

CANADA / JUDGMENT

P. (S.) v. R. (M.)

[1996] 2 SCR 842

COURT

Supreme Court of Canada

DECIDED

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P. (S.) v. R. (M.)

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Supreme Court Judgments

Date

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Report

[1996] 2 SCR 842

Case number

24251

Judges

Lamer, Antonio; La Forest, Gérard V.; L'Heureux-Dubé, Claire; Gonthier, Charles Doherty;
McLachlin, Beverley

On appeal from

Quebec

Subjects

Family law

Notes

SCC Case Information: 24251

Decision Content

P. (S.) v. R. (M.), [1996] 2 S.C.R. 842

S.P. Appellant

v.

M.R. Respondent

Indexed as: P. (S.) v. R. (M.)

File No.: 24251.

1995: November 3; 1996: August 22.

Present: Lamer C.J. and La Forest, L'Heureux-Dubé, Gonthier and McLachlin JJ.

on appeal from the court of appeal for quebec

Family law -- Compensatory allowance -- Separation -- Wife performing administrative and secretarial work for husband's business while taking care of children -- Two properties purchased by husband registered in wife's name -- Principles to be considered in deciding whether compensatory allowance should be awarded to wife or husband -- Approach to be taken in considering facts -- Whether Court of Appeal's intervention in trial judge's decision justified.

The parties were married in 1969 under the regime of separation of property. The appellant left her job after the marriage and raised two children. She worked without remuneration in the respondent's first business. In 1971, when that business went bankrupt, the family moved to Antigua. The appellant worked for the respondent's import/export business from 1974 to 1983, performing administrative and secretarial duties up to five hours a day and at times seven days a week, all without remuneration. When the respondent was away on business trips, the appellant often stayed at home to continue the day-to-day operations of the business. She was also responsible for entertaining clients and suppliers. During their marriage, the respondent acquired properties, including one in Antigua and one in Montreal which were registered in the name of the appellant as the sole owner. Proceedings for separation from bed and board were instituted in 1988. Both parties requested a compensatory allowance under art. 462.14 C.C.Q. -- the appellant for her contributions in services to the enrichment of the respondent's patrimony, and the respondent for his contribution to the Montreal property. The respondent also instituted proceedings in Antigua for a declaration that he was sole beneficial owner of the Antigua residence. At the time of the Superior Court judgment, the appellant was 56 years old and the respondent was 59. The appellant was not employed but was earning rental income from the Antigua property; her total savings and assets were about \$35,000 U.S., in addition to the properties in Montreal and in Antigua. The respondent in his testimony admitted to a net worth of at least \$1,525,000 U.S. The trial judge awarded the appellant a compensatory allowance of \$150,000 and dismissed the respondent's claim because art. 462.14 C.C.Q. was not intended to include that which was the object of a deliberate contract between spouses. The trial judge found that the appellant had not yet reached financial autonomy and set the alimentary allowance at \$2,625 per month, to be reduced to \$1,500 per month after the compensatory allowance had been paid in full. The trial judge did not take into account the rental income which the appellant was receiving from the Antigua property because of the proceedings instituted by the respondent in that jurisdiction, but reserved the respondent's right to ask for a variation order if that decision

were to be rendered in favour of the appellant. After the Superior Court judgment, an Antigua court dismissed the respondent's action and upheld the appellant's ownership of the Antigua property valued at \$270,000 in 1989. The Court of Appeal ruled that the Antigua judgment and the appellant's statements in the Antigua proceedings to the effect that the property had been given to her as compensation for her work constituted new evidence justifying its intervention. The Court of Appeal held that the confirmation of the appellant's ownership of the Antigua property constituted payment of the compensatory allowance awarded by the trial judge, and thus restored the amount of the alimentary support at \$1,500 per month instead of \$2,625. The court also awarded a compensatory allowance of \$100, 000 to the respondent for his contribution to the Montreal property, finding that the simple fact of putting this property in the appellant's name did not reveal any intention by the parties to benefit the appellant with the ownership of this property. This appeal involves the application of the principles set out by this Court in *Lacroix and M. (M.E.)* to the circumstances of this case.

Held: The appeal should be allowed.

The approach which the courts should take in assessing the constituent elements needed to establish a compensatory allowance must be overall, flexible and generous. Here, the trial judge, to some extent, and the Court of Appeal have failed, at least overtly, to take the overall circumstances into account in determining each of the separate amounts. The Court of Appeal especially appears to have come to a determination of how the parties should fare in the division of property upon separation in a piecemeal fashion.

The trial judge's mere finding that the parties intended to transfer the property to the appellant was not sufficient justification to refuse to grant a compensatory allowance to the respondent. Where there is an agreement between spouses to transfer property, the court must look to the underlying intention of the spouses to determine whether there is a justification or cause for the transfer of property from one spouse to the other. If the court can find such an intention to benefit the receiving spouse, then the contributing spouse will not have the right to claim a compensatory allowance for his contributions to the enrichment of the other spouse's patrimony. In determining the intention of the parties in transferring property between spouses, the trial judge must examine the lifestyle of the parties during their marriage and the choices they made to arrange their matrimonial relationship. The following considerations are relevant: who was earning money outside the home, who made capital payments to the house and mortgage, who looked after the children, and whether one of the spouses quit a career to focus on home and family responsibilities. The Court of Appeal was justified in intervening in the trial judgment on the basis that the trial judge erred in law in his stated reasons for refusing the respondent's claim for a compensatory allowance but erred in concluding that he was entitled to such an allowance. The evidence on record indicates that the parties had arranged their finances and divided their responsibilities within the marriage in such a way that putting this property in the appellant's name was intended for her benefit. On a proper examination of all the circumstances of the marriage and of this specific property transaction, the trial judge was correct in refusing to award a compensatory allowance to the respondent.

The Court of Appeal erred in considering that the Antigua judgment declaring the appellant the owner of the Antigua property constituted significant new evidence, and also constituted payment of the compensatory allowance awarded by the trial judge. The fact that the ownership of the Antigua property was being contested before an Antigua court was known to the trial judge. The logical reading of his judgment is that he assessed the amount of compensatory allowance to be awarded the appellant on the understanding that the respondent had given her the Antigua property as partial compensation for the contribution of her services toward his business endeavours. There was sufficient evidence before the trial judge to allow him to come to that conclusion. The appellant's testimony in this regard was not contradicted by the respondent and both parties indicated that the property represented an investment which provided some level of security and independence for the appellant. There was also enough indication in the record, such as the cost and rental income of the Antigua property, to allow the trial judge to make an assessment of the value of that property in the patrimony of the appellant, in order to establish a proper compensatory allowance.

To make a correct assessment of an amount for a compensatory allowance for the appellant, it would be necessary to know the extent of the respondent's patrimony and to know to what extent the contributions of the appellant benefited the respondent. The respondent, however, was vague and uncooperative in his evidence as to the earnings of his company and as to the extent and the nature of his own assets. In light of the uncertainty which this file presented, the trial judge surely made the best assessment he could in determining what compensation should be awarded to the appellant. In reviewing the trial judge's decision, an appellate court must accord a considerable degree of deference to the discretion of the trial judge, and consider what might represent a reasonable range for a compensatory allowance, keeping in mind that any court addressing this question must approach the assessment flexibly, generously, and with regard to the overall situation of the parties. Here, the trial judge did not err egregiously in exercising his discretion in awarding the appellant a compensatory allowance of \$150,000. The Court of Appeal therefore was not justified in intervening in the trial judge's decision.

Cases Cited

Applied: *M. (M.E.) v. L. (P.)*, [1992] 1 S.C.R. 183; *Lacroix v. Valois*, [1990] 2 S.C.R. 1259; *Droit de la famille -- 866*, [1990] R.J.Q. 1833.

Statutes and Regulations Cited

Civil Code of Québec [en. S.Q. 1980, c. 39, art. 3; am. 1989, c. 55, s. 8], art. 462.14, 462.15, 462.17.

Civil Code of Québec, S.Q. 1991, c. 64, art. 427, 428, 430.

Authors Cited

Caparros, Ernest. *Les régimes matrimoniaux au Québec*, 3e éd. Montréal: Wilson & Lafleur, 1985.

APPEAL from a judgment of the Quebec Court of Appeal, [1994] R.D.F. 421 (sub nom. *Droit de la famille -- 1947*), allowing in part the respondent's appeal from a judgment of the Superior Court, [1991] R.D.F. 648. Appeal allowed.

Miriam Grassby and Sylvie Leduc, for the appellant.

Daniel St-Pierre, for the respondent.

The judgment of the Court was delivered by

Gonthier J. --

I - Introduction

1. This appeal concerns primarily the application of the proper principles in determining whether a compensatory allowance should be awarded in cases of separation or divorce, and what the amount of this compensatory allowance should be. Two recent decisions from this Court, *Lacroix v. Valois*, [1990] 2 S.C.R. 1259, and *M. (M.E.) v. L. (P.)*, [1992] 1 S.C.R. 183, have set out the principles to be considered in determining the amount of a compensatory allowance to be awarded. This appeal involves applying the principles from those two decisions to the circumstances of the present case.
2. The facts of this case are as follows. The parties were married in 1969 under the regime of separation of property by virtue of a marriage contract. The appellant left her job after the marriage, and raised two children. After the failure of the first business partly owned by the respondent, in which he lost all of his savings, the family moved to Antigua and lived there from 1971 to 1981. The appellant then returned to Montreal with her two children. The respondent, however, despite the family's return to Montreal in 1981, has retained the status of non-resident for tax purposes in this country.
3. The appellant worked without remuneration in the respondent's first business from 1969 to 1971, and again without remuneration in his second business based in Antigua from 1974 to 1983, under the title of "export manager". This was an import/export business which consisted of locating products and suppliers, and arranging for the shipment of these products to clients in the Caribbean. Much of the day-to-day business was managed over the telephone from the parties' home in Antigua, and then in Montreal after 1981. The respondent travelled frequently to locate products and suppliers around the world in order to expand the business's operations. The appellant sometimes accompanied the respondent during these trips, but more often stayed at home, taking and processing telephone orders and arranging for the shipment of products. Until the fall of 1983, the respondent and the appellant were solely responsible for the operations of the business; at that time, the respondent moved the daily operations of his business in with another company located in Montreal, whose services he employed for some of the administrative work of his business.

4. During their marriage, the parties acquired several pieces of property. In Antigua, the respondent acquired three separate properties which were registered in his name, and one property in the name of the appellant in 1981, on which was built a house which now provides rental income. The parties also acquired a property in Montreal at Habitat '67, which they had rented since 1969 and purchased in 1986. This was their common domicile for the years they were living together in Montreal. For these two latter pieces of property, the respondent provided the money for the down payment although the properties were registered in the name of the appellant as the sole owner.
5. Proceedings for separation from bed and board were instituted in 1988. As part of these proceedings, the appellant requested a compensatory allowance under the authority of art. 462.14 of the Civil Code of Québec (now art. 427) for her contributions in services to the enrichment of the patrimony of the respondent. The respondent requested in turn a compensatory allowance for his contribution to the Montreal property which was registered in the name of the appellant. The Superior Court judgment was rendered on October 22, 1991, finding in favour of the appellant, and the respondent appealed this judgment to the Quebec Court of Appeal. In 1988, the respondent had also instituted proceedings in the High Court of Justice of Antigua for a declaration that he was sole beneficial owner of the Antigua residence. Judgment was rendered by the High Court on May 6, 1992, dismissing the respondent's action and upholding the appellant's ownership of the property. The respondent presented the Antigua judgment as new evidence before the Court of Appeal. The Court of Appeal judgment, finding in favour of the respondent, was rendered on June 2, 1994.
6. At the time of the Superior Court judgment, the appellant was 56 years of age, and the respondent was 59 years of age. The respondent in his testimony admitted to owning a bond and equity portfolio as well as some land having a total market value of \$1,525,000 U.S. This sum represented his net worth as he had no liabilities. The appellant was not employed but was earning rental income from the Antigua property; her total savings and assets were about \$35,000 U.S., in addition to the properties in Montreal and in Antigua.

II - Judgments Below

Superior Court, [1991] R.D.F. 648

7. Boudreault J. first examined the appellant's request for a compensatory allowance based on her contributions to the enrichment of the respondent's patrimony as a result of the help she gave him in the pursuit of his business endeavours. The trial judge expressed great reservations as to the respondent's credibility, and accepted the appellant's testimony wherever it was at variance with that of the respondent. He did not believe the respondent's explanation as to how his assets were accumulated, and found that the appellant was entitled to a compensatory allowance of \$150,000 "considering the value of the senior clerk cum executive secretary's services which she supplied to his company during the relevant years and the accruing benefits from that money being judiciously invested by [the

respondent] year after year” (p. 651).

8. With respect to the respondent's cross-demand for a compensatory allowance representing the value of his rights in the Montreal common domicile, the trial judge said that the expression "contribution ... to the enrichment of the patrimony" in art. 462.14 C.C.Q. was not intended to include that which was the object of a deliberate contract between spouses. Even though neither party stated that the respondent intended to make a gift to the appellant of the down payment for the Montreal property, Boudreault J. said that "when one voluntarily and deliberately turns over to another \$26,000, a contractual situation of some sort must somehow exist" (p. 652). Thus, there was no reason to award the respondent a compensatory allowance for his interest in the Montreal property, which he gave by way of contract to the appellant.
9. With respect to the appellant's request for maintenance and alimentary support, Boudreault J. found that she had not yet reached financial autonomy and that the respondent had the means to support her in a manner similar to their former standard of living. The trial judge set the alimentary allowance at \$2,625 per month, to be reduced to \$1,500 per month after the compensatory allowance had been paid in full. The trial judge did not take into account the rental income which the appellant was receiving from the Antigua property because of the proceedings instituted by the respondent in that jurisdiction. If that decision were to be ultimately rendered in favour of the appellant, the trial judge expressly reserved the right of the respondent to ask for a variation order to reflect the rental income received by the appellant in her support payments. The trial judge felt that the circumstances in this case indicated that the burden of requesting a variation of the support order should rest with the respondent.
10. And finally, Boudreault J. denied the appellant's request for a lump sum payment, considering the evidence and the fairly large capital which the appellant would receive in the form of a compensatory allowance. He did, however, order the respondent to furnish security in the amount of \$50,000 in order to guarantee the payment of the alimentary support.

Court of Appeal, [1994] R.D.F. 421

11. Proulx J.A. refused to interfere in the trial judge's discretion to grant a compensatory allowance to the appellant in the amount of \$150,000. However, he ruled that the Antigua judgment which was handed down after the decision of Boudreault J., and the appellant's statements in the Antigua proceedings to the effect that the property had been given to her as compensation for her work, constituted new evidence justifying the intervention of the Court of Appeal. He also held that the confirmation by the Antigua High Court of Justice of the appellant's rights to the Antigua property constituted payment of the compensatory allowance awarded by the trial judge, since the Antigua property, valued at \$270,000 in 1989, covered the amount of the compensatory allowance awarded.

12. With respect to the amount of alimentary support awarded by the trial judge, Proulx J.A. held that there was no reason to interfere with the amount awarded, and restored the amount at \$1,500 per month instead of \$2,625 per month, considering that the payment of the compensatory allowance had been satisfied in full by the Antigua judgment confirming the appellant's ownership of the Antigua property. Proulx J.A. ordered the retroactive reimbursement of the overpayment of support for the previous two years, from the time of the Antigua judgment to the date of the Court of Appeal judgment. Proulx J.A. did not make reference to the rental income which the appellant was receiving from the Antigua property.
13. And finally, Proulx J.A. was of the view that the trial judge erred in refusing to award a compensatory allowance to the respondent for the contribution he made toward the Montreal property. The simple fact of putting this property in the name of the appellant did not reveal any intention by the parties to benefit the appellant with the ownership of this property, and the respondent should be compensated for his contribution. Since he made a down payment equal to about 50 percent of the purchase price of the property, he should be entitled to a similar proportion of the present value of the same property. Therefore, Proulx J.A. held that the respondent was entitled to a compensatory allowance of \$100,000 to be paid by the appellant.
14. On this last point, McCarthy J.A. wrote a brief concurring opinion indicating that this Court's decision in *M. (M.E.)*, supra, which was handed down after the trial judgment in the case at bar, mandated a trial judge to examine the intention of the parties in determining whether putting a particular property in the name of one spouse was meant to benefit that spouse with the ownership of the property. If this is done solely with the intention of putting the property beyond the reach of the creditors of the spouse who paid for the property, then the contributing spouse has the right to claim a compensatory allowance for his contribution toward the property. McCarthy J.A. agreed with Proulx J.A. that the evidence in this case indicated that such a compensatory allowance should be awarded to the respondent for his contribution to the purchase price of the Montreal property.

III - Issues

15. The central issues on this appeal are, firstly, whether the Court of Appeal erred in finding that the confirmation by the Antigua High Court of Justice of the appellant's ownership of the Antigua property constituted payment of the compensatory allowance of \$150,000 to the appellant and, secondly, whether the Court of Appeal erred in awarding a compensatory allowance to the respondent for his contributions to the Montreal property which was registered in the name of the appellant. Both issues will necessitate a review of the principles set out by this Court in previous cases with respect to the awarding of compensatory allowances.
16. The specific legal issues which this appeal raises are, firstly, whether the judgment rendered by the Antigua High Court of Justice constituted "new evidence" sufficient to justify the intervention of the Court of Appeal in the judgment of Boudreault J. of the Superior Court.

Secondly, did Boudreault J. err in his treatment of the Montreal property, especially in light of this Court's judgment in *M. (M.E.)*, supra, and was the Court of Appeal justified in awarding the respondent a compensatory allowance for his contributions to the appellant's patrimony with respect to this property? And thirdly, if the Court of Appeal were justified in intervening in the judgment of Boudreault J. on these grounds, did the Court of Appeal commit any error in correcting only discrete parts of the award of Boudreault J., without apparent consideration for the overall picture and the overall circumstances of both parties? This appeal is largely concerned with the approach an appellate court, or for that matter a superior court, must take when assessing these issues involving distribution of property between spouses within proceedings of separation and divorce.

IV - Law

17. The first paragraph of art. 462.14 C.C.Q. (now art. 427) provides for the payment of a compensatory allowance from one spouse to the other in the following circumstances:

462.14 The court, in declaring separation from bed and board, divorce or [nullity] of marriage, may order either spouse to pay to the other, as compensation for the latter's contribution, in property or services, to the enrichment of the patrimony of the former, an allowance payable [in cash] or by instalments, taking into account, in particular, the advantages of the matrimonial regime and of the marriage contract. The same rule applies in case of death; in such case, the advantages of the succession to the surviving spouse are also taken into account.

18. In *Lacroix*, supra, I pointed out some of the weaknesses inherent in the regime of separation of property, and the injustices which this regime has often visited on one spouse, usually the wife, who has benefited the other spouse throughout the marriage with contributions of money and unpaid services which have served to enrich the patrimony of the receiving spouse to the detriment of the contributing spouse. At p. 1283 of that decision, I said the following:

At first sight, the purpose of the compensatory allowance is to restore the equilibrium between two patrimonies which has been unfairly disrupted by developments in the matrimonial relationship. If one of the spouses has been enriched at the conclusion of the matrimonial relationship by the contribution of the other spouse, the judge will order compensation to the extent that the enrichment was due to the contribution.

19. The legislature introduced the remedy of compensatory allowance on December 1, 1982, as a remedy available to the courts to mitigate the losses suffered by the spouse who contributed goods and services throughout the marriage, by compensating that spouse for these contributions. This mechanism is directed towards redressing a disequilibrium which may have resulted between the parties within the matrimonial relationship. This legislative intervention in 1982 was not, however, meant to create a mandatory family patrimony; the legislature maintained the right of spouses to choose their own matrimonial regime through a matrimonial agreement. Thus, the question faced by courts is how to give effect to the

remedy introduced by the legislature which justifies a considerable intervention by the courts in the division of property between spouses who are parties to a matrimonial agreement, and yet respect the freedom of choice of the parties as evidenced by such an agreement.

Elements Necessary to Establish a Compensatory Allowance

20. In *M. (M.E.)*, supra, this Court again addressed the law relating to compensatory allowances, this time referring more explicitly to the circumstances in which the awarding of a compensatory allowance is justified. This Court adopted the following passage from Professor Caparros as an appropriate statement of the law regarding the criteria needed to establish an award for a compensatory allowance under the terms of art. 462.14 C.C.Q.:

[translation] Accordingly, to succeed in a claim for a compensatory allowance it is necessary to establish an impoverishment of the claimant which has resulted in an enrichment of the defendant, and an absence of cause for that enrichment. If the absence of cause is not taken into account, arbitrary action may result. Once there is an impoverishment, enrichment and causal link, even if the enrichment is justified, there may be a tendency to take away property from someone who is validly enriched. Let us not forget that the great underlying principle is that each person should be given his due, not have it taken away.

(Ernest Caparros, *Les régimes matrimoniaux au Québec* (3rd ed. 1985), at p. 61.)

21. The doctrine of compensatory allowance is related to the doctrine of unjust enrichment, and the criteria needed to establish a cause of action in both cases are very similar. In *M. (M.E.)*, supra, at p. 204, I set out the following constituent elements required to establish an award of a compensatory allowance:

- (1) the contribution, whatever its nature and form;
- (2) the enrichment;
- (3) the causal link, which must be "adequate", but does not have to be absolute;
- (4) the proportion in which the contribution has made possible the enrichment;
- (5) the concomitant impoverishment of the person making the contribution;
- (6) the absence of justification for the enrichment.

22. In *M. (M.E.)*, supra, this Court also made more specific comments regarding two of the above elements. In keeping with the overall, flexible and generous approach which this Court has held is the proper approach in assessing these elements, all contributions to the marriage by both spouses are to be considered and weighed in a preliminary assessment, without making a distinction between contributions to the marriage and contributions to the patrimony. I state at p. 197:

So-called "domestic" or "conjugal" contributions must not be excluded a priori because of their nature, but should be part of the overall assessment of the matrimonial situation.

23. Disregarding a spouse's contributions to the marriage may lead to a distorted view of the overall situation of the marriage and the understanding of the spouses as to the arrangements to be made within the marriage. Further on, at p. 198, I continue:

Further, failure to look at the "contributions towards the expenses of the marriage" and assess them may lead to unfair results in a compensatory allowance situation. Since the wife's contribution to the home is more fluid, less capable of being strictly proved, it is easy to regard it in its entirety as a contribution to the marriage and exclude it from the analysis. It is less easy to exclude the husband's contribution, as it is often monetary and lends itself to allocation depending on his employment.

24. I recognize that normal contributions to the marriage may certainly enrich the patrimony of the other spouse. I also recognize that a spouse making a normal contribution to the marriage and to family life cannot be expected to be compensated to the extent of the whole value of that contribution. In *M. (M.E.)*, supra, I suggested that in keeping with a global approach which the courts must take in assessing spouses' contributions to the marriage, it would be appropriate to consider normal contributions to the marriage at the stage of assessing the overall contributions made by both spouses, and to acknowledge at a later stage that the marital relationship itself may justify the fact that normal contributions were made by both spouses, leaving the court to determine whether contributions other than normal contributions merited a compensatory allowance.
25. Also, one must consider whether contracts and agreements concluded between the parties before or during the course of the marriage are a cause or justification for the enrichment of one of the spouses with the result that this enrichment should not give rise to a compensatory allowance. A spouse may, by sale or by gift, transfer the ownership of property in the name of the other spouse. This transfer of property may be intended as payment of compensation for contributions made by the receiving spouse, and to discharge part of any potential claim for compensatory allowance made under art. 462.14. This possibility has been provided for by art. 462.17 C.C.Q. (now art. 430), which states:

462.17 One of the spouses may, during the marriage, agree with the other spouse to make partial payment of the compensatory allowance. The payment received shall be deducted when the time comes to fix the value of the compensatory allowance.

26. Alternatively, the spouses may have intended that the spouse receive the benefit of the ownership of the property for some other reasons, for example, to provide the receiving spouse with a patrimony. The court must look to the underlying intention of the spouses to determine whether there is a justification or cause for the transfer of property from one spouse to the other. If the court can find such an intention to benefit the receiving spouse, then the contributing spouse will not have the right to claim a compensatory allowance for his contributions to the enrichment of the other spouse's patrimony.

Approach to Be Taken by Courts

27. This Court has repeated both in *Lacroix*, *supra*, and *M. (M.E.)*, *supra*, that the approach which the courts must take in assessing all the constituent elements needed to establish a compensatory allowance must be overall, flexible and generous. In *Lacroix*, for example, this Court stated at p. 1278 that, in general, "analysis of the factual and legal aspects of a compensatory allowance situation calls for special flexibility". This is true for all aspects of the analysis which a trial judge must bring to bear on the circumstances and the situation between the parties. The party requesting a compensatory allowance is allowed to adduce evidence by any means to prove the contribution to the enrichment of the other spouse's patrimony, as provided for by art. 462.15 C.C.Q. (now art. 428); the causal link between the enrichment of the benefiting spouse and the contribution made by the spouse requesting the compensatory allowance need not be demonstrated as strictly as in other areas of civil liability; the burden of proof imposed on the requesting spouse with respect to each of these elements should not be applied so rigidly as to deny in effect to the contributing spouse the beneficial effects of the remedy. Flexibility is needed because of the special nature of the matrimonial context: we cannot view marriage in the same way as a business and expect that detailed accounts of contributions, gains and losses have been recorded. We must keep in mind the ideal of marriage as a peaceful union, as a partnership aimed at benefiting both spouses and in which the contributions of both spouses combine to mutual benefit.
28. In addition, any assessment of the contributions made and the losses sustained within a marriage cannot be done in a piecemeal fashion. The circumstances of the marriage must be viewed as a whole, and an overall assessment must be made to determine whether a compensatory allowance should be paid to a spouse whose holdings coming out of the marriage do not reflect the contributions made by that spouse during the marriage for the mutual benefit of the spouses. It would be mistaken for the court to treat properties held by either or by both spouses as distinct entities and to determine an amount in the nature of a compensatory allowance for each property, without regard for contributions made otherwise in the marriage or with respect to other property. Similarly, in determining the final division of property between spouses, it would be mistaken for a court to assess discretely and individually amounts relating to the property division between spouses, compensatory allowance, lump sum payments, or alimentary support payments. These amounts must be assessed in relation to the overall circumstances between the parties.
29. In the case at bar, we can reproach both the trial judge, to some extent, and the Court of Appeal for having failed, at least overtly, to take the overall circumstances into account in determining each of the separate amounts. With respect, the Court of Appeal especially appears to have come to a determination of how the parties should fare in the division of property upon separation in a very piecemeal fashion. Treating the decision of the trial judge as a starting point, it considered the compensatory allowance to be paid to the appellant as satisfied by the *Antigua* judgment confirming her ownership of the *Antigua* property, and it ordered the payment of a compensatory allowance to the respondent with

respect to the Montreal property, maintaining the alimentary support payments to the appellant in the same amount as ordered by the trial judge, without apparent regard for the fact that it effectively reduced the appellant's equity by an amount greater than \$250,000 compared to what the trial judge had provided.

Deference to Trial Judge's Exercise of Discretion

30. Article 462.14 C.C.Q. states that the court may order a spouse to pay a compensatory allowance to his or her spouse if certain conditions, as discussed above, are met. The court has ultimate discretion to determine whether, in the circumstances of the case, a compensatory allowance is warranted and the assessment of these circumstances is the prerogative of the trial judge. The Court of Appeal should refrain from intervening in this assessment short of an error of law or evidence of an egregious error of fact in the trial judge's exercise of discretion, under art. 462.14.
31. In *Lacroix*, supra, I pointed out that the awarding of a compensatory allowance depends to a large extent on the ability of the trial judge to assess the facts and the evidence. With respect to the scope of intervention which is appropriate by an appellate court, I said the following, at p. 1275:

In performing this difficult judicial exercise, there are many factors which the trial judge may legitimately consider as, in relation to both compensatory allowances and lump sums, the legislator has recognized the need for broad discretion by adopting enabling provisions which have an essentially open texture. In such a context, the function of an appellate court is to correct errors of law made at trial in exercising the discretion conferred by law. It goes without saying that assessing the facts is the prerogative of the trial judge and that, unless it can identify such an egregious error in this regard that it indicates an error of legal principle, the Court of Appeal is not justified in intervening.

32. As well, in *M. (M.E.)*, supra, I reiterated that a Court of Appeal must exercise a relatively large degree of deference to the discretionary power of the trial judge for two reasons. Firstly, when a family is in the process of dissolving, its financial matters must be dealt with promptly so as to avoid exhausting the parties' resources and so as to permit them to start their lives over again. And secondly, spouses generally do not keep detailed records concerning their family finances, and oral testimony is therefore of great importance. The trial judge is in the best position to assess the demeanour and credibility of the witnesses. As indicated above, there are a number of factors which a trial judge may legitimately consider in assessing the appropriateness and the amount of a compensatory allowance. In *M. (M.E.)*, supra, at p. 205, this Court said the following with respect to the deference to be accorded by an appellate court:

This latitude in assessing "factors which the trial judge may legitimately consider" will occur in particular in the examining of the reasons justifying the enrichment, which may well be done from an overall perspective and will often underlie the judge's decision whether or not to use his discretionary power to alter the parties' patrimonial situation resulting from their agreements or from the circumstances.

The fact of giving greater deference to the trial judge's decision may, at least *prima facie*, lead to "contradictory decisions". This difficulty is inherent in the subject-matter, but it is the result of a flexible system in which the judge exercises an equitable power. Article 559 C.C.Q. (and its successor, art. 462.14 C.C.Q. [now art. 427]) is just such an equitable provision, which clearly confers a remedial and discretionary power on the trial judge.

33. And in the conclusion of that case, the Court decided that the trial judge had exercised his discretion judicially, saying at p. 206:

In the case at bar, the record contained evidence which justified the trial judge in exercising his discretion to deny the compensatory allowance to the respondent. The Court does not have to decide whether it would have exercised its discretion in the same way. Questioning a trial judge's findings of fact where there has been no error of law can only encourage appeals, a particularly unfortunate development in family matters. The Court must instead inquire whether the trial judge exercised his discretion judicially.

34. In the present appeal, as in *Lacroix*, *supra*, and *M. (M.E.)*, *supra*, the appellant is challenging the intervention of the Court of Appeal in a determination made by the trial judge as to the appropriate amount of compensatory allowance which should be awarded the appellant. Absent an error of law or an egregious error of fact on the part of the trial judge, the Court of Appeal should not intervene in this determination.

V - Application to the Case at Bar

Error with Respect to Montreal Property

35. The law in effect at the time of the trial judgment was not yet settled as to whether an intention to remove a piece of property from the reach of one spouse's creditors, and thereby putting that property in the name of the other spouse, was a sufficient justification to deny awarding the contributing spouse a compensatory allowance to reimburse him for his contribution to the other spouse's patrimony. The Court has since, in *M. (M.E.)*, *supra*, confirmed the proposition that an agreement between spouses to transfer property with the intention to benefit the receiving spouse does not give rise to a claim for compensatory allowance by the contributing spouse at a later time. However, if the intention is solely to put the property in the name of the receiving spouse to protect the property from the contributing spouse's creditors, this is not the sort of justification that will by itself bar a later claim for a compensatory allowance by the contributing spouse.

36. The trial judge in the present case held that the respondent, in putting the Montreal property in the name of the appellant, intended to put the property out of reach of his creditors, and that a contractual situation of some sort existed between the parties. Even though neither party stated that the respondent intended to make a gift to his wife of the value of the property which was transferred, the judge found that the result of this contract was to transfer the ownership of the property to the appellant, and the respondent had no further claim to the Montreal property, either as an owner or through the mechanism of a compensatory allowance. The trial judge in the absence of any express testimony of an intention to make a gift purported to look at the reality of the transaction to determine whether there was an intention to benefit the appellant. However, the trial judge concluded that there was such an intention only on the basis that the parties effected this gratuitous transaction voluntarily and deliberately, without considering any of the other circumstances behind the transaction.
37. This Court's decision in *M. (M.E.)*, supra, indicates that this was the wrong approach to take in determining whether the respondent was entitled to a compensatory allowance for his contributions to the Montreal property. Therefore, the Court of Appeal was justified in intervening in the trial judgment on the basis that the trial judge erred in law in his stated reasons for refusing a compensatory allowance to the respondent for his contributions to the Montreal property. A mere finding that the parties intended to transfer the property to the appellant is not sufficient justification to refuse to grant a compensatory allowance to the respondent; the court must determine that the parties intended that the receiving spouse obtain the benefit of ownership of the property.
38. The Court of Appeal was of the opinion that the evidence on the record did not show that the parties had intended that the appellant should receive the benefit of ownership of the Montreal property, nor that this was the intention of the parties when title to that property was registered in the appellant's name. With respect, I would disagree with the conclusion of the Court of Appeal on this point. I believe that the record in the case at bar contained sufficient evidence to show that the parties had intended that the appellant receive the benefit of ownership of the Montreal property. Before discussing this evidence, I will refer further to this Court's reasoning in *M. (M.E.)*, supra.
39. The most common types of contracts between spouses which would serve as a justification for the enrichment of one of the spouses are contracts of sale of property, often for nominal consideration, and gifts, or inter vivos donations. In *M. (M.E.)*, supra, I say the following, at p. 202:

The spouses may also have concluded contracts of sale or gift by which certain property was transferred from one spouse's patrimony to the other's. A husband may thus have transferred ownership of the family residence to his wife to provide her with a patrimony. This decision to benefit the wife may constitute a "justification" or cause for the enrichment of the latter's patrimony, in which case the husband could not subsequently claim what he had freely given or sold.

40. Thus, a gift for the purposes of benefiting the other spouse is a justification for the enrichment of that spouse, and the contributing spouse will have no subsequent right to a compensatory allowance in return for that gift. In the absence of any formal gift, as in the case at bar, a court must find that the transfer of the property into the hands of the receiving spouse was intended for her benefit. Thus, if the parties intended merely to place the property beyond the reach of the contributing spouse's creditors, or if they contemplated that the ownership of the property could somehow revert to the contributing spouse, the intention to benefit the receiving spouse did not exist and the contributing spouse would have a claim for a compensatory allowance.
41. This Court's decision in *M. (M.E.)*, supra, gives a good indication of how a court should go about these determinations. Again, this is a matter of judicial discretion, and the court must consider the circumstances of each case. The trial judge must examine the lifestyle of the parties during their marriage and the choices they made to arrange their matrimonial relationship. In *M. (M.E.)*, supra, this Court quoted extensively with approval from the decision of Rothman J.A. in *Droit de la famille* — 866, [1990] R.J.Q. 1833 (C.A.), to illustrate an example of circumstances in which property was given by one spouse to another partly as protection against creditors and partly to benefit the receiving spouse. The comments of Rothman J.A. are equally relevant to the case at bar, and I cite again the following extract from that case, at pp. 1838-39:

It is perfectly plausible that the parties would have intended to benefit the wife and the family by having the house purchased in her name while, at the same time, protecting this important family asset from possible future claims of business creditors. Many couples purchasing a home do so with both of these purposes in mind. There is no contradiction here and no incompatibility between the two purposes.

The contradiction arises only when respondent attempts to recover, by way of compensatory allowance, the payments he willingly made for a house that he and his wife decided would be purchased by her. At no time until the divorce proceedings were taken was there any question that the payments were not being made for her benefit or that they would be subject to reimbursement or compensation.

In short, while the payments made by respondent did enrich appellant's patrimony, this was obviously what the parties intended. It is difficult to imagine that respondent could have made the payments that he did on a house that his wife had purchased without intending to benefit her, albeit, at the same time, protecting the house from his creditors.

Nor is there anything unusual in the path the parties followed. They did what many generations of Quebec couples have done. They married under a regime of separation as to property, providing in their marriage contract for various gifts of future property. They purchased their family home in the wife's name while the husband made the payments on the house because he was the wage-earner. The parties were obviously aware that the wife could not herself make these payments, having agreed to remain at home to look after the children. Unless the entire arrangement was a subterfuge designed to hide the true ownership of the property from respondent's creditors, what purpose, other than a benefit to the wife, could possibly have been intended by the parties?

The claim for a compensatory payment under article 559 C.C.Q. is a claim founded on the equitable principle of unjustified enrichment or *enrichissement sans cause*. It is not every contribution made by one spouse to another that will give rise to a compensatory allowance. There must, of course, be an enrichment and an impoverishment. But it is essential, as well, that the enrichment be without cause.

Far from being without cause in this case, the enrichment of appellant's patrimony by respondent's contributions seems to me exactly what the parties intended in the arrangements they made.

Nor does this result seem unjustified or inequitable. Appellant gave up her own teaching career and salary for some 20 years to look after the house and children. This left respondent free to pursue his business career. It does not seem to me unjustified or unfair that during this period respondent was contributing to appellant's equity in the house while he was building up his own equity in the business. [Emphasis added by Rothman J.A.]

42. The decision in *M. (M.E.)*, *supra*, indicates that considerations such as the following are relevant in determining the intention of the parties in transferring property between spouses: who was earning money outside the home, who made capital payments on the house and mortgage, who looked after the children, whether one of the spouses quit a career to focus on home and family responsibilities. These are exactly the kinds of factors which Rothman J.A. considered in *Droit de la famille* — 866, *supra*. With respect, I believe that the Court of Appeal judgment in the present case does not follow the spirit of *M. (M.E.)*, *supra*, and that a more objective application of the principles in that case should lead this Court to the conclusion that the trial judge's result, if not his stated reasons, was the correct one, for virtually the same reasons as are set out in the long citation from *Droit de la famille* — 866, *supra*.
43. Because of the respective situations of the parties during the marriage and the financial arrangements which they made with respect to the family residence in Montreal, it would seem reasonable to conclude that the parties had both purposes of benefiting the equity position of the wife while protecting the family home from the creditors of the husband in mind in putting the home in the name of the wife. In fact, the trial judge expressed some doubt that the parties could seriously have been concerned about any impending

bankruptcy of the respondent and that their intention as stated at trial by the respondent was to protect the property from his creditors, considering that the parties did not purchase this property until 1986, when the respondent's net worth was considerable after over 10 years of successful business and investment management. In general, the trial judge gave little credence to the respondent's testimony, because of his evasive and uncooperative behaviour on the stand.

44. The parties, realizing that the appellant would otherwise be without financial security, intended to benefit her by placing the equity of the family home in her name. This kind of financial arrangement between spouses is quite common. And, as noted by Rothman J.A. in *Droit de la famille* __ 866, supra, dealing with similar circumstances, this result is neither unjustified nor inequitable. The appellant gave up the potential for an independent career during the marriage to assist her husband in his business as well as looking after the house and raising the children, freeing her husband to attend to a lucrative business. During their marriage, because of the respondent's considerable business travel and his business responsibilities, the appellant raised the children virtually alone. She also managed to do so while contributing substantially to the respondent's business with administrative and secretarial duties, all without remuneration.
45. The record establishes that the Montreal property was the first matrimonial home of the parties, and the only home that they occupied as a family while in Canada, both before 1971 and after their return to Canada in 1981. The parties and their two children were attached to the apartment. Considering the overall evidence, it is clear that this was the matrimonial residence in Canada, and that there was a clear intention to maintain it as the family home.
46. I believe that the evidence on record does indicate that the parties had arranged their finances and divided their responsibilities within the marriage in such a way that putting this property in the appellant's name was intended for her benefit. Therefore, even though the trial judge erred in finding that there was justification for the transfer of the property from the respondent to the appellant because of the mere existence of a contract between the parties, I believe that on a proper examination of all the circumstances of the marriage and of this specific transaction of property, the same result should hold, for the reasons explained above. Therefore, the parties intended that the appellant receive the benefit of the ownership of the Montreal property, and there was justification for the enrichment of her patrimony. As a result, the trial judge was correct in refusing to award a compensatory allowance to the respondent for his contributions to the appellant's patrimony.

New Evidence

47. The Court of Appeal in the present case also felt it was justified in intervening in the trial judgment because of new evidence which had come to light since the trial judge rendered his decision. In the intervening period, the High Court of Justice of Antigua had handed down its judgment which declared the ownership of the Antigua property to be in the hands of the appellant. The new evidence received by the Court of Appeal included the statement

of the appellant that the Antigua property had been given to her by the respondent in consideration of the services she had provided for him in his various business enterprises. This statement was set out in an affidavit of the appellant in the Antigua action and was affirmed by her in her testimony in those proceedings.

48. Proulx J.A. says that in light of this new evidence, which the trial judge could not have taken into account as the outcome of the litigation was not yet known, the Court of Appeal must take the value of the Antigua property into account in considering whether the compensatory allowance awarded to the appellant has been discharged. Since the Antigua property, stated in the Antigua judgment to be valued at \$270,000, is considerably more than the \$150,000 compensatory allowance awarded by the trial judge to the appellant, Proulx J.A. found it appropriate simply to cancel the obligation to pay the compensatory allowance, since payment of this had been satisfied by the gift of the Antigua property to the appellant.
49. The manner in which Proulx J.A. disposes of this matter rests on the assumption that the trial judge ignored the existence of the Antigua property completely when he set the amount of the compensatory allowance for the appellant at \$150,000, and that he removed any consideration of this property from his mind when he determined the appropriate amount of compensatory allowance. If this is true, then the trial judge erred in not considering the Antigua property as part of the overall situation when determining the amount to award the appellant as a compensatory allowance. But the decision of the trial judge can be read differently, and in fact the judgment can be read more logically if one considers that the trial judge did include the value of the Antigua property in his overall assessment.
50. First of all, the fact that the ownership of the Antigua property was being contested before the High Court of Justice of Antigua was known to the trial judge. Boudreault J. refers to the Antigua litigation and the allegations made on both sides, including testimony of the appellant that the property in Antigua had been given to her. There was also evidence in the present action before the trial judge, from an examination on discovery of the appellant, that the Antigua property was intended to be given to her as compensation for her work in the respondent's business:

Q. Did you ever ask [the respondent] for payment?

A. I did ask him and his reply was "I gave you a hundred thousand dollar house."

Q. Which house are we talking about?

A. There's only one hundred thousand dollar house, that's the Antigua house.

51. And furthermore, the trial judge explicitly referred to the Antigua property in making his award for alimentary support, reserving the right of the respondent to request a variation of that award once the ownership of the Antigua property had been decided. He explicitly did not take into account the rental income which the appellant was receiving from the Antigua property in setting the amount of alimentary support, on the grounds that if the Antigua litigation were to be decided in favour of the respondent, the appellant would need the

whole support payment awarded by the trial judge. If, on the other hand, the Antigua High Court kept the property in the hands of the appellant, then the respondent would bear the burden of coming to court to have the alimentary support award varied to reflect the rental income which the appellant would be earning from that property. Boudreault J. stated that in the circumstances, given the behaviour of the respondent before and during the trial, the burden of requesting this variation should fall on him. For example, it was the respondent who chose to set multiple litigation in action in two different jurisdictions, when he could have had the ownership of the Antigua property settled in the separation proceedings already instituted by the appellant.

52. The trial judge, however, though clearly aware of the circumstances and having made a specific and reasoned reservation as regards the alimentary allowance, did not make his award of a compensatory allowance to the appellant conditional on the outcome of the Antigua litigation. Yet the Court of Appeal assumed that the award of a compensatory allowance was conditional on the outcome of the Antigua litigation, and declared the compensatory allowance discharged by the Antigua judgment.
53. In my opinion, the logic of Boudreault J.'s judgment is that he took as a fact that the appellant owned the Antigua property. He did not give effect to that fact in setting the amount for alimentary support because of the potential risk to the appellant who, in the event that she lost the property, would be forced to seek variation of the support award payable by the respondent who was no longer a resident within the jurisdiction of the Superior Court. Imposing the burden on the respondent to apply to the court for reassessment of alimentary support based on the appellant's income from the Antigua property was more appropriate in these circumstances. This however required that the respondent's rights be reserved in this respect as otherwise it would be assumed that the rental income was taken into account in setting alimony.
54. On the other hand, if the Antigua judgment declared the property in Antigua as belonging to the respondent, the appellant could then have applied for a variation of the amount of the compensatory allowance awarded to her by the trial judge because of this intervening new fact. There was no need to reserve her rights. Her argument was consistent before the courts below as well as before the Antigua High Court that the Antigua property was given to her as part compensation for her services, and that she had the right to a further compensatory allowance as compensation for her considerable contributions to the respondent's patrimony. In my opinion, therefore, I believe that the logical reading of the judgment of Boudreault J. is that he assessed the amount of compensatory allowance to be awarded the appellant on the understanding that the respondent had given her the Antigua property as part compensation for the contribution of her services toward his business endeavours.
55. As I read the decision of Boudreault J., the Court of Appeal erred in considering that the Antigua judgment declaring the appellant to be the owner of the Antigua property constituted significant new evidence which was not before the trial judge, and also

constituted payment of the compensatory allowance awarded by the trial judge. The judgment of Boudreault J. was premised on the assumption that the appellant owned the Antigua property subject only to a possible review of the alimentary allowance. Therefore, the fact of the Antigua judgment can neither constitute significant new evidence that would have substantially affected the decision of the trial judge had this evidence been before him, nor a reason to interfere in the amount of the compensatory allowance to be paid to the appellant.

56. In my view, there was sufficient evidence before the trial judge to allow him to come to the conclusion that the Antigua property was given to the appellant in part consideration for her services to the respondent in his business activities. The appellant's testimony in this regard was not contradicted by the respondent. There was also testimony given by both parties that the Antigua property was given to the appellant in order that she would receive the benefit of the rental income which was generated by that property. Thus, the property represented an investment which provided some level of security and independence for the appellant.
57. The only question left to be clarified is whether the trial judge had evidence before him on record to assess sufficiently the value of the Antigua property, in order to establish a proper compensatory allowance. The appellant, in the various statements of income and expenses deposited on the record, indicated that the value of the Antigua house was \$100,000. In the course of examinations on her affidavit, the appellant stated on a number of occasions that this was the cost, in American funds, of the construction of the house on that property, and that she was not aware of the market value of the property. The appellant had a valuation report prepared on the Antigua property which put the market value of the property in November 1989 at \$632,800, in Eastern Caribbean currency, or \$270,000 in Canadian dollars. The respondent objected to the filing of this report in the record, alleging that it required cross-examination, and the respondent did not admit the correctness of the report. There was some suggestion that the respondent had also had a valuation done on the Antigua property, but if so this was not produced at trial. Thus, there was no clear evidence of the market value of the Antigua property which was the subject of examination and cross-examination. And furthermore, the trial judge does not state in the judgment what he considered the value of the Antigua property to be.
58. However, there was, in my view, enough indication in the record of the value of the property, such as its cost and rental income, which would allow the trial judge to make an assessment of the value of this property in the patrimony of the appellant. It would be necessary for the trial judge to have some idea of the value of this property in order for him to finally determine the amount of the compensatory allowance to be awarded to the appellant, since the trial judge must take into account the relative patrimonies of the parties in assessing the overall position of the parties. It is not necessary for the trial judge to set out all the factors and values he considers in determining an overall amount for a compensatory allowance, although certainly in the case at bar it would have been desirable had the trial judge given more elucidation of the factors he took into account in setting the compensatory allowance

at \$150,000.

59. It must also be noted that the value of the Antigua property was not the only element of uncertainty or vagueness which was present in the evidence before the trial judge. The respondent was vague and uncooperative in his evidence as to the earnings of his company and as to the extent and the nature of his own assets, and did not support his claims with adequate documentation. For example, the respondent denied the existence of any financial statements of his company which would give evidence of the company's profit figures, and he contradicted in his own testimony the sales and profit figures for the few years that were available. Although the respondent did admit to owning assets worth in excess of \$1.5 million U.S., he made it impossible to verify either his own current net worth or the financial standing of his solely owned company.

Compensatory Allowance

60. To make a correct assessment of an amount for a compensatory allowance for the appellant, it would be necessary to know the extent of the respondent's patrimony and to know to what extent the contributions of the appellant benefited the respondent. In light of the uncertainty which this file presented, the trial judge surely made the best assessment he could in determining what compensation should be awarded to the appellant. In reviewing the trial judge's decision, an appellate court must accord a considerable degree of deference to the discretion of the trial judge, and consider what might represent a reasonable range for a compensatory allowance, keeping in mind that any court addressing this question must approach the assessment flexibly, generously, and with regard to the overall situation of the parties. In my opinion, in the case at bar the respondent has not shown that the trial judge erred egregiously in his assessment of the evidence in coming to a figure of \$150,000 for a compensatory allowance.
61. The evidence discloses that the appellant made considerable contributions to the respondent's businesses, first from 1969 to 1971, and then from 1974 to 1983. The appellant was so closely involved in the respondent's second business in Antigua, and later on in Montreal, that it could be considered a joint enterprise between husband and wife, operated out of the parties' home. The appellant performed considerable administrative and secretarial work, up to five hours a day and sometimes for as many as seven days a week. When the respondent was away on business trips, which was often, he could entirely rely on the appellant to continue the day-to-day operations of the business. The appellant was also responsible for entertaining clients and suppliers. On the basis of this evidence, it could be said that the appellant had more of an executive role in the business than that of a secretary. The value of this contribution has to reflect the fruits that flowed from it. From a position of having lost all his savings in 1971 when the first business partly owned by the respondent went bankrupt, the respondent's investments in 1989 to which he admitted were in excess of \$1.5 million U.S. This can be compared to the impoverishment of the appellant, which is the prejudice to her own career in order to further the business of her husband. At the time of

their marriage in 1969, the appellant had gained considerable experience in banking administration. However, at the time of their separation in 1988, the appellant's age and lack of French language skills seriously compromised her ability to resume any career.

62. From the judgment of Boudreault J., the Court of Appeal effectively subtracted the compensatory allowance to the appellant, added a compensatory allowance of \$100,000 for the respondent, and ordered the retroactive repayment of the excess support payments. As of the date of its judgment, then, the Court of Appeal reduced the patrimony of the appellant by well over \$250,000 relative to what the trial judge had seen as a fair distribution of the property after separation. The Court of Appeal declined, however, to interfere with the amount of alimentary support which the trial judge had awarded the appellant, although there is no indication that it considered whether this amount would be sufficient in light of the fact that the appellant's equity was considerably decreased compared to what the trial judge had ordered. The Court of Appeal did not consider either whether it should reexamine the trial judge's decision not to award a lump sum payment, which the trial judge declined to do partly because of the considerable compensatory allowance which he awarded. An appellate court may not correct an error in the trial judgment with respect to one piece of property without then going on to determine whether such a correction would affect other aspects of the corollary relief ordered by the trial judge. Courts must take a global look at the situation of the parties in determining these issues of corollary relief such as awards of compensatory allowance, lump sum payment, or alimentary support.
63. As discussed above, even though the trial judge may have erred in his reasons for declining to award a compensatory allowance to the respondent, there was sufficient evidence in the record to justify this conclusion by the trial judge on other grounds. There was also, in my view, sufficient evidence in the record to allow the trial judge to assess the separate patrimonies of the two parties and to determine how much of a compensatory allowance to award the appellant, assuming that she was the owner of both the Montreal and the Antigua properties. On my reading of the evidence, I cannot conclude that the trial judge has erred egregiously in exercising his discretion in awarding the appellant a compensatory allowance of \$150,000, or in any other aspect of his order. Therefore, with respect, I conclude that in the result the Court of Appeal was not justified in intervening in the trial judge's decision. I would allow the present appeal and restore the order of the trial judge, with costs throughout in favour of the appellant.

Appeal allowed with costs.

Solicitors for the appellant: Miriam Grassby & Associées, Montreal.

Solicitors for the respondent: Kravitz & Kravitz, St-Laurent.

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