



**IN THE COURT OF APPEAL  
OF NEWFOUNDLAND AND LABRADOR**

**Citation:** *Stoodley v. Stoodley*, 2021 NLCA 5

**Date:** January 13, 2021

**Docket Number:** 202001H0004 and 202001H0013

**BETWEEN:**

KEITH STOODLEY

APPELLANT/RESPONDENT  
BY CROSS-APPEAL

**AND:**

DIANNE STOODLEY

RESPONDENT/APPELLANT  
BY CROSS-APPEAL

**Coram:** Welsh, White and Hoegg JJ.A.

**Court Appealed From:** Supreme Court of Newfoundland and Labrador  
Family Division 201402F0784  
(2019 NLSC 165)

**Appeal Heard:** September 24, 2020

**Judgment Rendered:** January 13, 2021

**Reasons for Judgment by:** Welsh J.A.

**Concurred in by:** White and Hoegg JJ.A.

**Counsel for the Appellant:** Sandra M. Burke Q.C.

**Counsel for the Respondent:** Paul D. Dicks Q.C.

**Welsh J.A.:**

[1] At issue in this appeal is the method by which the appropriate quantum of spousal support is determined upon dissolution of a long-term marriage. In particular, Mr. Stoodley's income, which was substantial and the sole source of the family income during the marriage, increased significantly after the spouses' separation. The issues involve discussion of the use of the *Spousal Support Advisory Guidelines*, the valuation date for division of RRSPs, the relevance of travel points earned in connection with the payor's employment, post-separation maintenance of the recipient spouse's lifestyle, and relevance of the payor spouse's increased income following the separation.

[2] At issue in the cross-appeal is whether an adjustment should be made to Ms. Stoodley's share of Mr. Stoodley's retention bonus and dividends if there is a reduction in the spousal support ordered as a result of the appeal.

**BACKGROUND**

[3] Keith and Dianne Stoodley, who were born in 1964 and 1963, respectively, were married on February 16, 1992. They separated on September 17, 2014 and have lived apart since then. In 1995, the parties agreed that Ms. Stoodley would leave her employment as an art therapist. After that she did not work outside the home other than to do some casual interior decorating for friends.

[4] Mr. Stoodley's income increased as he changed jobs over the years, except during one year, 2005 to 2006, when he was largely unemployed. The trial judge determined (2019 NLSC 165):

[158] In the period 2009 to 2014, Mr. Stoodley's taxable income fluctuated from \$290,816 to \$376,195, and had an average of \$338,356.

[5] After Mr. Stoodley moved to the United Arab Emirates for employment in 2015, the judge determined that his non-taxable income between 2015 and 2019 "fluctuated between \$497,715 and \$946,500" for an average of \$790,144 (decision of the trial judge, at paragraphs 201 and 204).

[6] Following a trial, in a final order dated September 19, 2019, the judge ordered Mr. Stoodley to pay spousal support of \$42,594 per month, commencing October 1, 2014. However, the order specifies:

The spousal support shall reduce to \$35,047 per month once the terms of the Property Order are satisfied and the Order for retroactive support is paid to [Ms.] Stoodley. Spousal support shall be paid until Keith Stoodley attains age 65 following which it shall be reviewed. An application to vary may be brought before he attains 65.

[7] The judge explained the reduction from \$42,594 to \$35,047:

[205] On \$42,594 ... Ms. Stoodley will have [net disposable income] of \$23,275 (after taxes of \$19,319). This will cover her monthly expenses of \$15,900 and permit savings of \$7,374 that will prepare her for Mr. Stoodley's retirement.

...

[207] Once Ms. Stoodley has received the retroactive spousal support for 2014 to 2019, she will be in an enhanced position to meet her own needs and the spousal support recalculations must be revisited.

[208] Mr. Stoodley's income will reduce because he will be required to liquidate shares to satisfy the judgment and Ms. Stoodley will be able to generate income on the money received. ...

[8] The judge also ordered retroactive spousal support for the period from September 17, 2014 to September 30, 2019 in the amount of \$1,002,730.

[9] Mr. Stoodley submits that spousal support of \$24,000 per month would be consistent with the application of relevant principles of law. He appeals only the quantum of spousal support, including the retroactive amount. He advised this Court that there is no issue as to either Ms. Stoodley's entitlement to spousal support or its duration. In the circumstances, Ms. Stoodley would be entitled to spousal support on a compensatory and a non-compensatory basis (*Bracklow v. Bracklow*, [1999] 1 S.C.R. 420 (S.C.C.)).

[10] Following an application to stay the enforcement of the order under appeal pursuant to rule 42 of the *Court of Appeal Rules*, NLR 38/16, Mr. Stoodley was ordered to pay ongoing spousal support in the amount of \$35,047 per month pending disposition of the appeal. The application for a stay was granted with respect to the payment of spousal support of \$42,594 per month and \$1,002,730 in retroactive support.

[11] I would note the following. First, the parties agreed that, if the appeal is allowed, and if the Court is satisfied that it is in a position to determine an appropriate order for spousal support, the order should be made, rather than remitting the matter to the trial court. Second, Mr. Stoodley made a request that this Court order Ms. Stoodley to pay taxes on the amounts she receives for

spousal support. I would decline to make such an order since that is a matter for Ms. Stoodley and Revenue Canada, and is not relevant to the issues on appeal.

## ISSUES

[12] At issue in the appeal is whether the trial judge erred with respect to the quantum of spousal support payable to Ms. Stoodley. The analysis involves the use of the *Spousal Support Advisory Guidelines*, the valuation date for division of RRSPs, the relevance of travel points earned in connection with Mr. Stoodley's employment, post-separation maintenance of Ms. Stoodley's lifestyle, and the relevance of Mr. Stoodley's increased income following the separation.

[13] At issue in the cross-appeal is whether an adjustment should be made to Ms. Stoodley's share of Mr. Stoodley's retention bonus and dividends if there is a reduction in the spousal support ordered as a result of the appeal.

## ANALYSIS

### General Principles

[14] Section 15.2 of the *Divorce Act*, RSC 1985, c. 3 (2nd Supp.), addresses the objectives of a spousal support order together with factors to be considered in determining an appropriate order:

(4) In making an order under subsection (1) [for spousal support] ..., 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.

...

(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;

...

- (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.

[15] In a situation where the payor spouse's income increases substantially after the spouses have separated, the increase may, but not necessarily would, be relevant depending on the circumstances. In this case, the relevance of Mr. Stoodley's significant increase in income would relate to assessing his ability to pay support to enable Ms. Stoodley to maintain a lifestyle comparable to what she enjoyed during the marriage. On marriage breakdown it is desirable, to the extent possible, to allow the parties to maintain the lifestyle they enjoyed prior to the separation (see, for example, *Boston v. Boston*, 2001 SCC 43, [2001] 2 S.C.R. 413, at paragraph 59, in a different context). Mr. Stoodley's significant increase in income after the separation engages, as a factor to be considered, spousal support that would be sufficient to enable Ms. Stoodley to maintain a lifestyle comparable to what she enjoyed during the marriage.

### Quantum of Spousal Support

#### *Relevance of the Spousal Support Advisory Guidelines*

[16] The trial judge appended to her decision a number of calculations using the formulas in the *Spousal Support Advisory Guidelines: The Revised User's Guide*, April 2016. The judge recognized that the *Guidelines* are not legislation. They are advisory only. The calculations obtained from applying the formulas provide a range of support meant to be used as one factor to assist in determining an appropriate spousal support order (*Drover v. Drover*, 2020 NLCA 9, at paragraphs 48 and 49). The *Guidelines* set an annual income of \$350,000 as a ceiling after which the formulas provide only limited assistance. Indeed, the *Guidelines* specify, at page 57:

Above the ceiling, spousal support cases require an individualized, fact-specific analysis. ... Evidence and argument are required.

[17] To apply the formulas, the *Guidelines* require a determination of the relevant annual income of the spouses. Where it is appropriate and equitable to do so, particularly where the annual income has not consistently increased or decreased, the trial judge may average incomes of three or four years, as was done in this case (*Allen v. Whelan*, 2008 NLUFC 23, at paragraph 63). The final determination and support order will involve consideration of other pertinent

factors. In this case, such factors would include the family income and lifestyle at the time of separation, together with possible implications of Mr. Stoodley's significantly increased income after the separation.

[18] I note in passing that section 14.3 of the *Guidelines* references post-separation increases in income. Where an increase in the payor spouse's income may be relevant to the quantum of spousal support ordered, the jurisprudence generally supports the need for a link between the marriage and the increase in income. The issue here relates to providing Ms. Stoodley with compensatory support that would enable her to maintain a lifestyle comparable to what she enjoyed during the marriage.

[19] The trial judge began with Mr. Stoodley's average annual income between 2009 and 2014, that is, prior to their separation, which she calculated to be \$338,356. Her calculations using the *Guidelines*, based on an annual income of \$290,816, that is, a gross monthly income of \$24,235, resulted in a range between \$8,724 and \$11,633 for monthly spousal support. The record filed in this Court does not include a calculation using an annual income of \$338,356, which was Mr. Stoodley's average annual income during the last four years of marriage.

[20] The judge also calculated that Mr. Stoodley's average annual income between 2015 and 2019, that is, after their separation, was \$790,144. Using that amount, and recognizing that the *Guidelines* have limited application for an income over \$350,000, the judge assessed, and ultimately awarded monthly spousal support of \$42,594. The reduced monthly support payment of \$35,047 was based on an income of \$687,959.

[21] In the circumstances, in applying the *Guidelines* to determine the spousal support order, the trial judge erred by using only Mr. Stoodley's post-separation annual income on which to base the quantum of spousal support. Mr. Stoodley's increased income, which more than doubled after the parties separated, would be relevant for the purpose of determining a level of spousal support sufficient for Ms. Stoodley to maintain the lifestyle she enjoyed during the marriage. However, the fact that Ms. Stoodley is entitled to compensatory spousal support does not lead to the conclusion that spousal support should be determined based exclusively on Mr. Stoodley's post-separation income.

[22] In concluding that Ms. Stoodley was entitled to compensatory spousal support, the trial judge recognized that her "contribution to the marriage and the family was significant and it was to Mr. Stoodley's advantage" (decision of the

trial judge, at paragraph 101). The judge found that Ms. Stoodley had dedicated herself to the home and children and support for her husband, foregoing her career and potential financial independence. While this factor supported a measure of compensatory spousal support to Ms. Stoodley, there is no evidence of special circumstances that would entitle her to an enhanced level of support beyond her entitlement to maintenance of the lifestyle she enjoyed during the marriage.

[23] Mr. Stoodley has agreed to pay monthly spousal support of \$24,000, substantially more than the high end of the range for an income of \$290,816. It is necessary, then, to consider the effect of other factors relevant to determining an appropriate quantum of spousal support. As discussed above, the focus is on ordering support sufficient to permit Ms. Stoodley to maintain the lifestyle she enjoyed prior to the separation. Mr. Stoodley's increase in income after the separation is a relevant consideration to the extent that it puts him in the position of being able to augment the support he is able to provide to Ms. Stoodley.

### Lifestyle

[24] In determining the quantum of spousal support, the trial judge relied on the proposition that Ms. Stoodley was "entitled to enjoy the lifestyle to which she became accustomed over the duration of her 24 year relationship [with Mr. Stoodley]" (decision of the trial judge, at paragraph 117). In assessing the finances necessary for Ms. Stoodley to maintain that lifestyle, the trial judge concluded:

[118] I estimate below Ms. Stoodley's reasonable monthly needs before allowances for either taxes or savings are considered:

Housing	\$6,000
Transportation	\$1,500
Groceries, meals outside, entertainment, alcohol and supplies	\$2,000
Personal care, clothing, dry cleaning, donations, church	\$1,000
Travel	\$3,000
Medical: dental, optometry, therapy, insurances	\$1,400

Gifts	<u>\$1,000</u>
Total	<u>\$15,900</u>

[119] Coincidentally, Mr. Stoodley had estimated approximately \$17,000 as his own monthly expenses on his December 2014 financial statement.

[120] Once she has received the \$686,000 due to her for the bonus, Ms. Stoodley may be able to generate a small amount of interest income but I estimate this will not exceed \$1,000 per month.

[25] Mr. Stoodley submits that the trial judge erred in her assessment of Ms. Stoodley's lifestyle during the marriage and the appropriate resulting quantum of support. In particular, with respect to an allowance of \$3,000 per month for travel, the judge explained:

[106] The lifestyle to which Ms. Stoodley became accustomed, particularly in the period June 2006 to 2014, included numerous trips a year to unusual and exotic destinations, always in business class travel, staying in the best hotels and with meals enjoyed at the finest of restaurants when they chose to do so. ... On their travels it was not unusual for them to purchase artifacts for their home (Turkish rugs, a Taiwanese carving, African masks, an arrow from Malaysia, swords, jewelry for Ms. Stoodley and expensive watches for both). To third party observers the Stoodleys lived the lifestyle of a wealthy family.

[26] The trial judge accepted that Ms. Stoodley's travel was made possible for two reasons:

[102] As to non-compensatory spousal support, the evidence supports the conclusion that the Stoodley family enjoyed many wonderful adventures associated with the travel that was enabled largely by: (i) the accumulation of travel points through Mr. Stoodley's employment, and (ii) Mr. Stoodley's decision to prioritize travel over debt reduction.

[27] Further, in assessing Ms. Stoodley's evidence, the trial judge concluded that some expenses were exaggerated while a claim for travel had been "seriously underestimated":

[115] As to a reasonable budget of monthly expenses, cross-examination on her financial statement revealed that Ms. Stoodley's estimates for many expenses were without foundation. Her combined claim for meals outside the home and groceries appeared exaggerated but her estimate for travel and vacation were seriously underestimated (if designed to be a substitute for that to which she had become accustomed).

[28] Mr. Stoodley submits that the trial judge failed to exercise her discretion based on the evidence in ordering support of \$3,000 per month for travel. A review of the transcript, including the evidence of Ms. Stoodley in cross-examination, indicates that, in fact, most of the travel referenced by the trial judge occurred when Mr. Stoodley was employed by Lotek, between 1995 and 2005, and that many of the destinations were part of single, work-related trips. While Ms. Stoodley enjoyed some travel associated with Mr. Stoodley's employment with Provincial Airlines from 2006 to 2014, the evidence does not support the conclusion that an annual amount of \$36,000 for travel is warranted.

[29] As discussed above, from 2009 to 2014 when the parties separated, and before Mr. Stoodley obtained employment in the United Arab Emirates in 2015, his income was, on average, approximately \$338,000 per year. A review of the evidence leads to the conclusion that, other than joining Mr. Stoodley on his employment-related trips by accessing his accumulated travel points, Ms. Stoodley did not travel extensively.

[30] Further, while Ms. Stoodley had access to her husband's travel points during their marriage, upon their separation, her entitlement would have been limited to a division of the travel points, and any related benefits, as an asset at the time of separation. A claim for a substantial amount for travel, in this case \$36,000 per year, would require an evidentiary foundation not found here. (I note that the division of assets was not under appeal, but if the division of travel points has not been addressed, it would be necessary to do so incidental to this appeal.)

[31] In fact, there was no evidence that the parties could have afforded a lifestyle involving regular travel to destinations around the world in the absence of employment-related opportunities and travel points earned by Mr. Stoodley. The trial judge found that, at the time of their separation, the parties were significantly in debt:

[34] It followed that on the day of separation, the Stoodley's joint account was in overdraft and their credit cards and secured and unsecured lines of credit were at their limits. Ms. Stoodley was left in an extremely vulnerable financial position and was both unaccustomed and ill-equipped to handle monetary matters.

[32] I am satisfied that the trial judge erred in concluding that, in the circumstances of this case, Ms. Stoodley's lifestyle during the marriage involved travel that would warrant an award of \$3,000 per month for travel.

[33] In addition to the award for travel, having specified spousal support of \$42,594 per month, the trial judge included a substantial sum to allow for Ms. Stoodley to set aside savings:

[204] The average [of Mr. Stoodley's annual income from 2015 to 2019] is \$790,144 non-taxable and Schedule "D3" [from the *Guidelines*' calculation] suggests monthly spousal support of \$42,594.

[205] On \$42,594, as Schedule "D3" confirms, Ms. Stoodley will have [net disposable income] of \$23,275 (after taxes of \$19,319). This will cover her monthly expenses of \$15,900 and permit savings of \$7,374 that will prepare her for Mr. Stoodley's retirement.

[34] In addressing the duration of spousal support, the judge referred again to Mr. Stoodley's eventual retirement:

[215] However, both parties have to make plans for a realistic date when Mr. Stoodley's employment income will transition to retirement income. By this time it is a reasonable expectation that both parties will have to rely on their assets to generate a substitute form of income, at least in part. The duration of the current spousal support order must be sufficient to allow both parties the opportunity to set aside savings for this purpose.

[35] The trial judge did not explain why an amount of \$7,374 per month should be included in the spousal support order to allow Ms. Stoodley to prepare for Mr. Stoodley's retirement. Duration of support for an indefinite period would encompass post-retirement support. In this case, Ms. Stoodley would be entitled to continuing support, subject to an application for a review or variation that may be made by Mr. Stoodley depending on the circumstances when he retires.

[36] Further, while Ms. Stoodley testified that she was unable to set aside savings when Mr. Stoodley was paying interim support of \$9,000 per month, she did not give evidence regarding her ability to save when Mr. Stoodley began making payments of \$24,000 per month, commencing in April 2018. In the ordinary course, a recipient spouse would be expected to set aside savings for future needs to the extent possible. The flexibility that would permit prudent use of funds by the recipient spouse would be increased where the quantum of monthly support is significant, as in this case.

[37] This brings me to the question of projected expenses on which the spousal support order is based. A total of expenses requiring a net amount of \$15,900 per month, or approximately \$28,000 in gross monthly income, would not be

realistic based on Mr. Stoodley's monthly income averaged during the last four years of marriage. That is, based on an average annual income of \$338,356, Mr. Stoodley would have had an average monthly income of approximately \$28,200. In effect, a net monthly support payment of \$15,000 to Ms. Stoodley would amount to the whole of Mr. Stoodley's after tax income prior to separation.

[38] Mr. Stoodley has agreed to pay monthly support of \$24,000. While that amount is significantly more than could be expected based on his income at the time of separation, because the family chose to spend Mr. Stoodley's income as it was earned, Ms. Stoodley enjoyed a lifestyle that was more luxurious than would otherwise have been expected. Mr. Stoodley is in a financial position which allows for a higher rate of support to permit Ms. Stoodley to maintain a lifestyle similar to what she enjoyed during the marriage.

[39] It was open to Mr. Stoodley to make submissions on appeal detailing how support of \$24,000 per month was calculated, or why another quantum should be ordered. However, rather than proceeding by undertaking such an analysis, he submits that spousal support of \$24,000 in the particular circumstances of these parties, is generous, reasonable and appropriate. I agree. That amount would provide Ms. Stoodley with an income that would accommodate her housing, transportation, daily living and personal care expenses at an appropriate level, with a generous allowance for clothing, travel, gifts and other items. It would provide sufficient funds to permit Ms. Stoodley to maintain a lifestyle similar to what she enjoyed prior to the separation, and should also permit flexibility in the use of the funds to allow for savings to be set aside for the future.

[40] The result in this case demonstrates how, while an order for spousal support will be determined based on established legal principles, the application of those principles requires a very fact-specific analysis. Given the unusual circumstances, the quantum of spousal support would not have precedential value.

#### *Conclusion on Monthly Spousal Support*

[41] By determining the quantum of spousal support based on Mr. Stoodley's post-separation annual income, the trial judge erred in awarding monthly spousal support of \$42,594, to be reduced to \$35,047 after the property and retroactive support orders are satisfied. In the circumstances, I would order Mr. Stoodley to pay spousal support, commencing October 1, 2014, in the amount of \$24,000 per month until he attains the age of 65, following which the order shall

be reviewed in Supreme Court, Family Division. An application to vary may be brought in Supreme Court, Family Division before Mr. Stoodley attains age 65.

### Retroactive Spousal Support

[42] Mr. Stoodley takes no issue with the award of retroactive support of \$25,000 payable in respect of the period between September 17 and November 30, 2014, and \$154,128 for the period between January 1 and December 31, 2016 as ordered by the trial judge (decision of the trial judge, at paragraphs 192 and 199). (I note that the trial judge did not award any retroactive spousal support for the period from December 1, 2014 to December 31, 2015. Ms. Stoodley did not challenge this.)

[43] For the period between January 1, 2017 and March 30, 2018, the trial judge ordered Mr. Stoodley to pay retroactive support of \$488,910 based on a monthly calculation of \$42,594 minus the \$10,000 which Mr. Stoodley had been paying pursuant to an interim order (decision of the trial judge, at paragraph 206). Mr. Stoodley acknowledges retroactive support is payable for this period at the rate of \$24,000 minus \$10,000 per month, for a total of \$210,000.

[44] For the period from April 1, 2018 to September 30, 2019, the trial judge ordered Mr. Stoodley to pay retroactive support of \$334,692 based on a monthly calculation of \$42,594 minus \$24,000 which Mr. Stoodley had been paying (decision of the trial judge, at paragraph 206). However, in accordance with the above order setting spousal support of \$24,000 per month, there would be no retroactive support payable after March 30, 2018 when Mr. Stoodley began making monthly support payments of \$24,000.

[45] In summary, Mr. Stoodley owes the following in retroactive support payments: \$25,000; \$154,128; and \$210,000, for a total of \$389,128.

### RRSPs – Evaluation Date

[46] For purposes of division, the trial judge concluded that the RRSPs should be valued at the time of judgment:

[78] The parties acknowledge that they held RRSPs at the time of separation valued at \$742,324.96. Since I have considered Mr. Stoodley's employer's contribution of \$25,000 in 2015 as part of his income, there must be an adjustment to the value of the asset to be divided. Also, the parties agree that the value of the parties' RRSPs has fluctuated considerably since the date of separation.

[79] In light of these facts, I accept that the most reasonable manner to address the division of these assets would be to require Mr. Stoodley to rollover to Ms. Stoodley, tax-free, 48.37 percent of the value of the RRSPs at the time of judgment. ...

(Emphasis added.)

[47] In *Martin v. Martin* (1998), 168 Nfld. & P.E.I.R. 181 (Nfld. C.A.), at paragraphs 31 to 40, Cameron J.A., for the Court, discussed the difficulties inherent in determining the date for valuing RRSPs for purposes of division as an asset. She concluded:

[40] ... Every effort should be made to make the division of property on marriage breakdown consistent with easily determined and simply stated principles. A consistent approach of valuation of RRSPs at the time of rollover would seem to me to be the clearer, simple way to achieve consistency of approach and therefore encourage settlement of issues by the parties themselves and avoid the complication of dealing with claims for constructive trusts in actions for division of matrimonial property. For this reason, as a general rule the content of the RRSPs should be determined at the date of separation but valued at the date of rollover or transfer. ...

(Emphasis added.)

[48] As applied in this case, there is no reason, either given by the trial judge or otherwise, to depart from the general rule stated in *Martin* that RRSPs should be valued as of the date of rollover or transfer. It follows that the trial judge erred in concluding that the RRSPs should be valued as of the date of her judgment.

### The Cross-Appeal

[49] Ms. Stoodley submits that a reduction in spousal support as a result of the appeal should justify an increase in Ms. Stoodley's share in Mr. Stoodley's retention bonus and dividends. I do not accept that proposition.

[50] The trial judge assessed the value of the retention bonus and dividends, up to the time of the parties' separation, as an asset subject to division. The contract providing for the bonus was signed in July 2014 and the parties separated in September 2014. The judge applied a formula to calculate the value of "only that portion that was acquired during the marriage", and concluded that Ms. Stoodley was entitled to an equal division of that value (decision of the trial judge, at paragraphs 70 to 72). The judge summarized:

[76] It follows from my characterization of \$1,700,000 in value of the Retention Shares as an asset (of which \$1,360,000 is to be divided equally between the parties to

reflect the portion relevant to Mr. Stoodley's [employment] service during the marriage) that:

The first \$1,360,000 in value of the Retention Shares Mr. Stoodley later received (as a replacement for the \$1,700,000 Retention Bonus) must be excluded from consideration in the calculation of Mr. Stoodley's income because to include it would represent double-dipping (*Boston v. Boston*, 2001 SCC 43);

The remaining value in the Retention Shares Mr. Stoodley received is exempt from division as property acquired after separation but may be relevant to the calculation of spousal support;

Income generated on the Retention Shares Mr. Stoodley received (dividends in lieu, dividends or interest on proceeds of sale) may be relevant to the calculation of spousal support.

[77] In a later portion of this Decision I consider whether the remaining value in the Retention Shares and/or the dividends and interest associated with these should be considered in the calculation of Mr. Stoodley's income for purposes of spousal support.

[51] The trial judge's decision regarding the division of the retention bonus and dividends as an asset acquired prior to the parties' separation was not appealed. Ms. Stoodley has received her share of that asset.

[52] The relevance of Mr. Stoodley's income after the parties separated is discussed above. It is clear that, in the circumstances of this case, Mr. Stoodley's income after the separation is relevant to the extent that he is able to provide sufficient support to enable Ms. Stoodley to maintain a lifestyle comparable to that which she enjoyed during the marriage. For the reasons set out above, the quantum of the spousal support order would not be altered even if there was a basis on which to increase Mr. Stoodley's post-separation income as requested in the cross-appeal.

[53] In the result, there is no basis on which to conclude that a reduction in spousal support as a result of the appeal would justify an increase in Ms. Stoodley's share in Mr. Stoodley's retention bonus and dividends.

### Costs

[54] In the circumstances, I would order the parties to bear their own costs on the appeal and cross-appeal. There is limited case law to guide the parties in

situations such as this and clarification serves the interests of both parties. The decision on costs in the court appealed from was not appealed.

## **SUMMARY AND DISPOSITION**

[55] In summary,

1. The trial judge erred in awarding monthly spousal support of \$42,594, to be reduced to \$35,047 after the property and retroactive support orders are satisfied. I would order Mr. Stoodley to pay spousal support, commencing October 1, 2014, in the amount of \$24,000 per month until he attains the age of 65, following which the order shall be reviewed in Supreme Court, Family Division. An application to vary may be brought in Supreme Court, Family Division before Mr. Stoodley attains age 65.
2. Mr. Stoodley owes the following in retroactive support payments: \$25,000; \$154,128; and \$210,000, for a total of \$389,128.
3. The trial judge erred in concluding that the RRSPs should be valued as of the date of her judgment. There is no reason, either given by the trial judge or otherwise, to depart from the general rule stated in *Martin* that the RRSPs should be valued as of the date of rollover or transfer.
4. There is no basis on which to conclude that a reduction in spousal support as a result of the appeal would justify an increase in Ms. Stoodley's share in Mr. Stoodley's retention bonus and dividends.
5. The division of travel points as of the date of separation must be addressed if that has not already occurred.

[56] Accordingly, I would allow Mr. Stoodley's appeal and make the order as set out above. I would dismiss Ms. Stoodley's cross-appeal. I would order the parties to bear their own costs of the appeal and cross-appeal.

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B. G. Welsh J.A.

I Concur: \_\_\_\_\_  
C. W. White J.A.

I Concur: \_\_\_\_\_  
L. R. Hoegg J.A.