

Murdoch v. Murdoch

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[I did] "haying, raking, swathng, moving, driving trucks and tractors and teams, quietening horses, taking cattle back and forth to the reserve, dehorning, vaccinating, branding, anything that was to be done. I worked outside with him, just as a man would..."

Irene Murdoch's evidence

Introduction

Murdoch v. Murdoch is a 1973 Supreme Court of Canada decision from Alberta [<http://canlii.ca/t/1xv6k>]. It shows law as a blunt instrument when adapting to social change. The case involved the application of old property law principles to emerging matrimonial property realities.

In Canada, marriage was traditional up to the late 1970s. The spouses were male and female, divorce was rare by modern standards and property was mostly held in the husband's name. In the 1970s this started to change as divorce increased after divorce laws were liberalized and people lived together and separated without formal marriage. Women found they had a tenuous claim to share in the property they had acquired and contributed to during the cohabitation.

Women argued that under standard trust law, they had acquired a beneficial interest in matrimonial property to which they indirectly contributed.

Facts

Irene and Alex Murdoch married in 1943 and worked for four years on Alberta ranches as a hired couple. Multiple properties of increasing value were bought and sold in succession by Alex, culminating in a substantial ranch at Black Diamond, Alberta.

Throughout the marriage Irene worked on the property alongside her husband. She operated the ranch during her husband's substantial absences while he was tending other businesses.

When the marriage ended in 1968, Irene claimed a half interest in the ranch and other assets, the titles of which were in her husband's name. This amounted to about \$95,000. She said she was an equal in the ranching business during their 25 years of marriage.

Irene's story was the socio-economic reality of many Canadian farm wives – indeed most married women in Canada at that time. Women could identify with Irene.

At the Supreme Court of Canada

There had been a few decisions where, in exceptional circumstances of labour and sacrifice, wives could be entitled to a proprietary interest merely from marriage and cohabitation, and without financial contribution. The legal principle was resulting or constructive trust.

Four of the five male judges concluded that Irene's work did not exceed that which is expected of a typical ranch wife. A trust would be found if she had contributed money or if there was a common intention at the time of property acquisition to hold equal

shares in trust. Irene could prove neither of these things. Therefore, she was granted no beneficial interest in the property and she was ordered to pay some of her husband's legal bills.

The dissenting judge saw Irene's work contributions as "extraordinary." He said the pooled wages earned early in the marriage should be counted as sufficient financial contribution to the property acquisition. A denial of her interest would be an inequitable and unjust enrichment of her husband.

Impact on Canadian Matrimonial Property Law

The *Murdoch* decision stoked a significant increase in public and political support for matrimonial property law reform. Irene's story was the socio-economic reality of many Canadian farm wives – indeed most married women in Canada at that time. Women could identify with Irene. Women's groups pushed for reform of matrimonial property regimes. The case represented a watershed event in the Canadian women's movement.

Women's groups rallied behind Irene and set up a trust fund in 1974 to "thank [Murdoch] from all women because her courage and tenacity have brought the unjustness of our laws on matrimonial property out into the open..."

The political response was to create commissions with the mandate to examine existing matrimonial property law and to propose reforms. All Canadian provinces and territories enacted new legislation within six years of the *Murdoch* decision. An example was Ontario's *Family Law Reform Act* of 1978.

Gone was the separation of property principle where each spouse owned only that in which they could establish a proprietary interest through rigid rules of property and trust law, and where the wife received nothing upon separation if her name was not on the title. The new legislative regime mandated a presumption of equal sharing of property acquired during marriage or cohabitation, regardless of the financial or labour contribution to its acquisition. Indeed, there was more legally required sharing after marriage breakdown than during marriage itself.

What Happened to Irene Murdoch?

After the decision, Irene found work as a cleaning lady. Her divorce was final in 1975. Her lump sum financial settlement for maintenance was \$65,000.

Women's groups rallied behind Irene and set up a trust fund in 1974 to "thank [Murdoch] from all women because her courage and tenacity have brought the unjustness of our laws on matrimonial property out into the open... [and to be] a public gesture, a token of disapproval of the way the Supreme Court of Canada interpreted the law" (from a November 1975 speech). The Murdoch fund mobilized grassroots interest in Irene Murdoch's case and provided a means for ordinary women to demonstrate their support. The trust fund was endorsed by the newly established Alberta Human Rights Commission, which sent a letter to the Supreme Court of Canada seeking a revision. The story was taken up by the press and the Advisory Council on the Status of Women, both of which provided additional endorsement.

Irene re-emerged in May 1983 to author a letter to the editor of *Chatelaine*. Now remarried, she replied to an article in which she had been featured: "since my divorce, what I have said over and over again is that . . . I have a new life now and I want to forget the old."

By the mid-1980s, Irene was clearly wary of the media and sought to return to her private life. A reluctant heroine who shunned the spotlight, she drifted away from the women's organizations that had helped her.

Irene Murdoch's case will always be seen as a rallying focus for matrimonial property law reform. It served as the impetus for the quest for legal equality between spouses.

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