

## Engagement Rings as Gifts

A question of law that family counsel are commonly asked is whether an engagement ring is a gift to the recipient, or family property to be divided. The jurisprudence generally suggests that an engagement ring is a gift given prior to marriage and exempt from distribution (see for example, *Slapsys v Slapsys*, [1997] A.J. No. 1174; *Gieni v Gieni*, [1999] S.J. No. 427).

However, in the unusual case of *McManus v. McCarthy*, 2007 ABQB 783 the Court found differently based on a unique set of facts. In that case the parties were only married for 9 days. The only issue in dispute was the matter of whether the wife's engagement ring was a gift to her or a conditional gift given by the husband that should be returned to him.

The parties had a tumultuous relationship. They were engaged a total of 4 times between December of 2005 and their wedding on July 20, 2007. For the first engagement the husband purchased a "relatively expensive" engagement ring, which the wife returned to him when the engagement ended. The same ring was given to the wife for the second engagement and was again returned. The husband then sold the ring at a "significant financial loss."

For the third engagement the husband ordered a ring to be made, which ring was not yet finished at the time the engagement ended. The husband was required to pay for the work completed on the ring notwithstanding him cancelling his order.

The husband's evidence was that the fourth and final time the parties got engaged he advised the wife that he would not be purchasing a third ring. He said that she stated the marriage was conditional on her receiving a ring, and therefore he relented on the condition that if the engagement or marriage ended the ring would be returned to him. In her evidence the wife denied that this conversation ever happened.

The parties were married on July 20, 2007 and separated (during their honeymoon) 9 days later on July 29, 2007. The husband took the ring with him when he left. The wife demanded on several occasions that it be returned to her. It was ultimately determined that pending this application the ring would be held by a third party pending the application.

Given the facts outlined above the Court decided to take a different approach than previous cases. The Court specifically noted:

"It is normally the case that an engagement ring would be considered a gift and would not be subject to distribution between the parties on marriage breakdown. Counsel for the wife has provided to me a number of decisions of the court that hold an engagement is a gift. The facts in those decisions however relate to relatively normal engagements and marriages. The history leading up to this engagement is certainly unusual. I must decide this matter on the balance of probabilities based on the evidence before me."

Throughout her application the wife insisted that she did not care whether she had the ring. When asked why she had brought the application if she did not care she stated that "her husband had told her that he loved her and was totally committed to her and that she wanted the ring as a reminder of that."

Ultimately the Court determined that given the brief nature of the relationship the ring was a conditional gift, conditional on the marriage continuing. The Court further noted they had made this decision given the "very unusual facts and circumstances of this case." Notwithstanding the

outcome in *McManus* the jurisprudence continues to suggest that engagement rings are most often considered a premarital gift to the receiving party and not subject to family division.