# FAMILY COURT OF NOVA SCOTIA

**Citation : *S.M. v. D.D., 2018 NSFC 10***

**Date:** 20180424
**Docket:** Bridgewater No. FBWPSA-108230
**Registry:** Bridgewater

**Between:**

S.M.

Applicant

v.

D.D.

Respondent

**Editorial Note:** **Identifying Information has been removed from this electronic version of the judgment.**

**Judge:** The Honourable Judge Timothy G. Daley

**Heard** April 17, 2018 in Bridgewater, Nova Scotia

**Written:** April 24, 2018

**Counsel:** Deborah I. Conrad, for the Applicant
Andrea Isabelle, for the Respondent

## Introduction

[1] The applicant in this matter, S. M., comes before this Court seeking spousal support from the respondent, D. D. This decision is focused on the issue of jurisdiction, specifically whether this Court can and should take jurisdiction over this matter and determine the issue of spousal support between these parties or whether the matter should be heard in Ontario with where D. D. resides and S. M. resided with him until her relocation to Nova Scotia.

[2] Initially S. M. made application to this court seeking child support and spousal support as well as a determination of outstanding property matters by way of a finding of unjust enrichment. This application was later amended to withdraw the application for a finding of unjust enrichment and child support such that the sole remaining issue before the court is spousal support.

[3] On this issue, the parties' positions are clear. S. M. says the court can and should assume jurisdiction over spousal support and D. D. says the court cannot, and even if it can, should not, assume jurisdiction in the matter.

[4] It is important to note at this stage that the court will not consider the merits of the argument respecting spousal support or much of the evidence of the parties on this issue except as it is relevant to the issue of jurisdiction. Therefore, issues of entitlement, quantum and duration of spousal support are not before the Court for consideration in this motion and the only evidence I will consider is that which bears directly on the issue of jurisdiction.

## The Evidence

[5] Unsurprisingly, the parties differ in some of their evidence respecting the history of the matter but there is some common ground. The parties met in 2010 while they were both living and working in Ontario. The relationship was initially a professional one where S. M. was retained by D. D. to provide bookkeeping services for his company. Shortly after that professional relationship began, the parties began a romantic relationship. D. D. says that they began to live together approximately one year later. S. M. says that cohabitation began in 2010. They both agree that they cohabited in what appears to be a common-law relationship until November 1, 2017.

[6] There is no dispute that each of the parties owned and operated their own businesses in Ontario. D. D. owns and operates Rod End Mechanical Inc. and S. M. owned and operated at least three businesses, each related to accounting, bookkeeping and tax preparation services.

[7] S. M. says that the parties began discussing retirement in 2014 and that D. D. became semi-retired in 2016. She says that the parties listed their home in Ontario for sale in 2016. D. D. and S. M. both confirmed that they purchased a property in Lunenburg, Nova Scotia in 2017. D. D. describes this as a vacation property where the parties eventually intended to move for retirement and to continue operating their respective businesses. S. M. describes this as a property to which they planned to retire.

[8] She says that in June 2017 the parties moved to the property in Lunenburg, Nova Scotia, they remained there for the Summer of 2017 and had plans to sell the home in Ontario in early 2018. She describes this move as part of a retirement plan of the parties.

[9] While in Nova Scotia in the Summer of 2017, the parties changed their driver's licenses from Ontario to Nova Scotia and relocated several of their vehicles to Nova Scotia and insured them in this province. S. M. applied for and received a Nova Scotia health card at that time.

[10] S. M. says that she took on a Nova Scotia client in August 2017, completing the work for the client later in the year.

[11] It appears that the parties went back to Ontario after the Summer of 2017 at which time the relationship fell apart. The reasons for the breakdown in the relationship are not relevant to the determination of the issue of jurisdiction. It is relevant to the analysis that the parties agree the relationship ended on November 1, 2017.

[12] Not only did the relationship end on November 1, 2017 but D. D. terminated S. M.'s employment with his company on the same date. D. D., through counsel, wrote to S. M. on November 13, 2017 demanding that she vacate D. D.'s home in Ontario, which they had occupied together to that point, and that she do so on or before December 10, 2017.

[13] D. D. says that he did direct counsel to write to S. M. advising she had approximately 30 days to find alternate accommodation and that if she required additional time to do so, he would accommodate any reasonable request. The letter makes clear that he would only consider such a request and the additional cost would be hers to bear. He says that S. M. immediately moved to Nova Scotia and her daughter remained in the Toronto home, effectively leaving D. D. homeless for a time. He stayed with friends and in hotels until the home was ultimately vacated.

[14] S. M.'s daughter, who was in her last year of high school, moved in with and stay temporarily at the home of friends while her other daughter remained a student at university. S. M. relocated to the jointly held property in Lunenburg Nova Scotia and continues to reside there to this day.

[15] There is evidence respecting various steps taken by the parties regarding their finances including that D. D. closed the parties' joint bank accounts on or about January 17, 2018 and that S. M. was left financially vulnerable at that time. She says it affected her ability to carry on her business in Nova Scotia.

[16] S. M. says that D. D. took over $300,000 from the joint bank accounts of the parties and subsequently closed them after separation, leaving her without any income. She also says that he terminated her income through his company of $1,955 per week.

[17] D. D. says that S. M. withdrew significant funds by way bank draft from their account without his knowledge or consent on November 3, 2017 and, from the November 2, 2017 to January 15, 2018 withdrew $52,500 of D. D. and his company's money without his knowledge or consent. In his most recent affidavit sworn April 11, 2018 he says that on or about March 14, 2018 he opened mail addressed to S. M. by accident, believing this correspondence from a bank was for him or his company and says the statement showed a balance in a TFSA account of over $74,000 at the beginning of the February 2018 and a closing balance of $62.50 at the end of that reporting period, maintaining that S. M. had those funds available to her.

[18] He also says that he believes that S. M. took two 1 ounce gold bars from his dresser in the home and says that the second statement he opened on the aforesaid date confirms that she had sold this gold realizing $2,511 from that sale.

[19] He says as well that S. M. obtained a total of a further $18,000 in US funds by way of wire transfers in October and November 2017.

[20] With respect to income, S. M. says that she has had limited ability to generate income since the parties separated. D. D. says that he believes that S. M. has income in the range of at least $75,000 per year available to her in addition to the funds noted herein.

[21] D. D. says that he has income in the range of $87,000 to $196,500 per year with a three-year average of $129,379 and S. M. says that his income should be properly imputed to be much higher.

[22] In both circumstances, there will no doubt be much evidence called and argument applied to each party's income including analysis of financial statements and gross-ups applicable to self-employment incomes. It is not necessary to conduct that analysis for this decision and evidence on these matters was limited in this hearing.

**The Law**

[23] In determining the issue of jurisdiction, there is, broadly speaking, a two-part test that I must apply. I must first determine if I can take jurisdiction over the matter in Nova Scotia. Second, I must determine if I should take jurisdiction over the matter in Nova Scotia.

[24] Under the applicable legislation, the *Parenting and Support Act* 1989 RSNS c.160 as amended, there is no specific direction on determination of jurisdiction so I must look elsewhere for guidance on the issue. I must therefore look to the *Court Jurisdiction and Proceedings Transfer Act*, 2003 (2d Sess.), c. 2, s. 1 (the *Act*), judicial interpretation of that legislation and the common law to determine jurisdiction.

[25] The test to be applied in such jurisdiction disputes is set out in the decision of *Yonis v. Garado*, 2011 NSSC 110, a decision of Justice Jollimore of the Nova Scotia Supreme Court Family Division, in which she finds as follows:

> 6. In *Penny (Litigation Guardian of) v. Bouch*, 2009 NSCA 80 (N.S.C.A.), Justice Saunders, with whom Justices Rosco and Oland concurred, approved of the two-step analysis Justice Wright preformed in deciding the application at first instance. Justice Wright said, at paragraph 40 of his decision in *Penny(Litigation Guardian of) v. Bouch*, 2008 NSSC 378 (N.S.S.C.), that where there's a dispute over assumed jurisdiction, the *Court Jurisdiction and Proceedings Transfer Act* requires I must first determine whether I can assume jurisdiction given the relationship between the subject matter of the case, the parties and the forum. If that legal test is met and I can assume jurisdiction, I must then consider whether I ought to assume jurisdiction. He said this means considering the discretionary doctrine of *forum non conveineus*. There may be more than one forum capable of assuming jurisdiction and I may decline to exercise jurisdiction because there is another, more appropriate, forum.

[26] To the first question of whether I can assume jurisdiction, the *Act* sets out five circumstances under section 4 which begins:

> 4 A court has territorial competence in a proceeding that is brought against a person only if... (emphasis added)

[27] The *Act* goes on to list the first three of the possibilities and subparagraphs (a) through (c) are not applicable in this circumstance. Subparagraphs (d) and (e) may be, and read:

> (d) that person is ordinarily resident in the Province at the time of the commencement of the proceeding; or

> (e) there is a real and substantial connection between the Province and the facts on which the proceeding against that person is based.

[28] In determining whether section 4 (d) applies, it is first important to note that this subsection only applies if the person against whom the proceeding is being brought, in this case D. D., is found to be ordinarily resident in Nova Scotia and that he is ordinarily resident at the time of commencement of the proceeding. It is not relevant to this analysis, therefore, whether S. M. was ordinarily resident in

Nova Scotia, whether at the commencement of the proceedings or at some other time.

[29] The commencement of the proceedings was the date on which S. M. filed her documents with this court, that date being December 21, 2017.

[30] As to whether D. D. was ordinarily resident in Nova Scotia at that time, it is important to understand the meaning of the phrase “ordinarily resident”. Unfortunately, the phrase is not defined in the *Act* and we must look to judicial interpretation for assistance.

[31] The term “ordinary resident" was considered in the British Columbia decision of *Parker v Mitchell* 2016 BCSC 723. In that decision, the parties were not married but lived together for 19 years in California. They regularly spent summers in British Columbia where the common-law husband owned property. At separation, the common-law wife moved to British Columbia and sought spousal support in that jurisdiction.

[32] The court held, in determining that the common-law husband was ordinarily resident in British Columbia, at paragraphs 18-19

> 18 A person is ordinarily resident where “in the settled routine of his life he regularly, normally or customarily lives": *Thompson v. The Minister of National Revenue*, [1946] SCR 209 (SCC).
>
> 19 The term “ordinarily resident" should be given a broad and liberal interpretation. A person can be ordinarily resident in more than one jurisdiction and determination of ordinary residence does not require counting of days: *Blazek v. Blazek*, 2009 BCSC 1693 (BCSC] at para. 33.

[33] In the decision of the Nova Scotia Court of Appeal in *Quigley v. Wilmore* 2008 NSCA 33, our Court of Appeal adopted the language of Evans JA writing for the majority in *MacPherson v. MacPherson*, [1976] 70 D.L.R. (3d) 564 who approved of the following statement from *Macrae v. Macrae*, [1949] 2 All E.R. 34:

> Ordinary residence is a thing which can be changed in a day. A man is ordinarily resident in one place up till a particular day. He then cuts the connection he has with that place - in this case he left his wife; in another case he might have disposed of his house - and makes arrangements to have his home somewhere else. When there are indications that the place to which he moves is the place he intends

> to make his home for, at any rate, an indefinite period, and from that date he is ordinarily resident at that place.

[34] Justice Evans went on to cite Barry J in the decision of *Girardin v. Girardin*, 15 RFL 16 who wrote at paragraph 15

> When engaged in determining for jurisdictional purposes and matrimonial cases where a person is ordinarily resident, a person's state of mind may properly be taken into consideration for the limited purpose as to whether he was at the material time within the jurisdiction as a mere visitor, tourist or for some other temporary purpose, for example, on a business trip from another jurisdiction where he normally or customarily would be found living as one of the inhabitants thereof. If his home base was in another jurisdiction from which he ventured from time to time into other jurisdictions, he would, in my opinion, be ordinarily resident in the jurisdiction where in his home was situate, and he could not be said to be ordinarily resident in any other jurisdiction into which he intermittently travelled.

[35] Our Curt of Appeal in *Quigley* supra summarized as follows:

> [21] From this review of the law, several themes emerge:
> - the determination of ordinary residence is highly fact specific and a matter of degree;
> - ordinary residence is in contrast to casual, intermittent, special, temporary, occasional or exceptional residence;
> - residence is distinguished from a stay or visit;
> - a person's ordinary residence is where she is settled-in and maintains her ordinary mode of living with its accessories, relationships and conveniences, or where she lives as one of the inhabitants as opposed to a visitor;
> - an ordinary residence may be limited in time from the outset or it may be indefinite or unlimited; and
> - ordinary residence is established when a person goes to a new locality with the intention of making a home there for an indefinite period.

[36] Counsel for D. D. also cites the article of Professor James G. MacLeod, Faculty of Law, University of Western Ontario entitled *The Meaning of Ordinary Residence and Habitual Residence in the Common Law Provinces in The Family Court Context*, Family Children And Youth Section Research Report, September 2006 when he writes

> "Ordinary Residence" is not a phrase capable of precise definition. At its simplest level, ordinary residence connotes something more than their temporary presence

> in place. It refers to a place in which a person's lifestyle is centred and to which the person regularly returns if his or her presence is not continuous.

[37] Elsewhere Mr. McLeod goes on to say:

> Most common-law courts understand ordinary residence to mean a place where a person resides in the ordinary course of his or her day to day life. If the inquiry is directed towards a person's real home as many courts suggest, a person usually will have only one place of ordinary residence notwithstanding the Family Court's earlier reliance on cases decided in an income tax context of the courts held that an individual can have more than one residence.

[38] In my view, there is a difference between income tax cases and family law cases with respect to ordinary residence determination. It may well be that under the Income Tax Act a citizen may ordinarily reside in more than one jurisdiction, perhaps several. This may provide advantage or disadvantage to the taxpayer. But it does not, nor is it intended to, address the issue of an appropriate order of child custody, parenting time, child support, spousal support or property or debt division, the issues which must be determined in family matters.

[39] In family law matters, to accept that a party could be ordinarily resident in multiple jurisdictions would create uncertainty, likely lead to a multiplicity of proceedings and conflicting orders from different jurisdictions and ultimately lead to chaos for families. The focus in family courts is to provide timely and effective access to justice and resolution to disputes involving families. To recognize that parties, perhaps both spouses, could each ordinarily reside in several jurisdictions, could only lead to adverse results and at the very least invite attempts at jurisdiction shopping. I find that establishing one place of ordinary residence, where possible to do so, is consistent with the purpose and approach of family courts and the various statutes which govern these matters in Canada.

[40] There may, of course, be circumstances were parties ordinarily reside in multiple jurisdictions but, in my view, family courts should strive to avoid such findings unless necessary. As well each spouse or parent may have a different ordinary residence, but, where possible, each should only have one such residence recognized for purposes of determining jurisdiction. Such an approach provides certainty to the parties, simplifies the proceedings, avoids a multiplicity of such proceedings and the risk of conflicting orders among such jurisdictions.

[41] I therefore adopt the reasoning of the Nova Scotia Court of Appeal in *Quigley* and the comments of Professor MacLeod in this analysis. In that context, it is appropriate to consider D. D.'s state of mind at the time this application was filed, the facts surrounding that timeframe as well as the history of the parties as it is relevant to D. D.'s intent regarding taking up residence in Nova Scotia.

[42] There is no doubt from the evidence that the parties had resided in Ontario throughout much of the relationship and matters only began to evolve with the purchase of the property in Lunenburg, Nova Scotia in 2017. I accept that the intent of the purchase of the Lunenburg property was to enjoy it both as vacation destination and ultimately as a retirement residence for the parties. They spent the summer of 2017 in that home and returned to Ontario at the end of the summer until separation. S. M. says that D. D. was in Nova Scotia at that residence from June or July of 2017 until October 31, 2017. That evidence suggests that, at least from D. D.'s perspective, the home represented a vacation destination and, in the longer term, a retirement residence at some time in the future.

[43] It is relevant that the parties changed their driver's licenses to Nova Scotia and moved some vehicles and a boat to Nova Scotia where they were insured. As well, some household items were moved, though the bulk of these items remained in Toronto. This suggests some intent to relocate to Nova Scotia. D. D. says this was done at the suggestion of friends who said obtaining the Nova Scotia licenses would allow insurance to be obtained in Nova Scotia at considerable savings.

[44] I do not find that obtaining the licenses and insurance, in and of itself, or even in combination with the purchase and summer occupancy of the Nova Scotia residence in 2017 leads to the conclusion that D. D. was ordinarily resident in the province at the date of application by S. M., being December 21, 2017. On that date, D. D. was living in Ontario and operating his business. They had not sold the home in Ontario, though it was listed privately for sale. There is no evidence before me that they had moved the bulk, or even any substantial amount, of their belongings from their home in Ontario to Nova Scotia, though they did move several vehicles and a boat.

[45] Though it might be argued that S. M. was further along in her plans for residing in Nova Scotia by virtue of the fact that she obtained a health card and had obtained a client in Nova Scotia, that is not proof that D. D. was of the same mind or taking the same steps. I find that the evidence before me does not establish that

he had begun ordinarily residing in the province of Nova Scotia and I instead find that he ordinarily resided in Ontario at that time, having spent time in Nova Scotia during the summer of 2017.

[46] The second issue which I must consider is, under s. 4(e) of the *Act*, the evidence respecting real and substantial connection between Nova Scotia and the facts on which the claim against D. D. are based.

[47] Section 11 of the Ac*t* provides some guidance with respect to substantial connection. It says, in part:

> 11 Without limiting the right of the plaintiff to prove other circumstances that constitute a real and substantial connection between the Province and the facts on which a proceeding is based, a real and substantial connection between the Province and those facts is presumed to exist if the proceeding...

and goes on to list 12 circumstances under which it might be presumed that a matter has a real and substantial connection to the Province. None of those apply here. However, and to repeat, Section 11 begins with the phrase:

> Without limiting the right of the plaintiff to prove other circumstances that constitute a real and substantial connection between the Province and the facts on which a proceeding is based...

[48] This quite clearly indicates that though there are 12 examples listed in the *Act*, those are not a closed class or group, and if the party can establish other circumstances of a real and substantial connection it may satisfy the court.

[49] This section has been interpreted and applied in the case of *Detcheverry v. Herritt*, 2013 NSSC 315, a decision of Associate Chief Justice O'Neil of the Nova Scotia Supreme Court Family Division.

[50] In paragraph 56 of that decision, Justice O'Neil was analyzing section 11 of the *Act*, aforesaid, and found as follows:

> 56 But for s. 11(a), it is noteworthy that none of these presumptions appear to be directly applicable to family proceedings. The statue does not give a comprehensive guide, encompassing all common law principles and presumptions including those that are long established in the area of family law. We must look to the common law for more guidance in defining a real and substantial connection.
>
> 57 Justice Saunders summarized the considerations at common law that assist in determining whether "a real and substantial connection exists" as that phrase is

used in section 4(e) of the "*CJPTA"*. He wrote the following in *Penny (Litigation Guardian of) v. Bouch*, 2009 NSCA 80 (N.S.C.A.):

> [51] Accordingly, I reject the suggestion that considerations of fairness have no place in the inquiry into the existence of a real and substantial connection, and are only to be weighed during the application of the discretionary forum non conveniens doctrine. In my respectful view, such a prohibition would introduce an unnecessary and unrealistic rigidity to a test that is clearly designed to be flexible. To impose such a constraint would prevent a judge's assessment of the totality of the evidence when deciding whether the circumstances made it proper to accept jurisdiction over the action as framed by the plaintiff.
>
> [52] From the cases he reviewed, Justice Sharpe identified a list of emerging factors which would be relevant in assessing these jurisdictional questions. Sharpe, J.A. offered a list of eight factors:
>
> 1. The connection between the forum and the plaintiff's claim
>
> 2. The connection between the forum and the defendant
>
> 3. Unfairness to the defendant in assuming jurisdiction
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> 4. Unfairness to the plaintiff in not assuming jurisdiction
>
> 5. The involvement of other parties to the suit
>
> 6. The court's willingness to recognize and enforce an extra-provincial judgment rendered on the same jurisdictional basis
>
> 7. Whether the case is interprovincial or international in nature
>
> 8. Comity and the standards of jurisdiction, recognition and enforcement prevailing elsewhere

[51] Justice Saunders in *Penny*, supra, goes on to say in Paragraph 53 of that decision:

> [53] These were the same eight factors considered by Justice Wright in satisfying himself that Nova Scotia had acquired a real and substantial connection to the present litigation. I would endorse this list as a useful series of criteria with which to judge such matter, while at the same time observing that the list is by no means exhaustive. It offers a roadmap to guide judges hearing such applications. To borrow the language of s. 11 of the Act, the list of factors serves to complement "[w]ithout limiting the right of the plaintiff to prove other circumstances that

> constitute a real and substantial connection..." I would conclude on this point by endorsing the observations of Justice Sharpe in introducing the factors he identified:
>
> > [75] It is apparent from Morgaurd, [1990] 3 S.C.R. 1077, Hunt, [1993] 4 S.C.R. 289 and subsequent case law that it is not possible to reduce the real and substantial connection test to a fixed formula. A considerable measure of judgment is required in assessing whether the real and substantial connection test has been met on the facts of a given case. Flexibility is therefore important.
> >
> > [76] But clarity and certainty are also important. As such, it is useful to identify the factors emerging from the case law that are relevant in assessing whether a court should assume jurisdiction against an out-of-province defendant on the basis of damage sustained in Ontario as a result of a tort committed elsewhere. No factor is determinative...

Although that decision related to a tort damage claim, it is clearly applicable in this circumstance.

[52] The first factor outlined by Justice O'Neill was the connection between the forum and the applicant's claim. The claim before the court is for spousal support. I find that there is little connection between Nova Scotia and that claim. It is true that S. M. is now resident in Nova Scotia and has been for several months. That said, the history of the parties, their employment and the companies and the income of D. D. against which S. M. claims spousal support are all found in Ontario, not Nova Scotia. The only connection between Nova Scotia and S. M. and her claim is the fact of her residence here now. I find that the connection between S. M.'s claim and Nova Scotia is, therefore, tenuous at best.

[53] As to the connection between Nova Scotia and D. D., I have already made a finding respecting his ordinary residence and find, similarly, there is little connection between him and Nova Scotia. He and S. M. do own the property in which S. M. resides in Nova Scotia and I find that intent on this purchase was as a vacation home and ultimately a residence on retirement. Though I have already found he used the residence for vacation purposes, I have also found D.D. has not yet come to Nova Scotia for retirement. Therefore, I find that he has very limited connection to Nova Scotia except through that property.

[54] In considering the unfairness to D. D. in the assuming jurisdiction, I consider that almost all the history of the parties during the relationship is rooted in Ontario.

Their companies are based there. All the work history, except the most recent for S. M., is likewise based there. Their accountants and accounting records are based in that province. Though I do not have benefit of complete witness lists on the issue of long-term spousal support, I find it reasonable to assume that witnesses to be called would largely be based in Ontario. It is true that the expert report on income he has presented is from a Nova Scotia-based expert but that does not prevent him from calling such evidence from an Ontario expert as well. It is also true that this immediate application is for interim spousal support but S. M. is pursuing long-term spousal support as well. Once jurisdiction is established, that claim will no doubt involve far more detailed evidence which will likely involve these types of witnesses and evidence. I therefore find that there would be certain unfairness to D. D. to allow the matter to proceed in Nova Scotia and force him to bring all the evidence and witnesses to this province when it could be more conveniently called in Ontario. This would, without question, substantially increases his costs and inconvenience.

[55] I also consider the unfairness to S. M. in not assuming jurisdiction. If I do so, she will have to pursue her claim in Ontario where she no longer resides. She claims to have limited means to pursue that claim. On that issue, I do accept that she has obtained significant funds since separation, as has D. D., from various accounts and other means and I am not persuaded that she cannot afford to pursue the litigation in Ontario. That said, it will be inconvenient and more expensive for her to do so if she continues to reside in Nova Scotia. She will have to retain counsel in Ontario, travel there for various processes including a hearing and instruct counsel with respect to various witnesses and evidence to be called. In considering this, I am mindful that it was her evidence that she travels to and from Ontario regularly now.

[56] On the issue of involvement of other parties, there appears to be none that would be involved and I do not find this to be a relevant consideration.

[57] Respecting the courts' willingness to recognize and enforce extra provincial judgments rendered on the same jurisdictional basis, I find there should be no concern about that within Canada. Each province has appropriate reciprocal enforcement legislation and I do not believe there should be any difficulty around enforcement of such judgments.

[58] Concerning the nature of the case, it is interprovincial and not international. It is a case that is not uncommon in Canada, particularly with increasing mobility of parties across the country. Such disputes regarding jurisdiction are neither uncommon nor particularly complex and we have appropriate legal structures, processes and statutory and judicial authority to deal with them in a timely fashion. I do not find the nature of this dispute is any more complex or unusual than any other within the court's experience.

[59] Regarding the comity and standard of jurisdiction, recognition and enforcement prevailing elsewhere, I have no concerns. I find that the law respecting spousal support is reasonably consistent between Ontario and Nova Scotia, there are no issues respecting enforcement of orders between those jurisdictions and such orders are normally and regularly recognized by registration in each jurisdiction were necessary.

[60] Considering the law, the factors discussed and the evidence, I find that there is insufficient real and substantial connection between Nova Scotia and the facts on which the proceeding is based for this court to take jurisdiction over the matter.

[61] Having said that, and if I am wrong in either of these determinations such that Nova Scotia could take jurisdiction over the matter, I will further consider the second part of the overall test as to whether I should take jurisdiction. In doing so, I consider section 12 of the *Act* which reads as follows

> 12 (1) After considering the interests of the parties to a proceeding and the ends of justice, a court may decline to exercise its territorial competence in the proceeding on the ground that a court of another state is a more appropriate forum in which to hear the proceeding.
>
> (2) A court, in deciding the question of whether it or a court outside the Province is the more appropriate forum in which to hear a proceeding, must consider the circumstances relevant to the proceeding, including
>
> (a) the comparative convenience and expense for the parties to the proceeding and for their witnesses, in litigating in the court or in any alternative forum;
>
> (b) the law to be applied to issues in the proceeding;
>
> (c) desirability of avoiding multiplicity of legal proceedings;

(d) the desirability of avoiding conflicting decisions in different courts;

(e) the enforcement of an eventual judgment; and

(f) the fair and efficient working of the Canadian legal system as a whole.

[62] With respect to certain of these issues, they can be dealt with quickly. Regarding enforcement of an eventual judgment in Canada, there are various reciprocating statutes to permit the registering enforcement of judgments for spousal maintenance and other family issues and Ontario and Nova Scotia are reciprocating jurisdictions. As a result, whichever jurisdiction determines the matter, the law will permit the enforcement of judgments in the other jurisdiction.

[63] I am satisfied that the law to be applied to the issues in the proceedings is substantially similar between Nova Scotia and Ontario. The principles and general factors to be considered for spousal support I understand to be common among the common-law jurisdictions in Canada and I am not concerned that there would be such a substantial difference in law that it should come into consideration of this court in deciding whether to accept or decline jurisdiction.

[64] Other factors, however, do come into consideration including comparative convenience and expense to the parties and their witnesses.

[65] As earlier noted, I find that the most relevant evidence in determining entitlement, quantum and duration of spousal support would likely arise from witnesses and evidence located in the province of Ontario. This is the province in which the parties have resided for the bulk of the relationship. It is already evident from the filings made in this Court that there will be expert evidence respecting incomes, and perhaps, assets, all of which must come into consideration of the court in determining the various issues arising from a claim for spousal support. I find that all, or substantially all, of this evidence would be called from witnesses and sources located in Ontario.

[66] To have those witnesses called to give evidence in Nova Scotia would, I find, be a substantial and unreasonable expense for D. D. to have to incur to address this claim. In making this finding, I am also cognizant of the fact that S. M. will have to travel to, retain counsel in, and give her evidence in Ontario while she resides in Nova Scotia. That said, there is little evidence or witnesses that are in Nova Scotia that would be relevant to this issue. Therefore, while

acknowledging that whatever decision is made, one of the parties will be put to inconvenience and additional expense, I find it favours D. D. on this issue.

[67] There is no question that there is a desirability to avoid a multiplicity of legal proceedings and conflicting decisions in different courts. That said, to my knowledge there is no application made by either party in Ontario to date. If I defer jurisdiction to Ontario and declined to accept it in Nova Scotia, this will permit either party to bring the matter forward in that jurisdiction and would therefore be no conflicting decisions or multiplicity of proceedings.

[68] This, finally, ties into the issue of the fair and efficient working of the Canadian legal system as a whole. For all the reasons that I set out that favour declining jurisdiction, I find that they argue strongly that Ontario is the appropriate jurisdiction and this would be the fairest and most efficient way in which this matter can be addressed for the parties, and is consistent with the best approach within the Canadian legal system. All of the concerns raised by each party respecting the behaviour of the other including, but not limited to, withdrawing or obtaining funds without consent, cutting off at bank accounts, terminating employment and income, disclosure issues and related matters can all be dealt with in the court in Ontario and addressed by the court by way of an appropriate decision on spousal support as well as through a decision on costs.

[69] After careful consideration of the legislation, and judicial authority and the facts in this matter, I therefore find that I cannot and should not take jurisdiction of this matter in Nova Scotia and decline jurisdiction, deferring it to Ontario where the parties can bring their applications at the time of their choosing.

[70] After hearing submissions on costs I have left that determination to the Ontario court who will be in the best position to determine the matter of costs, including costs in this motion, after hearing all the evidence at a subsequent hearing.

Daley, JFC