

**IN THE SUPREME COURT OF NOVA SCOTIA**  
**(FAMILY DIVISION)**

**Citation:** Landriault v. Landriault, 2008 NSSC 249

**Date:**20080828

**Docket:**1217-000623

**Registry:** Halifax

**Between:**

Michael Emile Landriault

Petitioner

v.

Roberta Maia Landriault

Respondent

**Judge:**

The Honourable Justice Moira C. Legere Sers

**Heard:**

August 19, 2008, in Port Hawkesbury, Nova Scotia

**Counsel:**

Wayne MacMillan, for the Petitioner

Adam Rodgers, for the Respondent

**By the Court:**

[1] This is the petition for divorce advanced by Michael Emile Landriault issued out of the Supreme Court of Nova Scotia (Family Division) on the 29<sup>th</sup> day of August, 2007. The Petitioner seeks a divorce, an order for joint custody, child support and costs, as well as a division of property. The Respondent seeks retroactive and ongoing spousal support.

[2] The parties were married on October 23, 1982, and ceased co-habiting on September 24, 2006. The Petitioner was born on July 3, 1957, and the Respondent on January 31, 1959. The Respondent is currently 49 years old.

[3] The child Catherine, born September 16, 1988, is currently enrolled in a university in Alberta. Since the separation on September 24, 2006, she has been living with her father. He has been her sole financial support.

[4] The parties have settled all matters concerning custody, access, division of property and division of debts.

[5] The sole issue before this court is the issue of quantum and duration of spousal support . The parties have been married for 23 years. This is a traditional marriage with the Petitioner being responsible as the financial provider, amongst other functions, and the Respondent being a stay at home parent. Entitlement is not an issue.

[6] The mother has lived alternately between the matrimonial home and with Mr. Jack Ronalds. She advises the Court that they share household expenses at this time.

[7] I am satisfied that the jurisdictional elements have been addressed and grant a divorce on the grounds of one year separation.

[8] Between the time the separation occurred on September 24, 2006, and the matrimonial home sold in October of 2007, the Petitioner was solely responsible for all indebtedness and maintenance with respect to the home. This included payment of the mortgage, mortgage insurance, Scotia Line of Credit, Master Card, Peoples Jewelers, Sears Canada, and MBNA . After the separation, the Respondent

lived in the home and alternately with Mr. Ronalds until the home was sold. Then she moved in with Mr. Ronalds, where she lives to date.

[9] The home sold for \$119,000.00. Each of the parties received \$37,100.00. All debts were retired. The Petitioner resides with his mother and with his daughter up to August of 2008. He will fly out with his daughter and establish her in university in Alberta.

[10] With respect to child care costs, the Respondent has not, and maintains she is not, in a position to provide financial support for her daughter. The Petitioner is not seeking a contribution of child support from her although it is clear that both parties are responsible, to the best of their ability, to jointly support their child.

[11] The history of employment for the Petitioner includes graduating from high school, enrolling in an industrial instrumentation program, graduating from that program in 1978 as a second block apprentice. He completed his third block in the fall of 1978 and was hired in January 1979 by Catalytic Enterprises. He worked for seven months, was laid off, and in January 1980, was re-hired for five months. He completed his fourth and final block of apprenticeship in the fall of 1978.

[12] On January 16, 1981, he obtained permanent employment as an Apprentice Instrument Technician with Nova Scotia Power and obtained his journeyman's instrument ticket in 1983. He was so employed in 1981 when he met the Respondent and married her in October of 1982.

[13] At the time of separation, to the time of the sale of the home on October 26, 2007, the Petitioner voluntarily paid spousal support. He commenced in October with \$200.00 and continued thereafter with \$400.00 in November, and occasionally, \$450.00; and commenced a pattern of paying \$500.00 in September 2007, shortly before the sale of the home. In October of 2007, he paid \$600.00; in November \$750.00; and thereafter \$800.00 per month up to and including the current date.

[14] From separation to July 18, 2008 he paid \$13,350.00 in spousal support.

[15] Essentially, the Respondent has been in a relationship with Mr. Ronalds from previous to the date of separation, moving in with him full time in October of 2007, when the home was sold.

[16] According to his statement prepared July 21, 2008, Mr. Landriault will earn approximately \$5,583.24 per month including overtime for the 2008 year. His overtime fluctuates such that in 2005, his line 150 income was \$75,265.00. In the year 2006, it was \$68,496.00. In 2007, it was \$71,116.00.

[17] The average annual income for the last four years, including his estimate for 2008, is \$70,246.00. Overtime is still available to him.

**Dependant child expenses:**

[18] The Petitioner will be responsible for supplementing any monies required by the child to attend university. He is of the belief that she hopes to get a Millennium Scholarship. That has not been confirmed.

[19] He is uncertain about the actual costs of education.

[20] The father has estimated the following expenses: Board - \$4,800.00; Tuition - \$3,000.00; and the flight for both of them to Edmonton costs \$1,300.00. Her residence (which has been paid for by him) is \$4,800.00. Assuming she will need at least 2 trips per year, I have included the full \$1300.

[21] To this I add the following estimates, as the Petitioner was unaware of the actual figures: Books - \$1,500.00 and Food - \$3,000.00 for a total of \$13,600.00.

[22] This is likely a low estimate of total expenditures. However, the burden is on the parents to provide the actual expenses and they have not done so. Not doing so leaves the Court in a position where a reasonable estimate must be made to create an order that most accurately reflects the ability and circumstances of the parties.

[23] If the base amount were to be chosen as the appropriate monthly amount, the father would be paying \$567.00 plus a portion of special expenses. Since their daughter is in university in Edmonton, a different formula is more appropriate.

[24] In his statement he has identified a monthly payment for her education in the amount of \$485.00. This is likely an understatement given the evidence of his

contribution for the full year, particularly if she does not receive a millennium scholarship to cover her food expenses.

[25] The daughter has received a bursary/scholarship of \$1,000.00. She *believes* she will receive \$3,000.00 from another scholarship fund. That would reduce the special expenses and living expenses to \$9,600.00 for this academic year, leaving the Petitioner with a possible payment of \$800.00 monthly; considerably higher than his estimate of \$485.00 or the base amount according to *the tables* of \$567.00.

[26] In assessing *his current probable contribution*, it will be *at least \$650.00* per month, if not more.

[27] The current estimate without food allowance , book allowance, or clothing allowance and miscellaneous is \$9,100.00.

[28] Her summer earnings are minimal. She is a student with an excellent record and is likely to supplement her earnings by way of scholarship or bursary funds.

[29] Of the two parents, the Petitioner acknowledges he is likely to be the one who will cover the balance of educational expenses.

### **Spousal Support**

[30] The Respondent married the Petitioner when she was 23 years old. The only child of the marriage was born approximately six years after the marriage took place. The mother has a grade 12 education and no formal training or education in any area since that time. She did not work outside the home, either prior to the birth of the child, or afterwards.

[31] The Petitioner worked during the day in his ordinary job and evening time in the field of music. This was sufficient to sustain the couple.

[32] It is clear that they agreed that she was the primary parent and he was the financial provider.

[33] There is no contest that in 1983 the Respondent assisted with the care of her mother-in-law as well as assisting with the care of her father-in-law.

[34] The Respondent maintains that she is medically unable to work. There is no medical evidence to sustain this suggestion. The only evidence provided to the Court was her evidence that after working for a short period of time at a motel, she developed tendinitis in her hand and quit working. She also developed back problems and believes that she can not stand for too long, more than 15 minutes, or she is in extreme pain and her back locks. A job, she suggests, would not allow her the flexibility to work around her back pain.

[35] She has a doctor in the community. There was no doctor's certificate indicating she should be on short term or long term disability. She was advised in 2007 to go to a Chiropractor and because of the cost of \$60.00 per visit, she refused. However, she has traveled to Cuba and Florida each on one occasion since the separation and paid for those trips on her own.

[36] She is not prescribed medication and does not take medication other than Advil for the back pain. She was clearly in difficulty in the Court Room.

[37] However, she has not followed up or seen a specialist and has done nothing to get at the root cause of her back problem and to pursue any therapeutic mitigation of whatever damage is, in fact, causing her the pain. She has no intention of pursuing this, has not pursued any employment and believes she will be unable to sustain any employment.

[38] This, of course, is not a responsible approach to her own care and management and does not fulfill her obligations under the Divorce Act with respect to attempting to the best of her ability to attain some sort of self sufficiency; even if it is to supplement her income in some format.

[39] There is no evidence that she would be unable to address her medical needs, that medical intervention would detract or be an obstacle to her employment; there is no suggestion that there is a lack of therapeutic intervention that may assist, alleviate, improve her condition and there is certainly no evidence to suggest she is unable to obtain some sort of supplementary income to assist in sustaining herself at the age of 49 years old.

[40] There is no doubt that her expense statement is modest. She continues to share expenses with Jack Ronalds. She has a motor vehicle with a monthly

payment of \$351.00 which is entirely reasonable and there is certainly nothing in her budget that is excessive.

[41] The Child Support Guidelines in case law confirm that the parents continue to be obliged to financially support their daughter, at least until completion of her first degree.

[42] The mother has declared that she is not currently in a position to assist. That leaves the full child support obligation to the father, together with whatever bursary's and income from employment this young person can provide for her own care and maintenance.

[43] Sections 15.2 (4) ,15.2 (5), and 15.3 (1) of the *Divorce Act* 1997, c. 1, s. 2. read as follows:

15.2 (4) In making an order under subsection (1) or an interim order under subsection (2), 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.

Spousal misconduct

(5) In making an order under subsection (1) or an interim order under subsection (2), the court shall not take into consideration any misconduct of a spouse in relation to the marriage.

Objectives of spousal support order

(6) An order made under subsection (1) or an interim order under subsection (2) 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;

(b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;

(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.

1997, c. 1, s. 2.

Priority

Priority to child support

15.3 (1) Where a court is considering an application for a child support order and an application for a spousal support order, the court shall give priority to child support in determining the applications.

[44] Neither party have provided spousal support guideline figures nor calculations with respect to the actual expenses relating to the child's educational plan. Neither party have provided tax information regarding the consequences of a spousal support and child support order on the payor or the recipient.

[45] While the Respondent's counsel has suggested a range of payment, his calculations have not been provided and I am unable to determine what information he put into the program to arrive at his conclusions.

[46] Both parties have commented on the conduct of each party. The Petitioner points out that the Respondent entered into a relationship which ultimately triggered the breakdown of the marriage and has been, essentially, in a relationship and currently living with this individual to date. I have not considered the conduct but I have considered the division of expenses in her current relationship that has continued since the date of separation.



[47] I have not been provided his Mr. Ronalds statement of income . I am told he is looking for work out West, is a photographer and is on employment insurance. This has not been verified.

[48] The Respondent's counsel attempted to place the sole responsibility for the Respondent's support on the Petitioner's shoulders. The *Divorce Act* requires that I recognize the economic advantages and disadvantages to **both** spouses arising from the marriage The Court is directed to apportion between the spouses the financial consequences arising from the care of the child. In this situation, the primary parent subsequent to separation was the father and he has absorbed all financial responsibility for the child that has not been managed by the child herself.

[49] The interpretation of the four factors listed in s. 15.2 (6) of the *Divorce Act* have been the subject of significant commentary by Courts at all levels. It is clear the Court must consider all factors and not isolate one factor creating an emphasis on one over the four identified in s.15.2 ( 6 ) ( a ), ( b ), ( c ), and ( d ).

[50] The only factor that has not been addressed by any one of the parties is s. 15.2 (d). It is clear from the evidence that the Respondent has not addressed in any way the promotion of her economic self sufficiency within a reasonable period of time.

[51] She has assumed she is dependant, has not addressed her medical needs, has not proven short term or long term disability and has assumed that she is entitled, without contribution by herself, to be supported for the rest of her life.

[52] It may be that her economic self sufficiency will not reach a level of independence but she continues to have a obligation to address, in some way, assisting herself to at least supplement her income. She also has an obligation towards her child which, because she has not addressed her medical issues, has left the Petitioner and the child, essentially, with total responsibility.

[53] To the extent possible within the next three years and immediately she should (1) commence addressing the medical difficulties she has assessed have prohibited her from working outside the home; (2) address immediately a strategy of education or re-training that will allow her to obtain employment suitable to her skills and ability within the next three years; and (3) identify an appropriate goal

for supplementing her income aside from spousal maintenance and the sharing of expenses with her 'roommate'.

[54] Having considered these factors and the law, it is not appropriate, and it is certainly premature, to set time limit on spousal support given the long term nature of this relationship.

[55] However, it is appropriate to set a review date to assess her progress at addressing the issues that appear to create obstacles for her addressing the medical and employment issues to the extent possible.

[56] In addition, there will be changes with respect to the child's position although she may not have finished her first degree.

[57] Therefore, I allow for a review of this order to allow either party to apply for a variation in spousal support. This is in addition to any other rights they would have at law to apply to vary spousal support. At that review, the Respondent must provide affidavit evidence that addresses the issues identified including her medical issues, employment issues, employment attempts and strategy for re-training, and efforts to become employed; if not full time, part time.

[58] The parties will exchange income tax returns each year on or before May 15. The cost of obtaining this disclosure, should it not be provided voluntarily, are to be born by the party refusing to provide the information or failing to provide the information in the event court action is necessary to obtain disclosure.

[59] Considering all factors, the Petitioner shall pay to the Respondent spousal support in the amount of \$1500.00 per month, commencing August 1, 2008, and continuing each month until agreement of the parties or further order of the Court with a review in three years. At that point in time, the Respondent is expected to be in a position to provide some contribution towards her own support.

[60] There shall be no order for retroactive support given the evidence I have heard regarding the Petitioners responsibility for debt management and child support after the separation.

[61] Given his obligation to solely support their daughter, the daughter's needs and her ability to contribute to her own, a lump sum retroactive payment would be onerous. It would detract from his ability to support their child.

[62] In the event that his monthly contribution to child support exceeds my estimate of \$650.00 his spousal support payment will obviously have to be reviewed.

[63] Counsel for the Petitioner shall draft the order.

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Justice Legere Sers