

IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Waldick v. Waldick, 2011 NSSC 257

Date: 20110707

Docket: S.H. 1201-063005
(SFHD-060872)

Registry: Halifax

Between:

Stuart Gordon Waldick

Petitioner

v.

Regina Margaret Mary Waldick

Respondent

Judge: The Honourable Justice Robert F. Ferguson

Heard: October 18 and 19, 2010, in Halifax, Nova Scotia

Written Decision: July 7, 2011

Counsel: Stuart Gordon Waldick, self-represented
Karen J. Killawee, for the Respondent

By the Court:

[1] Stuart and Regina Waldick began a relationship, married and separated. They are the parents of two adult children. In the year of their separation, Mr. Waldick petitioned for divorce and sought a division of matrimonial property. Subsequently, Ms. Waldick sought spousal support, a pension division and a return to her maiden name.

BACKGROUND

[2] On April 3, 1982 the parties married.

[3] On January 8, 2008, the parties separated for the final time.

[4] On October 1, 2008, Mr. Waldick petitioned for divorce. In relation to the Petition, Mr. Waldick filed a Statement of Property and Income. In December of the same year, Ms. Waldick filed Statements of Property, Income and Expenses.

[5] On July 17, 2009, a discovery of both parties was held in the presence of their then counsel.

[6] On August 10, 2009, Ms. Waldick made an interim application for spousal support, supported by an affidavit and Statement of Expenses. In relation to this application, Mr. Waldick (on September 24, 2009) provided a responding affidavit.

[7] On October 1, 2009, there was a court appearance in relation to Ms. Waldick's interim application. Both parties appeared with counsel. There was an agreement the application would proceed by way of settlement conference. No conclusion was reached but it was agreed to continue the settlement conference at a later date. A date for the continuance was not obtained and the interim application did not proceed.

[8] On October 19, 2009, Mr. Waldick filed a Notice of Intention to Act in Person.

[9] On January 7, 2010, Mr. Waldick filed an application seeking 1) an order for production of documents; 2) an order for the inspection of property; and 3) costs related to Ms. Waldick withdrawing her interim application for support. Mr. Waldick filed an affidavit in support of this application and Ms. Waldick filed an affidavit in response.

[10] On February 18, 2010, there was an appearance in response to Mr. Waldick's January 7, 2010, application. Mr. Waldick attended. Ms. Waldick's counsel was available via telephone. Mr. Waldick's request for production of documentation and property assessment was granted. His request for costs was deferred to a later date. At that time, the parties acquired a date for a two-day trial beginning October 18, 2010, with a corresponding pre-trial on August 3, 2010.

[11] On March 2, 2010, an order was issued as a result of the February 18, 2010, appearance providing for the disclosure and appraisal requested by Mr. Waldick.

[12] On April 28, 2010, there was an appearance as a result of Mr. Waldick filing an Interlocutory Notice seeking a division of the home being occupied by Ms. Waldick. Mr. Waldick provided an extensive affidavit in support of this application. Mr. Waldick attended the appearance in person. Ms. Waldick's counsel was available via telephone. Mr. Waldick expressed concern that Ms. Waldick had, post separation, encumbered the property by way of a mortgage to which he was not a party. It was agreed the home would not be further encumbered prior to trial. Mr. Waldick further indicated Ms. Waldick had not provided the previously ordered disclosure. Ms. Waldick's counsel stated her belief such disclosure had been provided. It was agreed further discussion would take place between the parties on this point.

[13] On August 3, 2010, the previously scheduled pre-trial took place attended by Mr. Waldick, Ms. Waldick and her counsel. It was acknowledged the outstanding issues were a division of matrimonial assets and debt and Ms. Waldick's request

for spousal support on a retroactive and ongoing basis. The court was informed there was disagreement as to the valuation of the matrimonial assets and debt and Mr. Waldick's income for the purpose of considering Ms. Waldick's request for support.

[14] On October 15, 2010, Ms. Waldick filed an Answer in response to Mr. Waldick's Petition for Divorce. With the exception of her request for a division of any existing pensions and to return to her maiden name, the other relief requested by her had been disclosed in the pre-trial on August 3, 2010.

[15] On October 18, 2010, the trial began. Evidence was provided by Mr. Waldick and Dr. Duncan Veasey. Dr. Veasey testified as to Mr. Waldick's mental condition and ability to resume employment.

[16] On October 19, 2010, the trial resumed. Evidence was provided by Ms. Waldick and Donald Cranford who testified as to the work he performed on the home occupied by Ms. Waldick after the parties had separated.

[17] There was agreement as to the granting of the divorce and Ms. Waldick returning to her maiden name.

ISSUES

Spousal Support

[18] Mr. Waldick is not in agreement with Ms. Waldick's request for or entitlement to retroactive and/or ongoing spousal support.

Division of Matrimonial Assets and Debt

[19] The parties do not agree as to what items should be considered assets or debt, the value of such items or their ultimate division.

POSITIONS

Ms. Waldick

[20] Ms. Waldick submits the following: From the beginning to the end of their relationship, she was placed in a position that was detrimental to her advancing her own career opportunities. Mr. Waldick's employment took him away from home and out of the country. It was left to her for most of the relationship to remain in the matrimonial residence and provide the care and upbringing of their two children, curtailing her opportunity to progress as an educator. Mr. Waldick encouraged her to remain at home. Mr. Waldick's income was never completely known to her. He was unsupportive of her and the children to a great extent and, generally, treated her in a manner that brought about their separation. The land on which her current residence is located was gifted to her by a family member. She and Mr. Waldick spent considerable time and money prior to the separation building a home on this land. After the separation, she personally spent considerable time and money in attempting to finish the home. The value of the home when it was professionally appraised does not reflect the value of the home at the date of separation.

[21] Additional matrimonial assets include two lots of land on MacIntyre Road, an automobile, a pension, a life insurance policy and two bank accounts.

[22] As to debts, there are two lines of credit and a Visa account that were in existence at separation. A division of such assets and debt, with Ms. Waldick retaining the matrimonial real estate, will create an indebtedness owing by her to Mr. Waldick. However, the amount Mr. Waldick owes her by way of retroactive spousal support should exceed such indebtedness to him.

[23] Mr. Waldick's earned income was not subject to income tax and should be "grossed up" when considering the request for spousal support. Mr. Waldick has

not been employed for a period of time but such unemployment has been voluntary on his part and income should be imputed to him.

Mr. Waldick

[24] Mr. Waldick submits the following: During the relationship, he was employed as a wire-line operator in the oil industry which required him to work most of the time outside Canada. During this time, Ms. Waldick did remain at home doing a commendable job of raising the children. Her qualifications for employment were limited and he encouraged her to engage in further study to increase her employment opportunities. Prior to their separation, he provided financially for his family. For the most part, his income was forwarded to Ms. Waldick and she was responsible for its disbursement. On occasion, he would return home from his employment and not be provided with a satisfactory explanation as to how his income had been disbursed. Ms. Waldick knew or should have known that his employment as a wire-line operator automatically terminated on his 55th birthday (November 18, 2009). It was anticipated the home currently occupied by Ms. Waldick would be the couple's retirement home and considerable money and effort was expended by him on the building of this residence. Ms. Waldick's treatment of him precipitated the final separation and his current illness that prevents him from obtaining meaningful employment. On separation, he did initially indicate to Ms. Waldick that she could retain the matrimonial properties along with their associated debt, subject to him not being responsible to provide spousal support. However, subsequent financial demands made on him by her caused him to withdraw such offer. Ms. Waldick admittedly did expend further money in completing the home after the separation and before the appraisal made available to the court. However, much of the material used in this completion was purchased by Mr. Waldick and remained on site subsequent to their separation. The value to be placed on her current residence, for purposes of division, exceeds that suggested by Ms. Waldick.

[25] Ms. Waldick is not entitled to spousal support, either on a retroactive or ongoing basis. For the majority of the time since the separation, Mr. Waldick has been without income for two legitimate reasons. First, upon becoming 55, his

regular employment, as anticipated, ceased. Second, his mental health, as testified to by a psychiatrist, prevented him from working during the times he was unemployed and for the foreseeable future. Further, Ms. Waldick has obtained steady employment and has an income capable of providing for her monetary needs.

CONCLUSION

Divorce

[26] I have heard the evidence as to the possibility of reconciliation and determined there is no such possibility. I am satisfied all matters of jurisdiction have been fulfilled. The requirements of the *Divorce Act* have been complied with in all respects and the grounds for divorce as alleged has been proved. The Divorce Judgment shall be granted on the grounds set forth in s. 8(2)(a) of the *Divorce Act* in that there has been a breakdown of the marriage and the spouses have lived separate and apart for more than a year immediately preceding the determination of the divorce proceeding and have lived separate and apart since the commencement of the proceeding.

Change of Name

[27] Ms. Waldick, pursuant to the *Change of Name Act*, is granted the opportunity to return to her maiden name.

Spousal Support

Relevant Legislation

[28] The *Divorce Act*, particularly paragraph 15.2 (1) and (4) which provides the jurisdiction to make an order for spousal support and the factors and obligations to be considered when contemplating such an order.

[29] In assessing Ms. Waldick's request for support, the following must be considered:

Entitlement

[30] When the couple separated in January of 2008, they had been together (apart from one prior brief period) for 26 years. During that time, they raised their two children. During the course of their relationship, Mr. Waldick, employed as a wire-line operator, was the primary monetary provider for the family. Ms. Waldick had but brief intermittent employment until a few years before their final separation when she secured steady employment in the Antigonish area. She remains so employed earning approximately \$25,000.00 per year. Mr. Waldick's employment ended in August of 2008 – an employment that provided him with an annual income of £45,780.00 (Great Britain pounds) for the year 2007, according to his employer.

[31] The Supreme Court of Canada in *Bracklow v. Bracklow*, [1990] 1 S.C.R. 420, stated at para. 15:

“The lower courts implicitly assumed that, absent a contractual agreement for post-marital assistance, entitlement to support could only be founded on compensatory principles, i.e., reimbursement of the spouse for opportunities foregone or hardships accrued as a result of the marriage. I conclude, however, that the law recognizes three conceptual grounds or entitlement to spousal support: (1) compensatory; (2) contractual; and (3) non-compensatory. These three bases of support flow from the controlling statutory provisions and the relevant case law, and are more broadly animated by differing philosophies and theories of marriage and marital breakdown.”

[32] The *Annual Review of Family Law, 2002*, McLeod and Mamo, in reference to this decision stated at p. 193:

“In *Bracklow v. Bracklow*, the Supreme Court of Canada held that there were three types of support:

1. compensatory support, (both specific calculable and unspecific) to address the economic advantages and disadvantages to the spouses flowing from the marriage (or the roles adopted in marriage);
2. non-compensatory dependency based support, to address the disparity between the parties’ needs and means upon marriage breakdown; and
3. contractual support, to reflect an express or implied agreement between the parties concerning the parties’ financial obligations to each other.”

[33] In this instance, there is no submission as to contractual entitlement.

[34] Ms. Waldick has established an entitlement to seek spousal support on both a compensatory and non-compensatory basis. She spent the majority of their relationship as a stay-at-home parent providing care for their two children. Mr. Waldick acknowledges he had, during the relationship, been the primary monetary provider. At separation, Ms. Waldick had secured employment in the range of \$25,000.00 per annum and the children were adults and basically on their own. Also, at separation, Ms. Waldick briefly undertook the financial obligations associated with the proposed family residence. This undertaking was, at least initially, assumed with the concurrence of Mr. Waldick. Ms. Waldick’s Statements of Income and Expenses disclose that, since separation, her expenses exceed her income; a financial situation created to some degree by the marriage breakdown. Mr. Waldick – and it must be remembered he was without legal counsel at trial – did not directly address the issue of Ms. Waldick’s entitlement to support. Rather, he stressed his inability, due to lack of income, to provide such support.

Beginning and Duration of Support

[35] Ms. Waldick requests her entitlement begin with the parties' separation which pre-dates the initiation of legal proceedings. The couple, as previously noted, separated in January of 2008. It was some 10 months later (October 2009) that Mr. Waldick petitioned for divorce and some 19 months after separation (August 2010) that Ms. Waldick brought forward an application for spousal support. It is acknowledged that, after their separation, the parties discussed the possibility of Ms. Waldick retaining the matrimonial property with its corresponding financial liabilities and no spousal support being paid. This possible agreement soon evaporated creating a situation with Ms. Waldick seeking spousal support and Mr. Waldick a share of the matrimonial property.

[36] There was no delay by either party in seeking to resolve their matrimonial monetary issues following their separation. During such discussions, or, in any event, when initial negotiations failed, Mr. Waldick was made aware of Ms. Waldick's request for spousal support. In this regard, it cannot be said there was a significant delay in Ms. Waldick's alerting Mr. Waldick to her request for such support. Ms. Waldick's financial circumstances were such that it would have been a reasonably anticipated request for such support on the couple's separation. An award of spousal support from the date of the couple's separation will not impose a hardship on Mr. Waldick.

[37] Mr. Waldick voluntarily left his employment in August 2008. Ms. Waldick acknowledges that, currently, he does not have employment or income that would enable him to provide spousal support. She requests income be imputed to him for those periods of time. In her pre-trial submission, she states:

“At this point in time, we agree that Mr. Waldick has little to no income. The Respondent submits that Mr. Waldick is intentionally underemployed, and that a spousal support order should go forward on the basis that Mr. Waldick should have income imputed to him in the amount of \$100 - \$120,000.00 per year. We believe that this is generous given that when employed, Mr. Waldick earned approximately \$90 - 120,000.00 per year. He did not have to pay Canadian tax on this amount.

The bulk of the case law regarding imputing income is in Child Support cases, to which Section 19 of the Child Support Guidelines applies. Forgeron J confirms, in

Shaw v. Shaw, 2009 NSSC 353, that the same rules apply to imputing income for purposes of spousal support.

[30] The court has jurisdiction to impute income to a spouse. Imputation is not restricted to child support cases. The decision to impute income, whether for spousal support or child support purposes, is nonetheless a discretionary one. Like all discretionary awards, such discretion must be exercised judicially in accordance with rules of reasons and justice -- not arbitrarily. A rational and solid evidentiary foundation, grounded in fairness and reasonableness must be shown before a court will impute income: *Coadic v. Coadic* 2005 NSSC 291 (S.C.).

[31] The burden of establishing an imputation claim rests with the party who seeks the relief. However, once a party has proven that income should be imputed, the burden shifts to the other spouse where there is a claim that health problems compromise one's ability to work. The person claiming the health problems is, after all, the person who has access to the requisite and relevant medical information: *MacGillivray v. Ross* 2008 NSSC 339 (S.C.).

[32] Ms. Shaw has proven that income should be imputed to Mr. Shaw because he is underemployed or unemployed. Mr. Shaw, however, has not proven that health problems compromise his ability to work on either a full-time or part-time basis. Mr. Shaw adduced no medical evidence to support his contention, despite having been given ample opportunity to do so. Further, I reject Mr. Shaw's claim as not credible. Mr. Shaw did not tell the truth. Mr. Shaw has done everything within his power to evade his responsibilities to Ms. Shaw. Mr. Shaw has the ability to work, and has chosen not to do so.

The courts have been clear that the onus is on the party attempting to impute income.”

[38] Mr. Waldick’s contract of employment clearly states the type of work he performed throughout the marriage ceases on his 55th birthday (November 18, 2009). Paragraph 16.0 of his Statement of Terms and Conditions of Employment states:

“The Company’s Retirement age for employees working offshore/operationally is 55. Your employment will terminate automatically on your reaching retirement

age. Your actual last day of employment will normally be regarded as the working day you reach this age.”

[39] Dr. Veasey, a psychiatrist, testified as to Mr. Waldick’s mental health and how it reflected on his ability to seek and retain employment. His written report stated, in part:

“Mr. Waldick was referred to my colleague, Dr. Ed Strok, Clinical Psychologist in November 2009 . . .

Dr. Strok assessed him in November 2009 ...

In summary, my diagnosis was that of a moderate to severe chronic adjustment disorder in the setting of marital difficulties, divorce and family relationship breakdowns and all the associated (sic) the losses. There has been improvement with psychotherapy and antidepressant treatment. There is unlikely to be any major step forward until this divorce is finalized and no doubt his current mental state has markedly prejudiced him in terms of employment. He is still in my view only capable of low stress and part time employment currently and he continues under review.

. . .

Mr. Waldick has suffered a moderate to severe chronic adjustment disorder in the setting of marital difficulties, divorce and family relationship breakdown and associated losses.

There has been significant improvement with psychotherapy and antidepressant treatment. I would expect further improvement once the divorce is finalized. This remains the significant ongoing stressor in his life.

He is, in my view, fit for some kind of employment but I do not think it likely that he will be able to return to the type of heavy and stressful employment he had previously. He is likely to be vulnerable to anxiety and depression if exposed to further significant stressors. He remains under my psychiatric care as an outpatient.”

[40] Mr. Waldick cites the turmoil created by the marriage and his health condition as reasons for ceasing employment in August of 2008. The marital conflict and resulting turmoil was present for a considerable period of time prior to

August of 2008. There is no evidence to support a conclusion his relationship with Ms. Waldick provided a legitimate reason to leave available employment when he did. As to his medical condition preventing his continuing employment, the medical evidence provided speaks mainly to his difficulties from November 2009 to date. In August of 2008 Mr. Waldick, in effect, walked away from an opportunity to remain in established employment for an additional 15 or 16 months. I conclude it is appropriate to impute income to Mr. Waldick for the year 2008 and up to November of 2009.

[41] In November of 2009, the employment Mr. Waldick had for many years ceased to be available to him. Further, the medical evidence supports a conclusion he has not been in a position to maintain meaningful employment since November of 2009. Mr. Waldick has no ability to respond to a claim for support since that date.

Mode of Providing Spousal Support

[42] Ms. Waldick acknowledges Mr. Waldick is currently without employment or income from which to provide spousal support. She requests an order for support be made as a lump sum payment and taken from Mr. Waldick's share of matrimonial assets. Mr. Waldick denies the responsibility to provide or the ability to pay such support. Nevertheless, he agrees, if such support is ordered, it be paid in the form requested by Ms. Waldick.

[43] In *Wadden v. Wadden*, (1996) 160 N.S.R. (2d) 180, Justice MacLellan, when considering a lump sum spousal support payment, stated:

“65 Here, the petitioner requests that the respondent's interest in the matrimonial home, which I have now valued at sixteen thousand one hundred and thirty-two (\$16,132.00) dollars, be awarded to her to satisfy her right to lump sum spousal and child support.

66 In *MacNeil v. MacNeil* (1994), 129 N.S.R. (2d) 284, the Nova Scotia Court of Appeal clearly indicated that a lump sum award should not be used as a means to redistribute assets and that property division should be done under the Matrimonial Property Act. However, I do not read that case as standing for the

principle that a Court can never order conveyance of a property interest to satisfy a lump sum award.

67 In *Rossiter-Forrest v. Forrest* (1994), 129 N.S.R. (2d) 130, Goodfellow, J. of this Court addressed this issue. He said: (p. 144)

"Maintenance is to be awarded in accordance with the authority mandated and defined by the Divorce Act. An order for maintenance cannot go beyond this authority to deal with a redistribution and division of assets. Division and redistribution of assets belongs to the provincial jurisdiction under the Matrimonial Property Act. This does not preclude the award of a lump sum maintenance to meet maintenance requirements as directed and mandated by the Divorce Act. A lump sum maintenance award that has the effect of determining a division and redistribution of assets is still a valid exercise of authority under the Divorce Act. The fact that such a result occurs does not invalidate the authority."

68 I find that in this case the concerns addressed in *MacNeil v. MacNeil* do not apply because the request to have the respondent convey his property interest is not an attempt to redistribute marital assets, but simply to satisfy past and continuing support obligations in circumstances where otherwise the respondent would not be able to do so.

69 I have already found that the petitioner is entitled to spousal and child support. I have also found that a retroactive order is appropriate. In addition, I found that a lump sum was justified because of the respondent's inability to provide a periodic payment and finally I have found that the respondent has an asset which is his interest in the former matrimonial home."

It is appropriate to consider a lump sum award in this instance.

Establishing the Income of the Parties from January 2008 to December 2009

[44] It has been established that Ms. Waldick's gross annual income currently is in the range of \$25,000.00. Income Tax information supports such a conclusion.

[45] Establishing Mr. Waldick's income is far more complicated. The income has been derived from employment outside Canada and Income Tax information is not available. Mr. Waldick, without valid reason, unilaterally ceased his employment when his position remained available to him and, accordingly, income should be

imputed to him from separation up to the date his position would have been terminated which happens to coincide with the date I have found his health prevented him from continuing with employment. Further, as Mr. Waldick did not pay Income Tax in Canada, Ms. Waldick asserts that his income should be grossed up. Finally, the information provided to the court indicates Mr. Waldick was paid in British pounds which must be converted into Canadian currency. Mr. Waldick provided the following information: For 2006, 11 monthly pay stubs showing a total income of £44,631.00; For 2007, 8 monthly pay stubs showing a total income of £28,115.00; A letter from his employer dated January 21, 2008, indicating his gross income for the year 2007 was £45,780.00 and further noting tax paid of £9,156.00 in Algeria; For the year 2008 – remembering he left his employment in August of that year – 7 pay stubs showing a total income of £27,796.00.

[46] Mr. Waldick, on leaving his employment in August 2008, did secure two other periods of employment between December 2008 and June 2009 earning, according to him, approximately \$45,000.00.

[47] Since November 2009, Mr. Waldick has earned a very minimal amount of income.

[48] As to the amount of spousal support, Ms. Waldick, in her pre-trial brief, stated:

“In the year 2008, we know that Mr. Waldick did earn income, and he did not pay any amount of support. The total amount of money deposited to his account from employment is \$66,998.50. Mr. Waldick does not pay Canadian tax out of this amount, and therefore, this should be grossed up for purposes of determining quantum of support that should have been paid in 2008. This amount also does not incorporate any imputation for the time period that Mr. Waldick was unemployed in 2008. The Respondent therefore submits that the Petitioner’s income for 2008 should be set at \$100 - 120,000.00. I refer again to the attached recommendations of the Spousal Support Guidelines. In 2008, Mr. Waldick should have paid an annual amount of spousal support ranging from a minimum of \$18,000.00 to a maximum of \$48,000.00.”

[49] The best evidence available from which to impute income to Mr. Waldick from January 2008 to November 2009 is his employer’s notification of his 2007

income, being the last full year of employment in his regular position, being £45,780.00 Great Britain pounds.

Payment

[50] £45,780.00 Great Britain pounds equates to \$71,685.00 Canadian dollars which Ms. Waldick suggests is not subject to income tax and should be grossed up. It appears Mr. Waldick did pay tax on this income in the amount of £9,156.00 or \$12,578.00. Income of \$71,685.00, if earned in Nova Scotia, would attract tax of approximately \$19,650.00 or \$7,100.00 more than deducted from Mr. Waldick. Grossing up the \$7,100.00 to \$11,600.00 would bring Mr. Waldick's annual income to approximately \$83,275.00. Ms. Waldick refers to the *Spousal Support Guidelines* when recommending a lump sum payment amount; these suggested amounts flow from monthly payment figures which, if paid in that fashion, would provide tax relief to Mr. Waldick and be taxable in the hands of Ms. Waldick. A conclusion to provide a lump sum payment as requested and agreed to would not attract such consequences to Mr. or Ms. Waldick.

[51] I find, from the date of separation (January 2008) to November 2009, a period of approximately 23 months, Mr. Waldick is responsible to pay a lump sum spousal payment in the amount of \$34,500.00.

DIVISION OF MATRIMONIAL ASSETS AND DEBT

Relevant Legislation

[52] The *Matrimonial Property Act*, particularly paras. 4(1), 10(1), 12(1), 13 and 15, which provide for defining assets, the powers of the court, the division of assets, the factors to be considered in such division and the power of the court upon such division.

[53] The parties have provided information in relation to their assets and liabilities in the form of Statements of Property and oral testimony – not all of which has been consistent. Further, there is disagreement as to what items should

be considered matrimonial property and matrimonial debt. Still, further, the parties disagree as to the value that should be assigned to such items.

[54] Justice Hallett, in *Gomez-Morales v. Gomez-Morales* (1990) 100 N.S.R. (2d) 137 spoke to these issues and stated at p. 12:

“While one attempts to make the calculations with as much accuracy as possible, the basis of such calculations are generally estimates of value by experts. As a consequence, even as a general rule, a Court's division of property is, at best, an estimate of what is fair in the circumstances applying the criteria of the matrimonial property legislation. Furthermore, the Courts are regularly called upon in assessing damages arising out of personal injuries or death to fix amounts involving numerous contingencies and there is no reason why the Court should not do so in determining fair values in matrimonial property cases.”

[55] The parties have provided the following pertaining to matrimonial assets and debt:

- Mr. Waldick - Statement of Property sworn to on October 16, 2008
- Ms. Waldick - Statement of Property sworn to on November 17, 2008
- Ms. Waldick - affidavit sworn to July 22, 2009
- Mr. Waldick - affidavit sworn to January 7, 2010
- Ms. Waldick - affidavit sworn to February 12, 2009
- Mr. Waldick - affidavit sworn to March 22, 2010
- Ms. Waldick - affidavit sworn to October 5, 2010
- Ms. Waldick - pre-trial brief dated October 4, 2010
- Mr. Waldick - pre-trial brief dated October 8, 2010

Further, there was the testimony of both parties at trial.

[56] I have reached a conclusion as to matrimonial assets and debt, the value attributed to such assets and the amount attributed to the debts. This conclusion is based on the information provided by the parties in the form of filed documentation, oral evidence and submissions. Some items mentioned by the parties do not form part of my calculations; for example, the two motor vehicles, the one in the possession of Mr. Waldick had an associated debt very similar to its

value. As to the one in the possession of Ms. Waldick, there was a large discrepancy as to its suggested value. No appraisal was provided. Still, further, Ms. Waldick indicates it was purchased after the couple separated.

[57] I find the following to be matrimonial assets and debt.

Matrimonial Assets

- 596 North Lakeview Road, Antigonish County

[58] The title to this property is in the name of Ms. Waldick, having been acquired from a family member during the couple's three-month separation in 2003. Ms. Waldick has remained on the property since separation. Both parties acknowledge this property as being a matrimonial asset. An appraisal dated March 21, 2009, valued the property at \$185,000.00 and being 96% complete. The parties accept this appraisal. They, however, dispute the value of the property when the couple separated, being some 15 months prior to the appraisal.

[59] Ms. Waldick has spent money on the property since the separation and submits, at separation, the property was 55% complete and had a value of \$101,000.00.

[60] While acknowledging Ms. Waldick has incurred some expense in relation to the property since separation, Mr. Waldick believes that, at separation, the home was 90% complete and had a value of \$171,000.00.

[61] Ms. Waldick, in effect, submits she has increased the value of the home by 30% between the date of the couple's separation and the appraisal. Mr. Waldick suggests an increase in value during the same period of time of 6%.

[62] Ms. Waldick did employ carpenters to work on the home after separation. She estimates an additional \$25,000.00 is required to "complete" the home. Mr. Waldick testified, at separation, \$20,000.00 worth of material, paid for by him, remained on the property to be applied to the home's completion. Ms. Waldick

acknowledges she is not able to provide proof to support all of her expenditures as many of those who provided labour were paid “under the table.”

[63] As previously stated, both parties accept the appraisal provided on March 21, 2009. No information was provided to suggest the value of the property has increased or decreased since the appraisal. What is being attempted is to place a value on this asset at separation. It is recognized Ms. Waldick, between the couple’s separation and appraisal, incurred costs related to this property. The court was inundated with conflicting information from both parties on this point. Even if there had been an agreement, it must be noted the costs of material and labour do not of themselves establish an appraised value of a property

[64] Given the information made available, I conclude the value of this property at the date of the couple’s separation to be \$150,000.00. I agree with Ms. Waldick that disposition costs are applicable to concluding the value of this property. I find the disposition costs, including commission, legal fees and HST, to total \$10,176.00 placing a value on this property at \$140,176.00.

- Two Lots of Land - MacIntyre Road Properties

[65] These lots are in the name of Ms. Waldick. The value the parties attributed to these properties varied throughout the proceeding.

[66] There was a listing appraisal dated May 16, 2009, made available to the court finding the value of the properties to be \$46,300.00.

[67] In final submissions, Ms. Waldick suggests the lots be valued at between \$40,000.00 and \$45,000.00. Mr. Waldick suggests a value of \$45,500.00.

[68] I find the value of these properties to be \$45,000.00 as basically suggested by the appraisal. Disposition costs are also applicable to these properties which I find, including commission, legal fees, HST and migration, to be \$4,830.00 placing the value at \$40,130.00.

- Insurance

[69] I find, at separation, Mr. Waldick had in his possession an insurance policy with a cash surrender value of \$10,000.00.

- Bank Accounts

[70] Around the time of separation Ms. Waldick had a bank account under her control of a value of \$888.00 and Mr. Waldick controlled one with a value of \$2,390.00.

- Pension

[71] Ms. Waldick's pension at separation had a value of \$1,200.00. Mr. Waldick does not have a pension.

- Household Possessions and Furniture

[72] Early on in this proceeding, October and December of 2008, the parties filed Statements of Property. Under the heading "Household Items" Mr. Waldick valued his list of items at \$33,700.00; Ms. Waldick submitted a figure of \$11,800.00. Their only agreement came under the sub-heading of "Tools" which they both valued at \$4,000.00, agreed to be in the possession of Ms. Waldick. Ms. Waldick agrees to return such tools she has in her possession to Mr. Waldick who agrees to accept them. I expect this transfer to take place.

[73] Under the sub-heading of "Appliances" they both list a fridge, stove, dishwasher, dryer, hot tub and two wood stoves, all remaining in the home occupied by Ms. Waldick. Mr. Wadick values these items at \$11,200.00. Ms. Waldick believes they are worth \$2,960.00.

[74] Under the sub-heading "Furniture" they both list bedroom suite, kitchen set, living room set, TV and stereo, dishes, linens and blankets. Mr. Waldick values these items at \$14,500.00. Ms. Waldick values them at \$1,950.00.

[75] After the initial filings, very little, if anything, was provided to help the court reach a conclusion. The items have not been appraised. The written submissions did not address this source of matrimonial property nor did the parties' testimony provide any further evidence.

[76] On the delivery to Mr. Waldick of the items classified as tools and equipment, I find the value of the household items remaining with Ms. Waldick to be \$8,000.00.

Matrimonial Debt

[77] At separation, Ms. Waldick retained responsibility for a line of credit in the amount of \$23,100.00 and a Visa account in the amount of \$2,047.00 for a total of \$25,147.00. Mr. Waldick remained responsible for a line of credit in the amount of \$983.00.

[78] Having regard to s. 13 of the *Matrimonial Property Act* and the circumstances of this case, I conclude it would be appropriate to exercise my discretion and divide the assets and debt equally. The following equalization chart reflects my decision as to matrimonial property and debt which requires an equalization payment by Ms. Waldick to Mr. Waldick of \$76,920.00:

ASSET	VALUE	MR. WALDICK	MS. WALDICK
596 North Lakeview Road	\$140,176.00		\$140,176.00
MacIntyre Road Properties	\$40,130.00		\$40,130.00
Insurance	\$10,000.00	\$10,000.00	
Bank Accounts	\$3,278.00	\$2,390.00	\$888.00
Pension	\$1,200.00		\$1,200.00
Household Items	\$8,000.00		\$8,000.00

Totals	\$202,784.00	\$12,390.00	\$190,394.00
DEBT			
Line of Credit	-\$23,100.00		-\$23,100.00
Visa	-\$2,047.00		-\$2,047.00
Line of Credit	-\$983.00	-\$983.00	
Totals	-\$26,130.00	-\$983.00	-\$25,147.00
TOTALS	\$176,654.00	\$11,407.00	\$165,247.00
Equal Division	\$88,327.00		
Equalization Payment to Mr. Waldick		\$76,920.00	

[79] As previously decided, Mr. Waldick's lump sum spousal support payment of \$34,500.00 is to be deducted from his *Matrimonial Property Act* entitlement, leaving Ms. Waldick with a final payment to Mr. Waldick of \$42,420.00.

COSTS

[80] Mr. Waldick sought costs in what he termed Ms. Waldick's withdrawal of her interim application for spousal support. Ms. Waldick, in this instance, did not withdraw her request for support but rather provided for it to come forward at a later date. The request for costs is denied.

[81] I ask counsel for the respondent to prepare the order.