

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** Hiltz v. Shee, 2010 NSSC 164

**Date:** 20100428

**Docket:** Amh No. 323285

**Registry:** Amherst

Between:

Jeffrey Allan Hiltz

Applicant

and

Rhonda Lynne Shee

Respondent

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DECISION

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**Judge:** The Honourable Justice Gerald R. P. Moir

**Date of Hearing:** April 8, 2010

**Counsel:** Jeffrey Allan Hiltz, on his own behalf  
Ronald D. Richter, counsel for the respondent

**Moir, J.:**

***Introduction***

[1] The parties were common law spouses for a little over ten years, from 1997 until they separated in January of 2008. In 2000, Ms. Shee started a career with the armed forces. Mr. Hiltz applies for an equal division of Ms. Shee's pension benefits from 2004, when Ms. Shee joined the forces full-time, until 2008.

[2] Someone at the Department of National Defence told Mr. Hiltz that he needed to give them an application and a court order or agreement for the division. They led Mr. Hiltz to believe that the order was almost automatic. Mr. Hiltz's belief was reinforced when Service Canada recently advised him that Ms. Shee's CPP pension had been divided in his favour. No one told him that s. 55.1(1)(c) of the *Canada Pension Plan Act* permits division of CPP pensions for common law partners, but the *Pension Benefits Division Act* contains no such provision.

[3] The correct advice would have been that superannuation pensions are only divided when one partner proves they are entitled at law to a portion of the other partner's pension, that married people often have an entitlement under the

*Matrimonial Property Act*, but that a common law spouse's entitlement is very limited.

[4] After he received Ms. Shee's affidavit and the brief on her behalf, Mr. Hiltz filed affidavits tending to show unjust enrichment. The main issue is whether the evidence establishes that cause.

[5] I have Mr. Hiltz's initial affidavit, Ms. Shee's affidavit, Mr. Hiltz's lengthy rebuttal affidavit, and his supplementary affidavit. I also have the benefit of having heard Mr. Hiltz and Ms. Shee cross-examined.

### ***Legal Basis for a Division***

[6] As I said, Mr. Hiltz's entitlement is far from automatic.

[7] The *Pension Benefits Division Act* provides mechanisms for division of federal pensions. It does not provide any entitlement. The mechanisms are available to common law spouses but, unlike the entitlement of married spouses under the *Matrimonial Property Act*, there is no statutory entitlement for common

law spouses in Nova Scotia. See, Justice Legere-Sers' decision in *Cook v. Crabbe*, [2002] N.S.J. 467 (S.C., F.D.) at para. 17 to para. 20.

[8] Mr. Hiltz's claim can only be based on a constructive trust awarded for unjust enrichment. He must establish that (1) Ms. Shee was enriched, (2) Mr. Hiltz was correspondingly deprived, and (3) there is no juristic reason for the enrichment.

### ***Facts***

[9] Mr. Hiltz had two children of his own when he moved in with Ms. Shee in 1997, a son who did not join them and a daughter who lived with the couple until 2001. Ms. Shee had one child, and he lived with the couple off and on until 2006. Mr. Hiltz and Ms. Shee had a daughter who was born in 1998.

[10] Mr. Hiltz, Ms. Shee, and the three children moved into Mr. Hiltz's mother's home in Kingston. Mr. Hiltz's father had died. In 2000, his mother conveyed the home to herself and Mr. Hiltz as joint tenants.

[11] In his first affidavit, Mr. Hiltz says he resigned his position with Home Hardware in 2000 to stay home and look after the children while Ms. Shee pursued a career with the armed forces. In later affidavits he agrees that he moved home to look after his mother and the children. He says the decision was made jointly by Ms. Shee and himself.

[12] Ms. Shee denies this. She implies that Mr. Hiltz lost his Home Hardware job. She says he "never pursued any work". "He used his mother's pension income to live on."

[13] Ms. Shee's evidence on this point is contradicted by documents she submitted to D.N.D. requesting restrictions on transfers and a transfer to Greenwood from CFB Halifax. I accept Mr. Hiltz's evidence that the couple was in agreement that he should be at home.

[14] I do not accept that looking after the children was always the primary reason for Mr. Hiltz being at home. In 2000, when Ms. Shee's military career began, the children were two, six, and twelve. His mother had multiple sclerosis but she was

still quite able. However, this is when she conveyed half the title in her home to her son.

[15] At the end of 2004, Ms. Hiltz had a serious downturn. She then required Mr. Hiltz's full-time care. By then, all the children were school age and the oldest had long since moved out. Within two years, Ms. Shee's son moved out, although Mr. Hiltz continued to communicate with, and provide supports for, him. The only child left at home was nine when Ms. Hiltz's son moved out.

[16] The parties have provided evidence about assaults and each other's abuse of alcohol and drugs. Each emphasizes the fault of the other. I am satisfied that there were times when they were unpleasant to be around, and that each caused harm to the other.

[17] On the subject of Ms. Hiltz's pension income, Mr. Hiltz points out that his mother's income covered all the household expenses. It is, I agree, quite unfair to characterize him as having lived off his mother. He, Ms. Shee, and the children all benefited from living in Ms. Hiltz's home free of expenses. No doubt, Ms. Hiltz also benefited from having the others with her.

[18] In 2007, Mr. Hiltz and his mother conveyed the home to Mr. Hiltz and Ms. Shee jointly. They then mortgaged the home for \$130,400. Most of the proceeds went into investments. Mr. Hiltz calculates that he received \$55,652.94.

[19] By December 2008, after the parties had separated, Mr. Hiltz was out of money. His mother's pension was insufficient to keep up with the new mortgage payments and the regular household expenses. He and his mother moved to his new girlfriend's home in Springhill. He had no money for Christmas. So, he asked Ms. Shee to cash a joint RRSP.

[20] Contributions to Ms. Shee's superannuation pension only started in 2004, when she joined the armed forces full-time. She was reluctant to dispose of an RRSP. She said she would give Mr. Hiltz half of the RRSP if he signed over the house. He did so. He got \$13,119.53. He says this was done without independent legal advice and under duress. He provided evidence tending to show that there is more than \$90,000 equity in the house.

[21] It appears that the couple also made agreements about splitting assets and that each claims the other failed to perform some of the terms. Mr. Hiltz says they have "never officially settled matters".

***What This Proceeding is Not About***

[22] Mr. Hiltz applied for "an order for division of pension benefits pursuant to the *Pension Benefits Division Act*". As explained, that statute only provides mechanisms for division of federal pensions. The application is properly treated as an application for the remedy of constructive trust based on the cause of unjust enrichment.

[23] This case does not concern the validity of the deed from Mr. Hiltz to Ms. Shee, the division of other communal property, or child support. Evidence that seems to touch on those kinds of issues is of little or no value, in the circumstances of this case, for the issue of unjust enrichment.



*Unjust Enrichment*

[24] Mr. Hiltz was not deprived. He stopped working in order to take care of his mother and the children. For that he was well compensated. He received the joint tenancy and the benefits, for himself and his family, of having the household expenses covered without his having to go to work.

[25] Even if this had involved some measure of deprivation, that measure could only have corresponded insignificantly to Ms. Shee's enrichment. For most of the period, Mr. Hiltz would have been at home to look after his mother.

[26] Mr. Hiltz looked after one child for one year, a second, school-aged child for six years, and the third child for an additional one year. Most who can claim to have given up a career to take care of their children invest far more time than that. Had it not been for the need to care for Mr. Hiltz's mother, and for her willingness to compensate him for that, the couple would likely have found other ways to free Ms. Shee for her career.

[27] I find that Mr. Hiltz did not suffer a deprivation because he was well compensated for being at home full-time between 2000 and early 2008.

***Conclusion***

[28] Mr. Hiltz's application will be dismissed.

J.