

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Carter v. Carter*, 2015 NSSC 273

Date: 2015-09-28

Docket: *SFSND* No. 1206-6516

Registry: Sydney

Between:

Carolyn Carter

Petitioner

v.

John Carter

Respondent

Judge: The Honourable Justice Lee Anne MacLeod-Archer

Heard: June 24, 29 and 30, 2015, in Sydney, Nova Scotia

Written Release: September 28, 2015

Counsel: Elaine Gibney for the Petitioner
Lisa Fraser-Hill for the Respondent

By the Court:

BACKGROUND

- [1] The parties were married on November 26, 1988 after living common law for almost three years. They separated on November 26, 2012.
- [2] They lived in Port Hawkesbury, where Mr. Carter was employed as a mechanical engineer with the Port Hawkesbury paper mill for 23 years before the plant closed in 2011.
- [3] Ms. Carter was employed during the marriage at various jobs, including bartending, housekeeping and events management. She arranged her hours around her husband's schedule when their son was young. She worked mostly evenings so that she could be at home with their son during the day.
- [4] Mr. Carter was able to secure work in Alberta shortly after the paper mill closed, so the parties moved in January, 2012. Ms. Carter quit her part-time job in Port Hawkesbury to make the move. After they arrived in Alberta, Mr. Carter started his new job and Ms. Carter found part-time work in a gift shop. She later secured full-time employment at a nursing home and worked at both jobs until she returned to Nova Scotia.
- [5] The parties shared a good lifestyle while married. They travelled together, acquired a home and several vehicles, and paid off their debts.
- [6] Ms. Carter returned to Nova Scotia on November 26, 2012. The circumstances leading up to her departure are disputed, but the parties agree that she boarded a plane and flew home with Mr. Carter's approval. They have lived separate and apart since then.
- [7] Ms. Carter is 52 years old. She has not returned to work since she returned to Nova Scotia. Mr. Carter remained in Alberta after separation. He is 54 years old and now lives with a new partner, sharing her home.
- [8] There were no dependent children at the time of separation. The parties have one adult son.

[9] An interim spousal support hearing was held before Associate Chief Justice O'Neil, who issued a decision on July 23, 2013. Mr. Carter was ordered to pay support in the sum of \$2,100.00 per month, for so long as Ms. Carter occupied the matrimonial home in Port Hawkesbury, which was to be listed for sale. When Ms. Carter vacated the home (which she did in October, 2013 as ordered) the amount of support was increased to \$3,300.00 per month. The higher amount recognized that Ms. Carter would have to pay accommodation expenses after leaving the home, as well as her share of expenses to maintain the matrimonial home pending sale.

[10] The matrimonial home was sold in April, 2014. The balance of the sale proceeds have been held in trust, pending a determination of each party's interest therein.

AGREEMENTS OF THE PARTIES

[11] Prior to proceeding through trial, the parties reached agreement on several issues. The following agreements were read into the record and will be incorporated in the Corollary Relief Order to be issued by the court:

1. The RRSPs owned by the parties will be divided equally by way of a spousal roll over under the *Income Tax Act*. The value to be divided is the balance at separation, plus or minus market fluctuations since November 26, 2012.
2. Mr. Carter's pension as of November 26, 2012 (plus interest since separation) will be divided equally at source.
3. Mr. Carter will receive a \$1,250.00 credit towards the division of vehicles.
4. The parties will each keep the vehicles registered in their names at separation.
5. Ms. Carter is entitled to a \$7,500.00 credit for the closing fees paid to Mr. Carter by his employer.
6. There will be an equal division of the house proceeds, subject to any adjustment ordered by the court.

ISSUES

[12] The remaining issues are:

1. Divorce
2. Credibility
3. Division of Assets – classification of cottage; home proceeds
4. Spousal Support – entitlement; determination of income; retroactive and prospective
5. Ancillary orders - medical coverage and life insurance

Issue 1 - Divorce

[13] The jurisdictional and procedural requirements of a divorce have been met. The parties have been living separate and apart since November 26, 2013. I accept this as evidence of a permanent breakdown of the parties' marriage. The divorce is granted.

Issue 2 - Credibility

[14] Before addressing the issues to be determined by the court, I will address the issue of credibility. I make the following observations about Mr. Carter's evidence:

- He was testy with his own counsel's questions during direct examination.
- He berated Ms. Carter from the witness box over cell phone expenses.
- He was argumentative and evasive on cross-examination.
- He hedged his evidence with respect to the alleged abuse, saying he was violent "to a certain degree" and that he did not beat Ms. Carter "constantly".

[15] There were some problems with Ms. Carter's evidence as well:

- Her memory of events immediately after separation is poor due to her mental health problems and uncontrolled drinking during that period.

- She was confused about who made which ATM withdrawals from the joint account after separation. She initially testified that Mr. Carter “didn’t even know how to use a bank card” when they separated. However, when presented with a number of large ATM withdrawals made from the joint account, she attributed several of these to Mr. Carter.

[16] In general, even with these lapses, I found Ms. Carter to be more credible than Mr. Carter. Where the parties’ versions of events differ, I accept Ms. Carter’s version. In particular, I accept Ms. Carter’s evidence that Mr. Carter was abusive towards her, and that they both abused alcohol.

Issue 3 – Division of Assets

Cabin at Sampsonville, NS

[17] Ms. Carter seeks an equal division of all matrimonial assets and debts, which she says includes a cabin in Sampsonville, Nova Scotia. She claims Mr. Carter built the cabin during the marriage, using funds which would have otherwise been available to the family.

[18] The *Matrimonial Property Act* R.S.N.S. 1989, c. 275 defines matrimonial assets as follows:

"matrimonial assets" defined

4 (1) In this Act, "matrimonial assets" means the matrimonial home or homes and all other real and personal property acquired by either or both spouses before or during their marriage, with the exception of

- (a) gifts, inheritances, trusts or settlements received by one spouse from a person other than the other spouse except to the extent to which they are used for the benefit of both spouses or their children;

[19] The cottage in question is situated on lands held by Mr. Carter’s great-grandfather. The family built a small cabin on the land many years ago. Mr. Carter testified that his father hunted and fished on the land, and he cut firewood. He says nobody knew who paid the municipal taxes.

[20] Evidence was lead on the state of title to this land. James Carter died intestate in 1887, leaving five heirs, one of whom was Mr. Carter’s grandfather. In 1992 three cousins signed a Quit Claim deed to the land, conveying title to their 1/8th interest to Paul and Colleen Mombourquette. No

deed(s) from any other heirs was produced in evidence. Mr. Carter says he has upwards of 80 cousins through his great-grandfather's line. There are therefore dozens of potential heirs who have not signed over their interest, including Mr. Carter.

[21] There is no evidence that the Mombourquettes and other heirs would sign a Quit Claim deed granting title to Mr. Carter, should he request it. While he holds only a fractional interest in the lands, it is still a "property interest" under s.4(1) of the *Matrimonial Property Act (MPA)*, subject to the exclusions set out in s. 4(1)(a).

[22] Mr. Carter says the cabin is an inheritance exempt from division under the *MPA*. He denies the cabin was used for the benefit of Ms. Carter and their son. He testified that she stayed overnight once, but otherwise did not like to visit the cabin. Ms. Carter did not deny this.

[23] Mr. Carter also denies that he spent family funds on the cottage, though he agreed he contributed labour and bought patio doors.

[24] I have considered the evidence on the cabin and lands, and conclude that Mr. Carter's interest is an inheritance which was not used for the benefit of this couple. There was no evidence of their son using the lands or cabin. The evidence suggests it a hideaway for Mr. Carter and his male relations, where they hunted and fished. I find it is excluded from division under s.4(1)(a) of the *MPA*. Mr. Carter has met the onus of proving the cabin is exempt from division (see *Bellemare v. Bellemare* (1990), 98 NSR (2d) 140 (NSCA)).

[25] Even if the cabin was not excluded from consideration as a matrimonial asset, I would make no order for compensation to Ms. Carter, as there is insufficient evidence on which to base an award. The cabin was not appraised. Ms. Carter seeks compensation of \$5,000.00, being half the money she claims Mr. Carter spent on improving the cabin, but there are no receipts.

[26] Mr. Carter denies he spent \$10,000.00 on the cabin. He testified that his father and brother bought the lumber and building supplies (other than the patio doors). He says between his father, brother and him, they didn't spend \$10,000.00 altogether on the cabin.

[27] I find Ms. Carter has not advanced clear and convincing evidence to support her assertion that \$10,000.00 in matrimonial funds was used to improve the cabin. At most, I find Mr. Carter contributed a set of patio doors and labour. I

do not have convincing evidence of monies spent on the property. For these reasons, I dismiss Ms. Carter's claim to reimbursement for monies spent on improving the cabin.

Mr. Carter's Bonus in 2013

[28] Mr. Carter received a bonus in 2013 for his performance in 2012. Ms. Carter seeks a division of that portion of the bonus earned before separation, namely from January – November, 2012. The bonus of \$11,364.84 was paid after separation, and was included in Mr. Carter's taxable income for 2013. I find that portion attributable to the period before separation is a matrimonial asset subject to division.

[29] According to his return filed with Revenue Canada, Mr. Carter's tax rate in 2013 was 46%, so his net bonus was \$6,137.00. He shall pay Ms. Carter her 50% share of \$3,068.50.

Household Contents

[30] Mr. Carter initially sought compensation for an unequal division of household contents and evidence was led on the division of contents after separation. However, in his cross-examination, he agreed that the value of contents each received, including his tools and Ms. Carter's jewellery, "may be a wash". He does seek return of a gold chain, which Ms. Carter has agreed to return to him.

[31] Ms. Carter does not seek a further division of contents, but asks for the return of a hard top for her BMW convertible, which she claims Mr. Carter removed from the garage without her knowledge.

[32] I accept the evidence of both parties that they each received an equal share of contents, subject to the return of the hard-top to Ms. Carter and the gold chain to Mr. Carter, both within thirty days. No further order for division of the household contents will be made.

Loyalty Points

[33] Ms. Carter claims compensation for half of Mr. Carter's Aeroplan points as of the date of separation. However, Mr. Carter allowed the Aeroplan account to lapse after separation. He says the balance was about 200,000 Aeroplan

points when the parties separated. Ms. Carter claims it was much higher. Neither party tendered evidence from Aeroplan to confirm the balance at separation. There is evidence that when the points expired, the balance was 132,600 miles.

[34] Mr. Carter presented evidence from the Aeroplan website on the process and cost to reinstate expired miles, which involves an administrative fee of \$30 plus \$0.01 per mile reinstated, plus applicable taxes. Assuming the balance of Aeroplan miles at the time of separation was 200,000 as Mr. Carter claims, then the cost of reinstating Ms. Carter's half would amount to \$1,030.00 plus tax. Ms. Carter advances a claim for either reinstatement of the miles or compensation of \$5,000.00.

[35] The only clear evidence I have to consider is the statement showing the balance when the Aeroplan points expired. Ms. Carter's assertion that the balance was much higher than 200,000 is unsupported by the evidence.

[36] Further, Ms. Carter had Air Miles points at separation which she used to acquire household goods. Those points were not divided with Mr. Carter. And Mr. Carter purchased Ms. Carter's WestJet ticket when she returned to Nova Scotia in November, 2012. He claims reimbursement for the sum of \$602.83, but in the circumstances, I consider the price of that ticket to be set off against any interest Ms. Carter may have had in the expired Aeroplan points. It is not reasonable to order Mr. Carter to incur the cost of reinstating the points and transfer half to Ms. Carter.

Bank Account

[37] When the parties separated, their joint bank account was left open. Mr. Carter made deposits to that account after separation, from which both he and Ms. Carter withdrew funds to pay expenses. The account was closed on April 23, 2013.

[38] The joint bank account had a balance of \$29,633.00 on November 25, 2012 when Ms. Carter left Alberta. Two further deposits from payroll were made at the end of the month bringing the balance up to \$31,120.87. Shortly after separation, Mr. Carter transferred \$28,000.00 from the joint account to an account in his name only. He claimed he did this to ensure Ms. Carter did not fritter away the money.

[39] Given the circumstances of Ms. Carter's departure, flight home, subsequent hospitalization, and what she describes as a complete "breakdown", this was not an unreasonable concern. However, Ms. Carter had access to a significant amount of RRSP's. She did not cash nor fritter away that money, so Mr. Carter's control of the monies from the joint account was unnecessary in hindsight.

[40] Ms. Carter seeks an equal division of the balance of the joint account at the end of November, 2012. Mr. Carter takes the position that she has already been fully compensated for her share of the monies. He provided a list of items he claims he paid to, or for her, from November, 2012 to April, 2014. The original list totals just over \$20,000.00. It includes the WestJet ticket which I have already set-off against Ms. Carter's claim for division of the Aeroplan points.

[41] The list also includes payments on a PC Mastercard, oil, property tax, power and insurance expenses for the home in Port Hawkesbury, and withdrawals made by Ms. Carter from the joint account.

[42] Ms. Carter disputes Mr. Carter's claim that he paid the PC Mastercard. She also says his figures are too high because his calculations include sums paid to maintain the home **before** separation, and Mr. Carter tallied her withdrawals, but did not deduct sums he withdrew from the joint account himself.

[43] In his post-trial submissions, Mr. Carter recalculated the expenses he says he paid on behalf of Ms. Carter. After deducting expenses paid before separation, the adjusted figure is \$19,527.56. He argues these payments more than compensate Ms. Carter for her share of the funds he withdrew from the joint account after separation.

[44] Less the price of the Westjet ticket, his adjusted list amounts to \$18,924.83. I have considered the evidence on the individual expenses to determine whether Mr. Carter will be credited with the full amount claimed, as follows:

- Mr. Carter says he paid on the PC Mastercard. Mr. Carter relied on statements showing charges incurred and payments made, but there is no evidence he actually made the payments. Ms. Carter maintains that she made the payments online. The Mastercard statements show that payments were made through Scotiabank. The amounts paid are not reflected in the joint account records, and at least one payment

was made after the joint account was closed. The onus is on Mr. Carter to prove he made these payments as alleged, but the evidence is insufficient. I decline to include those payments in any credit to Mr. Carter for monies repaid from the joint account.

- Mr. Carter claims he paid Ms. Carter's share of utilities after she moved out of the home. I accept the evidence in this respect (subject to the adjustment for payments made before separation).
- I accept the evidence of deposits made by Mr. Carter to the account for Ms. Carter's support between November 30, 2012 – March 8, 2013, as well as the evidence of what amounts Ms. Carter withdrew between the same dates.
- I accept Ms. Carter's calculation of expenses paid on her behalf, or deposits made for her use, in the total amount of \$13,228.43.

[45] As set out below, Mr. Carter will be credited for these monies in the calculation of retroactive spousal support. He will therefore be required to pay Ms. Carter her 50% share of the joint account as of November 30, 2012, in the amount of \$15,560.00.

Sale Proceeds of Matrimonial Home

[46] Between July – October, 2013 Mr. Carter was obliged under the interim order to pay spousal support of \$2,100.00 per month, plus municipal taxes and insurance on the home. After Ms. Carter moved out of the home in October, 2013, she was obliged to pay her share of the utility, tax, heating and insurance expenses to maintain the home. At that point she was receiving spousal support of \$3,300.00 per month.

[47] Mr. Carter has proven he paid the insurance, oil and power costs until April, 2014 when the home was sold. I calculate Ms. Carter's share of those costs for that period, based on Mr. Carter's list and exhibits, to be \$1,970.46. That sum will be deducted from her share of the house proceeds and paid to Mr. Carter.

Issue 4 – Spousal Support

Entitlement

[48] Section 15 of the *Divorce Act* states:

15.2 Factors

- (4) In making an order under subsection (1) ... 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) ... 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.

[49] Neither party argued the issue of entitlement. I accept that Ms. Carter is entitled to spousal support. This is a long-term marriage, during which time Mr. Carter was the main income earner. Ms. Carter's income supplemented their lifestyle. She did not complete high school or pursue further training. Mr. Carter is a mechanical engineer.

[50] The parties raised one child together. Ms. Carter was responsible for most of the childcare. She worked part-time, setting her hours to complement Mr. Carter's schedule while their son was young. She left her job in Port Hawkesbury to follow Mr. Carter when he lost his employment at the paper mill.

[51] She suffers from a number of mental health issues which impair her ability to support herself. While she has no source of income, Mr. Carter earns a substantial income and shares expenses with a new partner.

[52] I find there is entitlement on a compensatory and non-compensatory basis. Ms. Carter suffered economic loss arising from the marriage. She was

pregnant when they got married. She did not pursue further education or training, even when their son left home. She took part-time jobs to supplement the family income and scheduled her hours around their son's care.

[53] She had no income when she left Alberta and her access to funds was limited by Mr. Carter's decision to remove \$28,000.00 from the joint bank account. She remains disabled and unemployed. As such, she continues to face economic challenges arising from the marriage and separation.

Determination of Income

[54] Mr. Carter argues that income should be imputed to Ms. Carter, as she has not worked since leaving Alberta. She held a variety of jobs before separation. She has hotel and bar management skills, as well as experience in bartending and housekeeping. Mr. Carter says she could return to work, but for her refusal to seek treatment for alcohol addiction and depression. It is his position that she chooses not to work.

[55] When Ms. Carter moved back to Cape Breton in November, 2012, she stayed with her sister in northern Cape Breton, where she accessed some counselling. She now lives in Halifax but remains unemployed.

[56] Ms. Carter says she cannot work at present, as she suffers from depression, anxiety, and symptoms of post-traumatic stress disorder (PTSD) including lack of concentration and mood disturbance. She alleges the PTSD symptoms are a result of the abuse she suffered at the hands of Mr. Carter.

[57] Her psychiatrist Dr. Christians testified. He confirmed that Ms. Carter has not had regular and consistent treatment for her condition since returning to Nova Scotia and that she did not take his advice to stop drinking until February, 2015.

[58] In his opinion, which I accept:

- She suffers from depression (moderate to severe), anxiety, alcohol dependency and symptoms of PTSD;
- Ms. Carter's condition requires a long-term plan which includes cessation of alcohol, cognitive behavioural therapy and counselling;

- Although she recognizes her problems, addressing them is an entirely and more difficult issue for Ms. Carter;
- Ms. Carter identifies with being employed, but he does not consider her well enough to hold down a job at present;
- Once the stress of the divorce is over, improvements in her functioning are likely.

[59] Dr. Christians suggested Ms. Carter apply for Canada Pension disability benefits in 2013, but she declined. She has since applied, and at the time of the trial, her application was outstanding.

[60] Mr. Carter takes the position that Ms. Carter should have applied for Canada Pension disability benefits when she moved home, and if she wasn't completely disabled for purposes of CPP disability benefits, she should have returned to work.

[61] Dr. Christians acknowledged that Ms. Carter managed to work during the marriage even while drinking heavily, but was firmly of the opinion she is not fit to return to work at present.

[62] Mr. Carter urges the court to impute income to Ms. Carter in the annual amount of \$30,000.00. In the alternative, he asks that spousal support be set in the low range under the *Spousal Support Advisory Guidelines (SSAG)*, to reflect her ability to earn income, and/or any CPP disability benefits she may receive.

[63] Ms. Carter argues that if income is imputed to her, income should also be imputed to Mr. Carter because he could be earning more. She points to the fact that he declined a more lucrative job offer before separation. Mr. Carter is already earning a significant amount of money at present, with bonuses. I decline to impute income to him based on a job offer he received and refused while the parties were still together. There is no clear and convincing evidence of higher income opportunities available to Mr. Carter at present.

[64] I also decline to impute income to Ms. Carter after separation. She may have worked regularly throughout the marriage, but when she moved back to Nova Scotia, the evidence is clear that she was in crisis. I find she was unable to seek help for her addiction and mental health issues until recently due to the nature of her condition.

[65] While conduct is irrelevant in determining spousal support, it can be a factor in determining income for purposes of spousal support where the context requires. Dr. Christians testified that Ms. Carter's problem is multi-factorial, including her difficult relationship with Mr. Carter, unresolved childhood issues, alcohol abuse, and the circumstances surrounding the separation itself. I conclude it would be unfair to impute income to Ms. Carter for purposes of spousal support in the circumstances.

Retroactive Spousal Support – under the Interim Order

[66] Ms. Carter seeks a retroactive adjustment in the amount of support paid by Mr. Carter under the Interim order. She argues that the amount of support ordered by Justice O'Neil was low, because it was based on a lower income than Mr. Carter actually earned in 2013. Mr. Carter received a bonus in 2013, though it was not paid until the spring of 2014. This is an annual bonus he receives each spring. The interim decision was based on an income of \$106,000 - \$107,000.00 per annum. The evidence at trial reveals that Mr. Carter's actual income was \$115,390.00 in 2013, including his bonus.

[67] Ms. Carter relies on the *SSAG* to calculate the amount payable. Based on Mr. Carter's income, it produces a range of \$3,606.00 to \$4,790.00 per month. She claims a retroactive adjustment to \$4,790.00/month. The difference is \$2,690/month from July 30 - October 30, 2013, which equates to \$10,760.00.

[68] After the matrimonial home was sold, Mr. Carter paid support of \$3,300.00/month, so the top up reduces to \$1,490/month. Over the past 11 months, that equates to \$16,390.00.

[69] Mr. Carter presented *SSAG* calculations which include imputed income to Ms. Carter of \$30,000/year. The range using those figures would be \$2,808.00 - \$3,665.00 per month in spousal support.

[70] He argues further that support payment should be set below the low range presented, because Ms. Carter failed to seek appropriate treatment, she did not pursue employment after separation, and she failed to apply for CPP disability benefits until April, 2015.

[71] Yet Mr. Carter bought alcohol and drank with Ms. Carter in the summer of 2013. To now suggest that support be set below the lowest range because she

failed to stop drinking and get treatment is untenable. His role in enabling Ms. Carter cannot be ignored.

[72] Mr. Carter also urges the court to consider the reasonable needs of the parties in the context of their circumstances. He argues that he should not be required to pay the *SSAG* amount because:

- the cost of living in Alberta is high;
- his travel expenses back to Cape Breton are high;
- Ms. Carter has no work related expenses;
- she chose to move to Halifax where her living expenses are higher than Cape Breton;
- she will receive her half of the proceeds from the sale of the home and her share of the RRSPs, and could live off that money.

[73] The *SSAG* are not binding on this court. They offer guidance only. Given that Ms. Carter's support claim includes a non-compensatory element, I will assess their respective needs and Mr. Carter's ability to pay before determining the amount of spousal support to be paid.

[74] Ms. Carter's budget shows a deficit of \$1,958/month. There are some expenses on her budget, including \$1,000/month vehicle and travel expenses which are excessive. Ms. Carter does not own a vehicle. She pays her sister to drive her to psychiatrist's appointments in Sydney and she travels to see her son in New Brunswick on occasion. She testified that she can make ends meet on the current level of support paid (\$3,300/month).

[75] Mr. Carter's budget shows a surplus, but he includes a number of discretionary expenses including savings of \$1,000/month, as well as significant holiday and entertainment expenses. Mr. Carter also lists room and board expenses, but he acknowledged on cross-examination that he lives with his new partner. I draw a negative inference from his failure to disclose cheques or receipts for room and board as requested, and conclude that Mr. Carter does not pay monthly room and board to his new partner. His budget therefore allows him to pay support in the *SSAG* range.

[76] Mr. Carter next argues it is not appropriate to equalize the incomes of the parties by way of support. He expressed the less-than-sympathetic view that Ms. Carter left him, so she should get a job and support herself. He says he

needs to save for retirement and doesn't plan to work harder just to support Ms. Carter.

[77] In assessing Ms. Carter's claim for retroactive adjustment of the interim support paid, I conclude that adjustment is warranted. Ms. Carter is disabled, and though she lived in the matrimonial home for several months in 2013, she moved to an apartment in Halifax in November, 2013. She has made do with what support she received. Meanwhile Mr. Carter was still earning a significant income while living with a new partner. He had no matrimonial debts to service, other than the maintenance expenses for the home in Port Hawkesbury. He is able to pay a retroactive adjustment.

[78] I award spousal support to Ms. Carter retroactive to the month she filed her Petition in the amount of \$4,000.00 per month. This will require an adjustment to the amounts paid by Mr. Carter under the interim order as of July 30, 2013 which I calculate at \$23,000.00 to August 30, 2015. In order to make the retroactive lump sum tax neutral for both parties, the amount payable by Mr. Carter will be discounted by 30% for a net amount of \$16,100.00.

Retroactive Spousal Support – separation to date of petition

[79] Ms. Carter also claims retroactive spousal support from the date of separation to the date she filed her petition. Mr. Carter objects, noting that her spousal support claim wasn't advanced until the petition was filed in March, 2013. He also points out that he has paid the required sums under the interim order and is not in arrears.

[80] Mr. Carter also argues that Ms. Carter had no need for support between January, 2012 and March, 2013 because he left open and deposited monies to the joint bank account. He also paid certain bills on her behalf. The problem with his argument is that it is double-sided. He asks the court to conclude he repaid Ms. Carter the monies he withdrew from the joint bank account through payments made to her, or on her behalf, which he says totals \$19,527.56. In other words, Ms. Carter lived off her own money after separation. Yet he also asks the court to refuse a retroactive adjustment, because he supported Ms. Carter with these payments after separation. He can't have it both ways.

[81] In all of the circumstances of this case, I find it is appropriate to award retroactive spousal support to the date of separation. Ms. Carter did not delay filing her claim for support, and Mr. Carter has the means to pay.

[82] I find the sums deposited by Mr. Carter into the joint account and monies he paid on Ms. Carter's behalf after separation constitute spousal support. He paid \$13,228.43 between November 30 – March 8, 2013. So for the period between separation and the filing of her petition, Ms. Carter received approximately \$3,300.00/month, non-taxable support. Mr. Carter will owe no further support to Ms. Carter for this period.

Prospective Spousal Support

[83] Having found that Ms. Carter is entitled to spousal support and having declined to impute income to her retroactively, I must now consider whether income should be imputed to her on a prospective basis, and what support should be payable to her.

[84] The court must consider, as one of the four factors set out in s.15.2(6), a dependent spouse's obligation to seek self-sufficiency. The Supreme Court of Canada has stated clearly that self-sufficiency is not the primary consideration. All four factors must be given equal weight in assessing a spousal support claim.

[85] Ms. Carter testified that she quit drinking alcohol in February, 2015. Her medications have been changed and she is following the treatment plan mapped out by her psychiatrist. I accept Dr. Christians' opinion that her road to recovery will be long, and there may be setbacks. She is only in the early stages of treatment at this point, but with treatment and time, Ms. Carter should be in a position to return to work.

[86] Ms. Carter's CPP disability benefits claim was not processed at the time of trial, and it is not clear whether she will be entitled to receive disability benefits. Even if she is approved, disability benefits are reviewable from time to time. I decline to make any adjustment at present, for future benefits which are not yet approved or guaranteed.

[87] Ms. Carter's mental health problems and addictions were exacerbated by the separation. Her depression and drinking worsened in the months following. However, she now says she has the drinking under control and is seeking treatment for mental health issues.

[88] I am prepared to allow Ms. Carter a period of time to pursue recovery without the stress of having to seek, secure and maintain a job. She says she

stopped drinking in February, 2015. She started seeking regular treatment through her psychiatrist around the same time. Dr. Christian's treatment plan includes proper medication, cognitive behavioural therapy and counselling. He believes this will greatly enhance Ms. Carter's functioning. She will always be a recovering alcoholic, and there may be slips in future which impact her recovery, but once she gets her dependency and mental health conditions under control, she should be able to work in some capacity.

[89] I am therefore prepared to impute income to Ms. Carter on a prospective basis as follows:

- If Ms. Carter returns to work, she will notify Mr. Carter immediately. She will provide information on her hourly wage, hours of work, benefits and probationary period.
- If she does not return to work before February 1, 2016 then gross income is imputed to her at \$1,000/month effective February 1, 2016. This reflects part-time work at a rate slightly above minimum wage.
- For purposes of determining her annual income, CPP benefits payable to Ms. Carter will be included.
- Ms. Carter shall immediately advise Mr. Carter if she is approved for CPP disability benefits, the benefit payable, her date of entitlement and any retroactive lump sums payable to her.
- Support will be adjusted using the *SSAG* software to calculate spousal support in the mid-range. Such adjustment will be made in the fourth month after Ms. Carter returns to work, i.e. the end of her probationary period, as soon as she is approved for CPP, or on February 1, 2016, whichever occurs sooner.
- Support will be calculated using Mr. Carter's prior year's income, including bonuses paid to him.

[90] On a prospective basis, Mr. Carter will pay monthly spousal support to Ms. Carter in the amount of \$4,000.00, commencing September 30, 2015 and continuing monthly thereafter, until adjusted as set out above, or as the parties may agree, or until a court of competent jurisdiction orders otherwise. No termination date is set, support is payable on an indefinite basis.

[91] Each party will make full and timely disclosure to the other of their annual tax returns with all schedules and supporting documents, by June 1 of each year starting in 2016.

Issue 5 - Ancillary Orders

[92] Ms. Carter seeks continued coverage under Mr. Carter's medical and dental plan through employment, which costs \$27.00 per month. Mr. Carter resists this, saying he needs to save money for retirement. In the absence of such coverage, Ms. Carter's health care costs would be much higher than reflected in her current budget. This would increase her spousal support needs.

[93] I am therefore prepared to order that Mr. Carter continue his medical and dental coverage for Ms. Carter through his employment, for so long as it is available to him through any employer, and that he pay the full cost of such coverage. Ms. Carter will be responsible for any deductibles, co-pay amounts or uninsured expenses. Mr. Carter will make his best efforts to ensure Ms. Carter is permitted to submit and be reimbursed for claims directly.

[94] Ms. Carter asks to be named as irrevocable beneficiary of all Mr. Carter's life insurance policies, including a \$50,000.00 RBC policy she acquired during the marriage and his group life policy at work. Mr. Carter wishes to retain the RBC life insurance policy and offers to pay her half its cash surrender value. The total cash surrender value at separation was \$2,473.49.

[95] It is appropriate in this case to secure the spousal support payments with some form of life insurance, in the event Mr. Carter predeceases Ms. Carter. He will therefore be required to name her as irrevocable beneficiary on his employment group policy or such other life insurance policy as may be available, provided benefits of at least \$400,000.00 are payable to Ms. Carter on his death. He will be free to name such other beneficiaries as he wishes on other policies.

[96] He will also pay Ms. Carter half the cash surrender value of the RBC life insurance policy which amounts to \$1,236.75.

[97] Both parties will execute any necessary documents to give effect to the ancillary provisions of this order. All insurance and investment forms and related documents will be completed and exchanged between counsel within forty five days.

CONCLUSION:

1. There will be no compensation payable for the cabin.
2. Mr. Carter will pay half his 2013 bonus, net of taxes, to Ms. Carter.
3. There will be no order for division of the household contents. The hard-top and gold chain will be returned to the owner within thirty days.
4. There will be no division of Aeroplan points.
5. There will be an adjustment of Ms. Carter's share of the house proceeds for expenses paid by Mr. Carter in the amount of \$1,970.46.
6. Mr. Carter will pay retroactive lump sum support of \$16,100.00 (net).
7. Mr. Carter will pay prospective spousal support of \$4,000.00/month commencing September 30, 2015 on an indefinite basis.
8. Income will not be imputed to Ms. Carter retroactively. Prospectively she will have income imputed as outlined.
9. Mr. Carter will carry health and dental coverage for Ms. Carter, and designate her as beneficiary of his life insurance (minimum \$400,000.00 coverage).
10. Mr. Carter will pay half the RBC policy value of \$1,236.75 to Ms. Carter.

[98] Sums payable by one party to the other shall be deducted from their share of the house proceeds. Counsel for Ms. Carter is requested to prepare the Corollary Relief Order. Should the parties wish to make submission on costs, written briefs are due within thirty days.

MacLeod-Archer, J.