

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

**Citation:** Phillips-Curwin v. Curwin, 2008 NSSC 198

**Date:** 20080623

**Docket:** 1201-061567

**Registry:** Halifax

**Between:**

Jennifer Phillips-Curwin

Petitioner

v.

Peter Curwin

Respondent

**Judge:**

The Honourable Justice Leslie J. Dellapinna

**Heard:**

May 15, 2008, in Halifax, Nova Scotia

**Counsel:**

K. Johnson counsel for Jennifer Phillips-Curwin

B. Hebert counsel for Peter Curwin

**By the Court:**

[1] The Petitioner seeks a divorce from her husband with whom she has been married for approximately seven years. They have an agreement with respect to the ongoing care of their two children but have been unable to resolve the financial issues arising from their divorce.

**BACKGROUND**

[2] The parties lived in a common-law relationship from December 1993 until March of 1999. It was during this period of cohabitation that their oldest child, Ruby, was born. She is now 12 years of age. They then separated but remained in contact with each other because of their daughter. They reconciled and were married on May 12, 2001. Their second child, Jade, was born on May 12, 2002. She is now six years old.

[3] The parties ceased living together as husband and wife on February 1, 2007.

**THE DIVORCE**

[4] I am satisfied that there has been a permanent breakdown in the parties' marriage and there is no reasonable possibility of a reconciliation. A Divorce Judgment will therefore be issued.

**INTERIM FINANCIAL ARRANGEMENTS**

[5] Since the parties' separation the children have remained living with the Petitioner in the matrimonial home. Although the Respondent did not pay interim child or spousal support he provided his wife and children with financial assistance by continuing to pay the monthly mortgage payments, house insurance premiums, the cable bill, the Petitioner's car insurance premiums and monthly payments on a joint VISA account. The Petitioner continued to charge purchases to that VISA account, with the Respondent's knowledge, to cover other expenses.

[6] When the parties separated the Petitioner was employed as an assistant manager on a part-time basis in a local restaurant. In 2006 her reported earnings came to slightly over \$15,100.00.

[7] In September 2007, the Petitioner left her employment. She offered a number of reasons for resigning from her position including that she was under the impression that the restaurant where she worked was going to be sold, that she had a number of problems with child care (due in part to the fact that the Respondent's employment required him to travel frequently) and because she felt she was being underpaid for the services she provided. When her teenage babysitters went back to school in the fall she said she was left with no child care arrangements and made the decision to quit her job. At the time she was being paid \$12.00 an hour. She did not say whether she also received gratuities.

[8] At the present time the Petitioner is not employed.

### **THE CHILDREN**

[9] The parties have agreed to share joint custody of the children and that they will continue to be in the primary care of the Petitioner subject to the Respondent's access.

### **ISSUES**

[10] The parties have been unable to agree on how their respective assets and debts should be divided. Neither party has argued in favour of an unequal division. The Petitioner wants to keep possession of the matrimonial home but the Respondent wants the matrimonial sold in order for the proceeds to be applied to debts that they both owe.

[11] The Petitioner has applied for both child and spousal support. The Respondent acknowledges that he has a responsibility to pay child and spousal support but they've been unable to agree on the amount. Because his compensation is in the form of salary, commissions and bonuses he is not paid the same amount each month. He is concerned about cash flow in those months when he does not receive commissions or bonuses.

### **THE ASSETS AND DEBTS OF THE PARTIES**

[12] The parties' assets and debts are as follows:

(I) There is the matrimonial home located in Dartmouth, Nova Scotia. According to the parties' Statements of Property they agree that the gross value of the matrimonial home is approximately \$255,000.00. ScotiaBank holds a mortgage against the property. As of the date of the parties' separation the outstanding balance of the mortgage was approximately \$195,368.00. As of April 2008 (the month before the trial) the balance of the mortgage was approximately \$187,931.00. I find that for asset division purposes the most current mortgage payout figure should be used. Although the parties have been living apart, their estates remained intertwined. The Respondent paid the mortgage post-separation from his income and his mortgage payments were in lieu of support payments to the Petitioner. It is appropriate that both parties share equally in the increased equity resulting from the reduction in the mortgage since the date of their separation.

(ii) On the Respondent's Statement of Property he listed furniture in the possession of the Petitioner having a value of approximately \$20,000.00 but added the footnote "(to be appraised if necessary)". He also listed a desk and Persian rug which he said were in his possession and indicated the market value for those items as being "unknown". On the Petitioner's Statement of Property which was sworn in March 2007 she listed "various furniture and appliances" which she said were in the possession of "both". For their value she stated "unknown (to be appraised if necessary)". In her Statement of Property sworn in April 2008 she indicated their value as being "little". Neither party had the household contents appraised and during the trial neither party gave any evidence regarding what comprised the "various furniture and appliances" or gave any further elaboration on the value of such items. Neither party was asked any questions regarding the household contents on cross-examination. In the face of such inadequate evidence the Court has no way of knowing what household contents are in the possession of each of the parties or what they are worth. If the parties are unable to agree on a division of assets they should at least try to agree on what those assets are and are worth and failing such an agreement they should provide the Court with sufficient evidence so that it is in a position to make those determinations. In this case both parties had over a year to have the household contents appraised. Telling the Court that they do not know what the contents are worth or that the contents are worth "little" is of no assistance.

In this case both parties had the responsibility, the ability and the time to have the contents appraised but failed to do so. I therefore assign no value to household contents.

(iii) The Petitioner drives a 2000 Honda Civic and the Respondent a 2000 Jeep Cherokee. In the Petitioner's Statement of Property sworn in March 2007 she valued the Honda Civic at \$10,000.00. In her 2008 Statement of Property she valued it at \$6,000.00. During summation counsel for the Petitioner indicated a willingness to rely on the \$10,000.00 figure presumably because it better reflects the value on the date of separation. Both parties agree that the Jeep had a value at the date of separation of approximately \$18,000.00. I find that the Honda had a value of approximately \$10,000.00 as of the date of the parties' separation and the Cherokee a value of \$18,000.00.

The Petitioner has a motor vehicle loan owing to ScotiaBank with respect to the Civic. The parties agree that the balance outstanding on that loan for division purposes is \$8,644.00.

(iv) As of the date of separation the Respondent had a registered retirement savings plan account which the parties both agree had a value of \$2,000.00 before any tax considerations. The RRSP is a taxable asset. I discount the value of that asset by 30% to take into account income tax leaving that asset with a net value of \$1,400.00.

(v) The Respondent owns a number of shares in a company managed by his siblings, which company operates a physiotherapy clinic. The Respondent presented no evidence and made no argument to suggest that these shares should be treated in any way other than as matrimonial assets. It was his evidence that he paid nothing for the shares but he estimates that the shares are now worth approximately \$10,000.00. The Petitioner is prepared to accept that value. The transfer or sale of his shares would attract capital gains tax. At the Respondent's marginal rate of tax (federal and provincial) I calculate the capital gains that he would have to pay to be approximately \$2,350.00. I therefore find that the shares have a net value of approximately \$7,650.00.

(vi) The parties are jointly responsible for a line of credit owed to ScotiaBank. The outstanding balance of this account has remained more or less constant since the parties' separation with interest accruing on the account being offset by the monthly payments. The outstanding balance of this account is now approximately \$29,800.00. The parties agree that they are equally responsible for this account.

(vii) The parties have a joint ScotiaBank VISA account. On the day of their separation the balance outstanding on the account was \$3,405.00. Both parties made use of this account subsequent to their separation and the Respondent continued to make monthly payments on the account. As a result of their

combined charges and the payments made by the Respondent there is now an outstanding balance owing of approximately \$7,660.00.

Between April 2007 and April 2008 the Petitioner's average monthly purchases on the account came to \$1,412.50. A review of the charges incurred by the Petitioner suggests that for the most part the purchases that she made were for family related purposes. Considering that as of September 2007 she had no employment income her charges to this account appear to have been reasonable for a family of four.

The Petitioner proposes that any amount over and above the \$3,405.00 that was owing as of the date of the parties' separation should be the sole responsibility of the Respondent as the charges incurred by the Petitioner were in lieu of child and spousal support. In the circumstances of this case I find that proposal to be reasonable. I, therefore, find that of the amount presently owing on this account \$3,405.00 is "matrimonial" and, as between the parties, the remaining balance over and above that figure will be the sole responsibility of the Respondent. Had I concluded that the full amount owing of \$7,660.00 was matrimonial I would also have been inclined to grant an order for spousal support, having retroactive effect, in favour of the Petitioner to offset the difference in her share of the responsibility for this debt.

(viii) The Respondent has a personal line of credit with ScotiaBank having a balance outstanding of approximately \$27,160.00. At the time of the parties' separation, the outstanding balance was approximately \$14,624.00. The bulk of that debt was incurred to purchase the Respondent's Jeep.

Subsequent to the parties' separation, the Respondent used this account to purchase furniture for his residence and to cover moving expenses. He also used this account to make lease payments in relation to a car belonging to his brother's business – a business for which the Respondent once worked. By May 2007, the Respondent had increased the balance owing on this account to approximately \$27,160.00. I find that \$14,624.00 of this account is "matrimonial" as it had been used to purchase an asset used by the family. The charges incurred subsequent to the parties' separation were incurred solely for the benefit of the Respondent and, therefore, should be his sole responsibility.

[13] The Petitioner proposes that the matrimonial assets and debts be divided equally. Under her proposed asset/debt distribution plan, she would retain the matrimonial home and her car and would be responsible for the payments on the mortgage, her car loan and the joint line of credit. The Respondent would keep his

motor vehicle, the shares in his siblings' business and his RRSP and would assume sole responsibility for his personal line of credit and the joint Visa account.

[14] The Petitioner testified that she planned to support herself by operating a home-based catering business from the matrimonial home. To do so she would have to make renovations to the home and purchase a new range but by working at home she would have an income and still be available for the children during the day.

[15] According to the Petitioner's evidence she would develop a catering business with the assistance of the Centre for Entrepreneurship Education and Development (CEED). She testified that CEED offers a 40 week no cost program through which she would take courses in financing, computer skills, marketing, networking, inventory control, advertising and other areas that she would need to develop her own business. She said that CEED would also assist her in financing her renovation and start up costs. It is her hope that within two to three years she would be able to determine if the business is viable. If the business was not profitable by then it would be her intention to go to university on a full-time basis to obtain a degree in tourism and hospitality management.

[16] The Court was not provided with any material that might provide more information about the CEED program and the Petitioner did not produce any kind of business development plan. The Petitioner simply stated that she hoped that in a few years time she would be able to generate a profit of \$30,000.00 a year which was a figure she arrived at after speaking with one other person who she says developed a similar business with the assistance of CEED.

[17] The Petitioner's evidence did not put the Court in a position to assess the income producing potential of her proposed catering business. The evidence did show however that the Petitioner's shelter expenses, should she remain living in the matrimonial home, are already very high. They include mortgage payments that are presently \$1,547.00 per month (including taxes), property insurance premiums of approximately \$60.00 a month, a heating bill of \$290.00 a month (which is likely only to increase), electricity and gas of approximately \$56.00 a month and a water bill of approximately \$30.00 a month. The Petitioner also estimated that she would need approximately \$100.00 a month to maintain the property. That figure seems low. She testified that in addition to ongoing maintenance costs the roof on the house needs replacement. She would have to

obtain a business loan (for house renovations and equipment) and would have the cost of supplies needed in the operation of a catering business. All of these expenses would have to be subsidized by the Respondent by way of his support payments.

[18] When the Petitioner left her position as a restaurant assistant manager she was earning \$12.00 an hour. If she worked a forty-hour week at that rate, she could earn approximately \$25,000.00 in a year, plus gratuities. An argument could be made that it would make more sense for her to use the skills that she already has and seek employment now in a field in which she has experience rather than incur more debt so that she might earn approximately the same amount in two or three years.

[19] The Petitioner's proposed asset division would result in the Respondent remaining liable for the covenants on the mortgage and the joint line of credit. That would put him in a very vulnerable position should the Petitioner fail to meet her monthly debt payments. It would also seriously impede the Respondent's ability to obtain further credit. It might prevent him from purchasing a home of his own in the foreseeable future or another motor vehicle when the one he now drives needs to be replaced.

[20] There are too many flaws with the Petitioner's plan. By retaining the matrimonial home, she would be responsible for over \$225,000.00 of debt (not including the additional debt that she would incur to set up a catering business and to pay for a new roof) which would have to be serviced primarily with the support payments paid to her by the Respondent. This arrangement would limit the Respondent's ability to move forward with his life and both parties would have great difficulty paying down their debts.

[21] The Respondent proposes that the matrimonial home be sold with the net sale proceeds to be applied to the couple's various debts thus reducing their combined expenses. I find that to be a more practical approach. Therefore, pursuant to the *Matrimonial Property Act*, I order the following:

1. The Petitioner will retain sole ownership of the Honda motor vehicle and will assume sole responsibility for the loan in relation to that car. The Respondent will retain sole ownership of the Jeep motor vehicle;



2. The Respondent will retain sole ownership of his RRSP and his shares in the physiotherapy clinic;
3. Subject to clause 4 below, the Respondent will be responsible for paying out the balance of the joint line of credit, the joint Visa account and the balance owing on his personal line of credit;
4. The parties will fully cooperate with each other in order to effect a sale of the matrimonial home as soon as is reasonably possible at a price to be agreed upon by the parties. Upon the sale of the matrimonial home the gross sale proceeds will be applied to pay any real estate commission relating to the sale of the property (including HST), all reasonable legal fees, disbursements, closing costs and adjustments incurred in relation to the sale, the balance then owing on the mortgage on the property and any other encumbrance. The remaining net sale proceeds will then be divided between the parties in such a way as to effect an overall equal division of matrimonial assets and debts using the following schedule/formula:

<b>ASSETS/DEBTS</b>	<b>PETITIONER</b>	<b>RESPONDENT</b>
Motor Vehicles	\$10,000.00	\$18,000.00
Motor Vehicle Loan	(8,644.00)	
RRSP (net)		1,400.00
Shares (net)		7,650.00
Joint Line of Credit		(29,800.00)
Joint Visa		* (3,405.00)
Respondent's Personal Line of Credit		** (14,624.00)
<b>SUBTOTAL</b>	<b>\$1,356.00</b>	<b>(\$20,779.00)</b>
Net Proceeds from Sale of the Matrimonial Home	A	B
TOTAL Net Matrimonial Assets after Division of Matrimonial Home Proceeds	C	C
A = Petitioner's share of net proceeds from the sale of the matrimonial home B = Respondent's share of net sale proceeds from the sale of the matrimonial home A+B = Total net proceeds from the sale of the matrimonial home		

* Of the joint Visa account only \$3,405.00 is considered to be matrimonial. Any additional amount owing on that account will be the sole responsibility of the Respondent.
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** Similarly, \$14,624.00 of the Respondent's personal line of credit is considered to be matrimonial. The Respondent will be solely responsible for any balance owing on that account over and above that amount.
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The Court retains jurisdiction to resolve any disputes that may arise between the parties relating to the sale of the matrimonial home.

5. From the Respondent's share of the net sale proceeds he will immediately pay down as much of the joint line of credit as is possible and if there are sufficient funds from the sale of the house he will retire the full balance owing. If there are then any further funds remaining from his share of the net sale proceeds he will apply them to the joint VISA account. If there remains any balance owing on the joint line of credit or the joint VISA account, he will make his best efforts to have the Petitioner's name removed from the covenants of those accounts;
6. Neither the Petitioner nor the Respondent will add any further charges to the joint line of credit or the joint Visa account so long as both parties remain jointly responsible for those debts;
7. Beginning in the month of July, 2008 and continuing until the matrimonial home is sold, the Petitioner will be responsible for the monthly mortgage payments (including principle, interest and municipal taxes), the house insurance premiums and the cable bill. The Respondent will be responsible for the payments required by the joint line of credit, the joint VISA account and his personal line of credit. These expenditures have been considered in arriving at my decision on spousal support which follows.

[22] Should the matrimonial home sell for \$255,000.00 then the net sale proceeds would be approximately \$48,780.00 which I calculate as follows:

Gross sale price	\$255,000.00
Less Mortgage (Approximate)	(187,931.00)
Less 6% Real Estate Commission Plus 13% HST	(17,289.00)

Less Legal Fees & Disbursements (Approximate)	(1,000.00)
<b>TOTAL Net Sale Proceeds</b>	<b>\$48,780.00</b>

[23] The net sale proceeds figure will vary depending on the actual closing costs and adjustments and mortgage pay-out figure. Assuming a net sale proceeds figure of \$48,780.00 then the Petitioner would receive \$13,322.50 and the Respondent \$35,457.50 (which he will apply to the joint line of credit and, if possible, the joint Visa), calculated as follows:

	<b>PETITIONER</b>	<b>RESPONDENT</b>
Net Assets Prior to Distribution of Net Sale Proceeds	\$1,356.00	(\$20,779.00)
Net Sale Proceeds	13,322.50	35,457.50
<b>TOTAL Net Assets</b>	<b>\$14,678.50</b>	<b>\$14,678.50</b>

[24] If the parties' estimate of the matrimonial home's ultimate sale price is accurate this distribution of the proceeds will enable the parties to pay down much of their debt and still leave the Petitioner with funds which could then be used to offset moving costs with money remaining for a security deposit on a rental accommodation.

### **CHILD AND SPOUSAL SUPPORT**

[25] The Petitioner seeks child support for the two children as well as spousal support. The Respondent is not disputing that she is entitled to both. They cannot agree on the amount.

[26] Subsection 15.3(1) of the *Divorce Act* provides that 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.

[27] Sub-section 3(1) of the *Federal Child Support Guidelines* says:

3. (1) Unless otherwise provided under these Guidelines, the amount of a child support order for children under the age of majority is

(a) the amount set out in the applicable table, according to the number of children under the age of majority to whom the order relates and the income of the spouse against whom the order is sought; and

(b) the amount, if any, determined under section 7.

[28] The Petitioner has asked for only the table amount. She is prepared to accept as the Respondent's income for child support purposes his total income figure as contained on line 150 of his 2007 income tax return less the motor vehicle expenses he incurred as a result of his employment.

[29] The Respondent is a sales representative for a pharmaceutical company. He sells generic drugs directly to pharmacies in Nova Scotia, Prince Edward Island and Newfoundland. According to his testimony his success depends largely on the relationship that he is able to develop with each pharmacy owner. His evidence is supported by his income tax information which shows that his income has steadily increased in each of the past three years. That may be a reflection of the positive rapport he has been developing with his customers.

[30] The Respondent's income is comprised of a base salary plus commissions which can vary depending on his sales, and bonuses. He also receives a car allowance, a "gas taxable benefit" and life insurance coverage which is also a taxable benefit.

[31] Because of the nature of his work the Respondent has motor vehicle expenses which are a legitimate deduction from his total income figure in arriving at his net income for tax purposes and which expenses are also a legitimate adjustment under Schedule III of the *Guidelines*. Last year his total income (line 150) was \$167,663.82. His employment/motor vehicle expenses were \$11,590.20.

It is the difference, i.e. \$156,073.62, that the Petitioner submits is his income for child support purposes.

[32] The Respondent testified that he believes that in 2008 his income will drop by as much as \$30,000.00 as a result of having lost three or four pharmacies as customers and his belief that he will not be able to achieve the targets set by his employer (which targets have been set higher this year than last as a result of his success in 2007).

[33] The Respondent also expressed concern for his ability to meet his support payments in low cash flow months. Each pay period he receives his regular salary as well as a draw based on a projection of his anticipated commissions. His commission income is then adjusted quarterly based on actual performance. His bonuses are also staggered. He has asked the court to set the monthly child support figure based on him having an annual income of \$121,000.00 and, if and when he receives additional income, further sums could then be paid to the Petitioner.

[34] While the Respondent's cash flow may present some potential difficulties in meeting his support obligations in any given month, I am not prepared to structure the child support as he has requested. That would simply shift any cash flow burden from him to the Petitioner and the children. Further, I do not believe his cash flow problem will be as severe as he fears. The evidence of his income in 2008 thus far seems to indicate that his income this year will be at least as much as it was last year. Also, as a result of the asset division that I have ordered the Respondent's debt load will be reduced. If he still needs help with his cash flow, it should be possible for him to obtain a line of credit which he could use to supplement his income in those months when he does not receive any bonuses or commissions and which he could pay down in those months when he does.

[35] Because of the nature of the Respondent's employment his income will change from year-to-year. I believe that at the present time the best way to arrive at the fairest determination of the Respondent's current income is to use his previous year's income when fixing the amount of ongoing child support. Therefore, I find that for the purpose of section 3 of the *Federal Child Support Guidelines* the Respondent's annual income is \$156,074.00 and I order that he pay to the Petitioner child support for the support of the two children in the sum of \$1,981.00 per month commencing the first day of July, 2008 and continuing on the first day of each month thereafter until otherwise ordered. The Corollary Relief

Judgment will contain the usual provision requiring the Respondent to provide the Petitioner with a copy of his income tax return and Notice of Assessment for each year no later than June 1 of the following year.

[36] In addition to child support the Petitioner seeks spousal support. Her Statement of Expenses lists monthly expenditures (current and proposed) totalling \$4,650.00. The statement was prepared on the assumption that the Petitioner would be remaining in the matrimonial home and assuming all of the costs associated with that property. Her statement also budgeted for an expense of \$417.00 a month for tuition in the event that she enrolled in university on a full-time basis as well as \$350.00 a month for payments on debts which I have assigned to the Respondent.

[37] The monthly mortgage payments will obviously have to be serviced until the matrimonial home is sold but once sold I would expect the Petitioner's shelter expenses to decline by \$600.00 to \$700.00 per month. By shifting most of the debt payment obligation to the Respondent the Petitioner's monthly expenses should reduce to approximately \$3,650.00 and that would still leave her with funds for tuition/retraining as well as money for discretionary expenditures such as extra-curricular activities, gifts, holidays and entertainment.

[38] The Respondent's expenses total approximately \$5,940.00 after adjusting for the debts that I have assigned to him. That total does not include child support, spousal support or income tax.

[39] Reductions can be made to the Respondent's expenses. He has included savings of approximately \$1,100.00 per month, entertainment of \$200.00 a month, holidays of \$200.00 a month, gifts of \$200.00 a month and "miscellaneous" of \$100.00 a month. Even after trimming his budget I would expect his expenses to exceed that of the Petitioner because his include most of the parties' debt payments as well as source deductions for Canada Pension Plan contributions, Employment Insurance premiums and long-term disability insurance premiums.

[40] Subsections 15.2(4) and (6) of the *Divorce Act* provide as follows:

(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.

...

(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.

[41] While the parties may have been married for less than six years when they separated they cohabited in a common-law relationship from December 1993 to March 1999. Their two children are now six and twelve years of age. The Petitioner will be primarily responsible for the care of the children.

[42] During the marriage the Petitioner earned only a modest income which, at best, only supplemented the Respondent's earnings. He was the chief income earner for the family. The Petitioner's income earning ability was hampered by her need to care for the children and their home. At the present time she is without any employment income.

[43] The Petitioner is now 34 years of age. There is no evidence that the Petitioner suffers from ill-health. Her recent work experience has been as a

restaurant hostess, supervisor and assistant manager and according to her she often performed the duties of a restaurant manager. There are reasons to be optimistic that she could once again obtain a position in the hospitality business.

[44] The marriage relationship does not appear to have interfered with the Petitioner's ability to continue working except to the extent that her childcare responsibilities might prevent her from accepting some positions (for example working late at night when childcare might be difficult if not impossible to obtain).

[45] The Respondent is 43. His employment success has been largely a consequence of his own efforts, however, it is unlikely that he would have been able to achieve that success if it were not for the fact that the Petitioner was prepared to work part-time thereby being available to care for the children and their home.

[46] Counsel for the Petitioner proposed a monthly spousal support figure of \$3,683.00 which she said was the approximate mid-point suggested by the *Spousal Support Advisory Guidelines* based on the parties' respective incomes (the Respondent's being \$156,074.00 and the Petitioner's being \$0).

[47] Whatever method one might use to determine the appropriate level of spousal support, from a practical point of view the figure chosen should be a reflection of the recipient's reasonable needs and should not exceed the payor's means. This is not an exercise in maximizing the spousal support simply because the payor may have the ability to pay it. Rather, the Court must look at all of the factors listed in the *Act* in light of the stipulated objectives of support and exercise its discretion in a manner that equitably alleviates the adverse consequences of the marriage breakdown between the parties (see *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420 at paragraph 36). That requires a support order that is fair to **both** parties. As stated by Cromwell J.A. in *Fisher v. Fisher* (2001), 190 N.S.R. (144); [2001] N.S.J. No. 32 (C.A.) at paragraph 82:

“The fundamental principles in spousal support cases are balance and fairness. All of the statutory objectives and factors must be considered. The goal is an order that is equitable having regard to all of the relevant considerations.”



The spousal support proposed by the Petitioner in my view is excessive. When combined with the Petitioner's child support, Child Tax Benefit and G.S.T. rebate, she would then have total monthly income of approximately \$5,859.00. Her living expenses would be approximately \$3,650.00 and her monthly tax liability would be approximately \$593.00 leaving her with a monthly surplus of over \$1,600.00. The Respondent on the other hand would have a great deal of difficulty meeting that support obligation.

[48] Considering the length of the parties' relationship, the functions each performed during their cohabitation, the future responsibilities each will have with respect to the children, their current financial circumstances and the objectives listed in the *Act*, I find the Petitioner is entitled to non-compensatory support and order that in addition to the child support, the Respondent shall pay to the Petitioner spousal support in the sum of \$2,000.00 per month which will commence on the first day of July, 2008 and continue on the first day of each month thereafter until otherwise ordered.

[49] At that level of spousal support the Petitioner will have a total monthly income of approximately \$4,507.00. Comprised of child support (\$1,981.00), spousal support (\$2,000.00), and the Child Tax Benefit and a G.S.T. rebate (of approximately \$526.00). Her monthly tax liability will be only about \$54.00 because the spousal support would be her only taxable income and she would be able to claim one of the children as an eligible dependent. Her total net income should exceed her expenses by approximately \$800.00 per month. The Respondent would have the means to meet his support obligations and still have surplus funds available for discretionary spending.

[50] A spousal support figure of \$2,000.00 a month fairly and equitably addresses the economic consequences experienced by both parties as a result of their marriage and its breakdown. It also provides the Petitioner with ample funds for retraining should that be the route that she chooses. It leaves the Respondent with sufficient funds for his own reasonable needs as well as the debt payments for which he will be responsible. Both parties will have funds for discretionary spending. Both parties will also have sufficient funds to meet their monthly obligations pending the sale of the matrimonial home.

[51] While spousal support of \$2,000.00 a month provides the Petitioner with funds over and above what I have calculated she "needs" it seems equitable after a

relationship of approximately eleven years which has resulted in two children that where there are surplus funds available they should be shared to some extent between the two households. I am also comforted by the fact that the Respondent was prepared to pay spousal support of \$2,000.00 per month.

[52] The Respondent requested that the Corollary Relief Judgment include a termination date by which time the spousal support will come to an end or alternatively a review date at which time the spousal support provisions of the Corollary Relief Judgment could be reconsidered without the necessity of either party having to prove a change in circumstances. On his behalf it has been suggested that a termination date of four years would be reasonable or in the alternative a review date after two years.

[53] I decline to order a termination date. For the Court to order spousal support to be paid for a definite period of time there must be evidence sufficient to convince the Court that the recipient of the spousal support will, or at least will likely, achieve self-sufficiency by the termination date. There is no way of knowing in the circumstances of this case when the Petitioner will achieve self-sufficiency. Four years is however not an unreasonable target for the Petitioner considering her age, training and experience. Although the spousal support payments will be for an indefinite period of time the Petitioner should not misinterpret the order as meaning that the spousal support will continue without end. It is expected that the Petitioner will make diligent efforts to achieve self-sufficiency within a reasonable period of time either by pursuing employment opportunities now with skills that she currently possesses or by enrolling in a training program that could reasonably lead to lucrative employment in the foreseeable future.

[54] In the circumstances of this case there is nothing to be achieved by scheduling a review date that could not be achieved by leaving it to the parties to make a variation application pursuant to section 17 at the appropriate time should the circumstances of either party change.

[55] Counsel for the Petitioner will prepare the orders.