

IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: B.D.F. v. R.V.F., 2008 NSSC 236

Date: 20080731

Docket: 1201-061468, SFHD-051277

Registry: Halifax

Between:

F. (B. D.)

Petitioner

v.

F. (R. V.)

Respondent

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Judge: The Honourable Justice Beryl MacDonald

Heard: June 5, 2008, in Halifax, Nova Scotia

Written Decision: July 31, 2008

Subject: Divorce - Division of Assets - Calculation of Debt -
Occupation Rent - Unequal division of Assets - Effect of
adultery on division of assets - Spousal Support

Summary: Marriage of 31 years during which both spouses were employed. Wife is retired receiving a yearly income of \$34,243. Husband remains employed earning a yearly income of \$66,549. An equal division of assets would require the Wife to pay the Husband an amount that, because of her reduced income resulting from a division of her pension, may require her to sell the matrimonial home which she wanted to retain. The Husband was prepared to defer division of the Wife's pension until his retirement.
The Wife argued the Husband's adultery was a factor to

consider in respect to her claim for an unequal division of matrimonial property.

The Husband requested occupation rent because the Wife had resided in the home upon which there was no mortgage since their separation in September 2005.

Issue:

What is the appropriate valuation for the assets and debt?

Would an equal division of matrimonial property be unfair or unconscionable?

Is the Husband entitled to occupation rent?

Is the Wife entitled to spousal support and if so in what amount?

Result:

The matrimonial property was divided equally but with the Husband's consent the division of the Wife's pension was deferred until his retirement. Adultery does not give rise to a claim for an unequal division but the effect of the adultery may contribute to or create one or more of the factors listed in section 13.

The Husband was not entitled to receive occupation rent. He did not include a claim for occupation rent in his Petition. He paid no spousal support since the separation. He made no application for exclusive possession.

The Wife was entitled to spousal support in the amount of \$1,000 per month.