IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: Mason-Cramm v. Cramm, 2008 NSSC 308

Date: 20081027
Docket: 1201-61929(SFHD-54086)
Registry: Halifax

Between:

Marcienne Mason-Cramm

Petitioner

v.

Dennis Edward Cramm

Respondent

Judge:	The Honourable Justice Leslie J. Dellapinna
Heard:	September 4, 5 and 10, 2008, in Halifax, Nova Scotia
Counsel:	Peter Crowther counsel for Marcienne Mason-Cramm Judith Schoen counsel for Dennis Cramm

By the Court:

[1] Marcienne Mason-Cramm (the Petitioner) has applied for a divorce from her husband, Dennis Cramm (the Respondent). They have been unable to resolve the financial issues resulting from the breakdown of their marriage.

BACKGROUND

[2] The parties were married on November 10, 1983 when the Petitioner was 25 and the Respondent 20. Together they had four children.

[3] The Petitioner is a registered nurse and until 2006 worked in that capacity throughout most of the marriage. She is now attempting to start her own foot care business.

[4] When the parties were first married the Respondent was in the military. In 1989 he was in a serious automobile accident in which he suffered a broken neck. He spent approximately two years recovering from his injuries and receiving rehabilitation therapy. He says that he continues to suffer daily from chronic pain.

[5] From 1991 to 1997 the Respondent attended the Technical University of Nova Scotia graduating with a degree in engineering. During the first three years his tuition and salary were paid by his long-term disability insurer. During the final three years he continued to receive a disability pension but his tuition was not paid. In order to cover those costs the parties sold some rental properties that they purchased after the Respondent's accident. After graduation he obtained employment as an engineer and continues to be so employed.

[6] On or about July 2, 2007 the Respondent told his wife that he wasn't happy and that the marriage was over.

[7] The Petitioner was shocked by her husband's decision to leave her and suffered from depression for which she continues to receive therapy.

[8] Prior to July 2007 it seems that both parties had a good relationship with their children. In an e-mail sent by the parties' oldest child to the Respondent in December of 2007 she described him as "an amazing father" until he decided to leave her mother. One of their sons provided an affidavit in which he confirmed

that the Respondent had a good relationship with all of his children as did the Petitioner. All that changed in July 2007.

[9] Unfortunately both parties have involved the children in their on-going dispute and at times both have tried to influence the children against the other parent.

[10] It appears that all the children have made the decision to side with their mother. Some of them have been openly hostile to their father.

[11] The Petitioner claims that because of the Respondent's behaviour exhibited after July 2 she is afraid of him. She said that she fears for her personal safety and has nightmares that the Respondent will try to harm her.

[12] After the parties' separation the Petitioner made an application to the Court for interim relief. As a result of that application an interim order pursuant to the ***Divorce Act*** and the ***Matrimonial Property Act*** was granted. Primary care of the children was given to the Petitioner and the Respondent was granted "reasonable parenting time with the children, taking into consideration the wishes of the children". The Respondent was ordered to pay child support in the sum of $1,406.00 per month commencing September 7, 2007 for the support of the two younger children while reserving to the parties the right "to make argument at trial as to whether the two children of the marriage who are over the age of majority are children of the marriage for the purposes of determining the amount of child support".

[13] The Respondent was also ordered to pay interim spousal support of $2,200.00 per month and the Petitioner was granted interim exclusive possession of the matrimonial home.

THE DIVORCE

[14] The parties have been living separate and apart since July 6, 2007. I am satisfied that there is no possibility of a reconciliation. There has been a permanent breakdown in their marriage and a Divorce Judgment will be issued.

ISSUES

[15] Custody and access are not contested. The children still at home have decided to live with their mother and presently are having little involvement with their father. The issues are all financial in nature. The Court has been asked to rule on the following:

1. How should the parties' various assets and debts as of the date of their separation be divided?

2. What child support, if any, should the Respondent pay to the Petitioner?

3. What spousal support, if any, should the Respondent pay to the Petitioner?

4. Costs.

DIVISION OF ASSETS AND DEBTS

[16] The following provisions of the ***Matrimonial Property Act*** are applicable:

> **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
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> (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;
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> (b) an award or settlement of damages in court in favour of one spouse;
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> (c) money paid or payable to one spouse under an insurance policy;
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> (d) reasonable personal effects of one spouse;
>
> (e) business assets;
>
> (f) property exempted under a marriage contract or separation agreement;

(g) real and personal property acquired after separation unless the spouses resume cohabitation.

....

12 Where
(a) a petition for divorce is filed;

(b) an application is filed for a declaration of nullity;

(c) the spouses have been living separate and apart and there is no reasonable prospect of the resumption of cohabitation; or

(d) one of the spouses has died,

either spouse is entitled to apply to the court to have the matrimonial assets divided in equal shares, notwithstanding the ownership of these assets, and the court may order such a division.

....

13 Upon an application pursuant to Section 12, the court may make a division of matrimonial assets that is not equal or may make a division of property that is not a matrimonial asset, where the court is satisfied that the division of matrimonial assets in equal shares would be unfair or unconscionable taking into account the following factors:

(a) the unreasonable impoverishment by either spouse of the matrimonial assets;

(b) the amount of the debts and liabilities of each spouse and the circumstances in which they were incurred;

(c) a marriage contract or separation agreement between the spouses;

(d) the length of time that the spouses have cohabited with each other during their marriage;

(e) the date and manner of acquisition of the assets;

(f) the effect of the assumption by one spouse of any housekeeping, child care or other domestic responsibilities for the family on the ability of the other spouse to acquire, manage, maintain, operate or improve a business asset;

(g) the contribution by one spouse to the education or career potential of the other spouse;

(h) the needs of a child who has not attained the age of majority;

> (i) the contribution made by each spouse to the marriage and to the welfare of the family, including any contribution made as a homemaker or parent;
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> (j) whether the value of the assets substantially appreciated during the marriage;
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> (k) the proceeds of an insurance policy, or an award of damages in tort, intended to represent compensation for physical injuries or the cost of future maintenance of the injured spouse;
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> (l) the value to either spouse of any pension or other benefit which, by reason of the termination of the marriage relationship, that party will lose the chance of acquiring;
>
> (m) all taxation consequences of the division of matrimonial assets.

[17] Assets brought into the marriage or acquired during the marriage are considered to be "matrimonial" unless they fit within one of the exceptions listed in subsection 4 (1). The onus is on the party seeking to exclude an asset to prove that it is not matrimonial.

[18] The parties have or at least had on the date of their separation the following assets and debts, all of which are "matrimonial" unless stated otherwise:

1. The parties jointly own the matrimonial home which is located in Dartmouth, Nova Scotia. The parties agree that it has a gross value of $180,000.00 and a net value after disposition costs of $168,830.00.

2. There are three adjoining lots which the parties acquired subsequent to purchasing the matrimonial home property. They afford the matrimonial home additional privacy and have also been a source of wood used for heat in the matrimonial home. The parties purchased two of the lots. A third lot was given to them by the Petitioner's father. It was not clear from the evidence which lot was gifted to the parties or when it was given to them.

The parties agree that the three lots have a combined gross value of $60,000.00 and a net value after disposition costs of $55,860.00.

The parties agree that the three lots are matrimonial assets.

3. At the time of the parties' separation there were furniture items and other household contents in the matrimonial home. Those items have been appraised. The bulk of the household contents have been retained by the Petitioner. She has given to the Respondent a bedframe with head and foot boards and a box spring and mattress having a collective value of $275.00. The household contents retained by the Petitioner have a value of $2,873.00.

4. Both parties have vehicles. The Petitioner has a 1985 Toyota Land Cruiser which was appraised in October of 2007 and valued at $5,000.00. It was suggested by the Petitioner's counsel that the $5,000.00 figure be reduced by the costs of vehicle repairs incurred by the Petitioner in 2008. The appraisal of October 2007 was intended to reflect the value of the vehicle at that time. One can reasonably expect that a vehicle that is 23 model years old is likely to require on-going maintenance. I am not prepare to reduce the value by the cost of repairs that were required the following year. I accept $5,000.00 as the value of the Toyota motor vehicle for the purpose of these proceedings.

The Respondent has a Volvo motor vehicle. He did not have his car appraised but instead had a dealer provide him with a range of values for similar models depending on their condition. The information provided was as of August, 2008, more than a year after the parties separated. Using that information as a guide I estimate that the value of his vehicle as of the date of the parties' separation was $11,000.00.

5. Both parties have registered retirement savings plan accounts. The Petitioner has an account at Fidelity which had a value of $2,838.03 as of June 2007. The Respondent has an RRSP at SunLife which had a value as of September 30, 2007 of $9,373.18.

6. The Petitioner has a locked-in retirement account which as of February 26, 2008 had a value of $41,600.00.

7. The Respondent has a pension entitlement through the Department of National Defence as well as an employment pension into which he has only recently been contributing. It was agreed that the Respondent's military pension, as of the date of the parties' separation, will be divided equally at source pursuant to the ***Pension Benefits Division Act*** and his employment pension will be divided pursuant to the ***Pension Benefits Act*** of Nova Scotia.

On her Statement of Property the Petitioner said she had a “hospital pension” with an unknown value. There was no other evidence concerning this asset but on summation her counsel said her locked-in retirement account was her only retirement savings. If the Petitioner has a pension entitlement resulting from her previous employment as a nurse (in addition to her locked-in retirement allowance) then that pension will also be divided equally at source as of the date of the parties’ separation.

8. As of the date of the parties’ separation there was a registered educational savings plan account having a value of approximately $8,000.00. After the parties separated that account was closed. The funds were used to finance the education costs of the two older children - the purpose for which it was acquired.

9. At or about the time of the parties’ separation the Petitioner had savings of $21,000.00. After the Respondent told her he wanted a divorce she disbursed the money to two of the children. She does not dispute that the money is a matrimonial asset and has to be accounted for.

10. At the time of the parties’ separation the Respondent had, at the matrimonial home, numerous tools and equipment as well as a tractor, a trailer, a boat, a snowmobile and an old truck that he was rebuilding.

All of the tools, equipment and other such chattels were appraised. In November 2007 the Petitioner gave to the Respondent a number of the items. He complained that many of those items were damaged prior to being released to him. He acknowledged however that he has been making use of the majority of those items and no evidence was presented to confirm that they were damaged or what it might cost to repair any damage. I believe him when he says that a generator which was valued at $850.00 was not in working order when it was given to him and has been thrown out. The value of the assets given to him (less the value of the generator) came to $18,115.00.

On behalf of the Respondent it was argued that those items were not matrimonial assets but are instead business assets and therefore excluded by subsection 4(1). Subsection 2 (a) of the ***Matrimonial Property Act*** defines “business assets” as “real or personal property primarily used or held for or in connection with a commercial, business, investment or other income-producing or profit- producing purpose...”.

Although some of the tools and equipment may have some application in the course of the Respondent's employment as an engineer they were not primarily used or held for or in connection with a commercial, business, investment or other income or profit producing purpose. They were used not just by the Respondent but also by the parties' children and were used for the benefit of the family. They are matrimonial assets.

Still in the possession of the Petitioner are a number of other tools and equipment which have been valued at $13,025.00. Although those items do not appear to have been used by the Petitioner they were used by the Respondent and the children during the marriage and were used for the benefit of the family. The Respondent has asked the Petitioner for those items on a number of occasions.

11. There was evidence that during the marriage the Petitioner acquired various items of jewellery. The Court wasn't given a detailed list or any appraisal. I find that the Petitioner's jewellery constitute "reasonable personal effects" and are not matrimonial assets.

12. In addition to the assets the parties had one significant debt, a line of credit owed to the Canadian Imperial Bank of Commerce. As of the date of separation that account had an outstanding balance of approximately $33,000.00. The debt was incurred for family purposes. The majority was used to pay off the Respondent's motor vehicle loan. After the parties separated the Petitioner charged a further $15,000.00 to this account in order to pay her legal fees. Both parties agree that the $33,000.00 that was owing as of the date of their separation is a matrimonial debt and that the remaining $15,000.00 is the sole responsibility of the Petitioner. The line of credit is secured by a mortgage on the matrimonial home.

13. Since October of 2007 the Petitioner has been making payments on the line of credit. Her payments have been roughly equivalent to the monthly interest that has been accruing on the account. Her total payments as of the date of trial came to $3,296.04. Had she not made those payments the line of credit would have grown by at least that amount. A review of her Statement of Expenses presented to the Court in September 2007 when her application for interim spousal and child support was heard shows that it did not include the line of credit payments and therefore presumably were not considered by the Chambers judge when ordering

spousal support. It is reasonable under the circumstances to treat those payments as an additional matrimonial debt paid by the Petitioner.

It was also proposed on behalf of the Petitioner that the property taxes that she paid during the months that she has been in exclusive possession of the matrimonial home should also be treated as a matrimonial debt. I disagree. The property taxes were one of the costs of remaining in the matrimonial home and it was an expense that was listed on her Statement of Expenses and therefore presumably considered by the Chambers judge. The Respondent has been paying spousal support and child support to the Petitioner totalling $3,606.00 since September 2007. Out of that support the Petitioner would have been expected to pay her household expenses including the municipal tax bill relating to the matrimonial home and adjoining lots.

[19] Both parties are seeking a division of their assets and debts and both parties want the matrimonial home.

[20] The Petitioner argues that she should be allowed to retain the matrimonial home because two of the parties' children are still living with her and it is the only home that they have known. In spite of her stated fear of the Respondent, she is prepared to agree to him keeping the three adjoining lots in order to reduce her equalization payment.

[21] The Respondent also wants the matrimonial home and, as well, the adjoining lots. He hopes that his relationship with the children will one day improve and they will feel comfortable residing there with him or, if they live elsewhere, will visit him at the former matrimonial home.

[22] He also seeks ownership of the home because he claims that over the years he has redesigned the house and built a garage that would allow him "to do work, projects and hobbies with less irritation to [his] neck" and the house has been "rearranged and designed to accommodate [his] needs to reduce stress and tension, which reduces [his] chronic pain".

[23] While some modifications were made to the matrimonial home to accommodate the Respondent's on-going pain I do not believe that they were significant. I also do not accept that the retention of the house by either of the parties is necessary because of the needs of the parties' children although it may be

desirable for their youngest child to remain living there until she finishes high school.

[24] While one might hope that the parties' children will one day have a change of attitude toward their father it is not likely going to happen in the immediate future.

[25] Under the ***Matrimonial Property Act*** there is a presumption that matrimonial assets (and debts) will be divided equally unless there is strong evidence to show that an equal division would be unfair or unconscionable taking into account the factors listed in section 13.

[26] Bateman, J.A. stated in *Young v. Young*, 2003 NSCA 63 at paragraph 15:

> "...the division of matrimonial assets is *prima facie* equal, with unequal division permitted only in limited circumstances. The inquiry under s. 13 is broader than a straight forward measuring of contribution. The predominant concept under the **Act** is the recognition of marriage as a partnership with each party contributing in different ways. A weighing of the respective contributions of the parties to the acquisition of the matrimonial assets, save in unusual circumstances, is to be avoided. Since the introduction of the **Act**, it has been repeatedly stressed by this Court, that matrimonial assets will be divided other than equally, only where there is convincing evidence that an equal division would be unfair or unconscionable."

[27] I am not convinced that an equal division would be unfair or unconscionable. Therefore, the various assets and debts will be divided according to the following schedule.

ASSETS/DEBTS	**PETITIONER**	**RESPONDENT**
Matrimonial Home (net value)	$ 168,830.00	
3 lots (net value)	55,860.00	
Household contents	2,873.00	$ 275.00
Toyota	5,000.00	
Volvo		11,000.00

RRSP accounts	Divided equally	Divided equally
Pensions	Divided equally	Divided equally
Locked-in Retirement Account	Divided equally	Divided equally
Savings	21,000.00	
Tools	13,025.00	18,115.00
Line of Credit	(33,000.00)	
Line of Credit payments since date of separation	(3,296.04)	
NET ASSETS	**$230,291.96**	**$ 29,390.00**
Equalization Payment	(100,450.98)	100,450.98
TOTAL NET ASSETS AFTER DIVISION	**$129,840.98**	**$129,840.98**

[28] Because the Petitioner has been in possession of the matrimonial home since the interim hearing and two of the parties' children continue to live there with her, she will have the opportunity to keep it.

[29] Because the Petitioner expressed so much fear of the Respondent I am not prepared to transfer the adjoining lots to him while the Petitioner remains in the matrimonial home. Those lots will also be given to the Petitioner to do with as she pleases. It will then be for the Petitioner (and the Respondent) to decide if the lots are sold to the Respondent.

[30] Assuming neither of the parties made any contributions to or withdrawals from their RRSP accounts since the date of separation the current balances of those accounts will be divided equally between them by way of spousal roll-overs. Also,

whatever might be the current value of the Petitioner's locked-in retirement account, it too will be divided equally between the parties by way of a spousal roll-over. It was suggested that I transfer to the Respondent all of the RRSP's and the locked-in retirement account in order to reduce the Petitioner's equalization payment to the Respondent. Due to recent volatility and significant declines in the stock market I have concluded that the fairest treatment of those assets is to divide equally their values as of the date of the roll-over.

[31] Unless the parties agree otherwise the Petitioner will retain the tools and other equipment now in her possession. Although at one time the Respondent wanted those items I am concerned, because of his evidence, that some of those items may have since been sold, discarded or damaged.

[32] Petitioner will pay to the Respondent an equalization payment of $100,450.98 which will be paid no later than December 30, 2008.

[33] The Petitioner will be solely responsible for the entire balance of the line of credit, both the matrimonial portion and the non-matrimonial portion, totalling approximately $48,000.00, and so long as the Respondent's name remains on the account she will not incur any further indebtedness on it. The Petitioner will make all reasonable efforts to have the Respondent's name removed from the line of credit as soon as possible and until his name is removed she will keep him indemnified with respect to this debt.

CHILD SUPPORT

[34] The relevant sections of the ***Divorce Act*** are as follows:

> 2.(1)..."child of the marriage" means a child of two spouses or former spouses who, at the material time,
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> (a) is under the age of majority and who has not withdrawn from their charge, or
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> (b) is the age of majority or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessaries of life;
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> ....

> 15. 1(1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to pay for the support of any or all children of the marriage.
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> ....
>
> (3) A court making an order under subsection (1) or an interim order under subsection (2) shall do so in accordance with the applicable guidelines.
>
> (4) The court may make an order under subsection (1) or an interim order under subsection (2) for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order or interim order as it thinks fit and just.
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> ....
>
> (6) Where the court awards, pursuant to subsection (5), an amount that is different from the amount that would be determined in accordance with the applicable guidelines, the court shall record its reasons for having done so.

[35] For the purpose of this decision I will refer to the children as E.C. who is now 23 years of age, J.C. who is 21, Z.C. who is 18 and B.C. who is 17.

Prospective Child Support

[36] The Petitioner seeks ongoing child support for E.C. and B.C..

[37] At the present time B.C. is residing with her mother and is in grade 12. She is a full-time student. The parties agree that she is a "child of the marriage" and the Respondent does not dispute that child support is payable for her support.

[38] E.C. applied to the University of Prince Edward Island, College of Veterinary Medicine, hoping to be accepted in the class commencing in September, 2007. She was not successful at that time but was accepted for the class beginning in

September, 2008. She took some upgrading courses at Dalhousie University in the Fall of 2007 but this year has been employed on a full-time basis and has been living at home with her mother. She testified that she did not go to the veterinary college this year (September 2008) because she felt she could not focus on her studies and has put off those plans until September 2009.

[39] Should E.C. return to university she will likely need financial assistance. Tuition, books and other fees will cost her approximately $10,000.00 a year and room and board will add another $500.00 to $1,000.00 a month to her costs. It is not yet known how much money she might be able to save to apply to those expenses.

[40] The Petitioner argues that because E.C. plans to return to university next year she is still “a child of the marriage”.

[41] I find that E.C. is not at the present time a “child of the marriage”. She is 23 and has an undergraduate degree. She is working full-time and although her income is modest she is able to pay for her own expenses.

[42] If E.C. returns to university and it is then demonstrated that she is dependent on her parents for support she might again become “a child of the marriage”. At the present time no child support will be payable for E.C..

[43] Neither party suggests that Z.C. is a child of the marriage. He is working in the reserves and hopes to become a regular member of the Armed Forces.

[44] J.C. is also employed and the Petitioner is not seeking on-going child support for him.

[45] The Respondent’s pay stub for the pay period ending August 31, 2008 shows his current annual salary is $109,011.96. It also shows that he received a performance bonus this year of $7,337.00. His gross annual employment income is

therefore projected to be $116,348.96. Out of that he pays annual professional fees of approximately $300.00 a year (a Schedule III adjustment).

[46] In addition to his employment income the Respondent receives a tax free veteran's pension of $8,317.00 per year. Subsection 19 (1) (b) of the *Federal Child Support Guidelines* says:

> 9. (1) The court may impute such amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include the following:
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> ...
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> (b) the spouse is exempt from paying federal or provincial income tax;

[47] I believe it is appropriate to not only include in the Respondent's income his tax free veteran's pension but also to gross that figure up to arrive at a pre-tax equivalent figure for that pension. I calculate that figure to be approximately $14,850.00. I therefore impute to the Respondent an income of $130,898.96 for child support purposes ($116,348.96 + $14,850.00 - $300.00). Based on that figure I order the Respondent to pay to the Petitioner child support for the support of the child B.C. in the sum of $1,068.00 per month commencing the first day of November, 2008 and continuing on the first day of each day thereafter until otherwise ordered.

[48] According to the Petitioner B.C. is in need of new glasses. A portion of the cost of those glasses may be covered by the Respondent's medical plan. The portion that is not reimbursable under his policy will be shared by the parties proportionate to their income. The Petitioner's current income, exclusive of support payments received from the Respondent, is approximately $200.00 per month. Therefore, the Respondent will pay 98% of that expense.

Retroactive Child Support

[49] Although the Petitioner is not seeking on-going child support for J.C. it was argued that because J.C. returned to school in September 2007 until December 2007 that the Petitioner is entitled to child support for him for those months.

[50] After the interim hearing on September 6, 2007 the Chamber's Judge ordered the Respondent to pay child support to the Petitioner for the support of the two younger children. The Chamber's Judge ordered child support in the sum of $1,406.00 per month after concluding that the Respondent's annual income was $104,580.00. That is the figure that he disclosed on his Statement of Income. I now have the Respondent's 2007 tax return. His "total income" (line 150 of his tax return) was $108,807.00. He paid professional fees of $216.50. He also had his veteran's pension of $8,317.00 per annum. After grossing up his veteran's pension to a pre-tax figure ($14,591.00) I calculate his income in 2007 for child support purposes as being $123,181.50 ($108,807.00 + $14,591.00 - $216.50). From September to December, 2007, three of the children were eligible for child support and the table amount for three children for a payor with the Respondent's income at that time would have been $2,094.00 per month rather than the $1,406.00 ordered by the Chambers judge. The difference over the four months would have come to $2,752.00.

[51] In 2008 the Respondent continued paying child support of $1,406.00 for the two younger children. By January, however, the three older children had ceased attending school and were employed. Child support was then payable only for B.C..

[52] From January to October, inclusive, the Respondent paid total child support of $14,060.00 when, based on his 2008 income of $130,898.96, he should have paid a total of only $10,680.00, a difference of $3,380.00.

[53] If the inquiry stopped there the Petitioner could be required to repay the Respondent the net overpayment of $628.00 but had the Chambers Judge known of the Respondent's actual income it is at least possible that she would have increased the level of spousal support. Had that occurred then the overpayment may very well have been negated. Interim orders are often imperfect. Information before the Court is frequently incomplete and the parties' finances are in a state of flux. The relatively brief nature of interim hearings rarely permit the same opportunity for discovery and cross-examination as does a final hearing. If the events that transpired since the granting of the interim order were such that I was convinced that the outcome should not be left to stand unaltered because of some severe or unfair consequence to one of the parties or the children then I would grant an order

with retroactive effect to try to remedy that result. In the circumstances of this case I am not prepared to grant such an order.

SPOUSAL SUPPORT

[54] The relevant sections of the ***Divorce Act*** are as follows:

> 15.2 (1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse.
>
> (2) Where an application is made under subsection (1), the court may, on application by either or both spouses, make an interim order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse, pending the determination of the application under subsection (1).
>
> (3) The court may make an order under subsection (1) or an interim order under subsection (2) for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order as it thinks fit and just.
>
> (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
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> (a) the length of time the spouses cohabited;
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> (b) the functions performed by each spouse during cohabitation; and
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> (c) any order, agreement or arrangement relating to support of either spouse.
>
> (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.
>
> (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.

[55] The Petitioner seeks spousal support on both a compensatory and non-compensatory basis. She believes she is entitled to such an order not only because she needs financial assistance but also because she made sacrifices throughout the marriage for which she should now be compensated.

[56] The Petitioner is a registered nurse. She had just obtained her R.N. designation in 1982 at the age of 24 when she met the Respondent. He was then 18. They began dating and were married approximately a year later.

[57] The Respondent was by then a member of the Canadian Armed Forces and the Petitioner was working full-time at the Dartmouth General Hospital.

[58] She continued in that employment until approximately December of 1990. By then the parties had three children and were expecting their fourth.

[59] In December of 1990 the Petitioner left the Dartmouth General and took a casual position at a nursing home. She testified that she changed positions to "accommodate the needs of the family" and because she found working full-time at the hospital very stressful. Working at a nursing home was apparently less stressful and she was able to work her shifts around the needs of the family. Although the Petitioner held a casual position she worked, for the most part, full-time hours.

[60] It was in the preceding year, 1989, that the Respondent was injured in a motor vehicle accident. As serious as were his injuries the family's finances were not adversely affected because of the Respondent's military pension and disability insurance benefits.

[61] In 1998 the Petitioner returned to nursing at one of the local hospitals in the pre-op day surgery area. It was a position she enjoyed. In 2005 her job description changed and she was required to return to the critical care unit and was also required to work rotating shifts and be on call. She testified that although she tried she "just couldn't do it". She said "it was just too much" and "I knew that the stress of working in a critical care area was just going to be too much." She and her husband discussed how stressful she was finding the work. With the support of the Respondent the Petitioner decided to leave her employment. By that time the Respondent was employed as an engineer and was earning approximately $100,000.00 a year.

[62] After resigning from the critical care unit the Petitioner accepted a number of different positions including at the I.W.K. Women's Health Program where she worked part-time for a few months in 2006 and a nursing position for a local nursing home company in 2007. For three months she worked for the Canadian Blood Services and for a short period of time she had a part-time position as a dog attendant for a dog daycare.

[63] In October 2007 (three months after the parties separated) the Petitioner took a 40 hour course in diabetic foot care. She believes that foot care is a growing industry and that there is a need for it in this area. She is now attempting to build up a clientele. She has 25 clients and estimates that once she has a client list of approximately 200 she will earn enough to be self-sufficient. She said she wants to work full-time.

[64] The Petitioner presented evidence suggesting that she suffers from post-traumatic stress disorder. The Court heard from Ms. Catherine Lambert, a mental health social worker who has been providing therapy to the Petitioner. In her report she said that throughout her sessions with the Petitioner she has "worked on issues related to the trauma she experienced during her marriage" and the events during July of 2007 when the parties separated.

[65] Also in her report she said that the Petitioner claimed that she was sexually and emotionally abused by her husband during the marriage. That information is not consistent with other evidence provided by the Petitioner. In an affidavit sworn by the Petitioner on July 26, 2007 (the month the parties separated) she stated "we had a good marriage. The Respondent was a good father and husband."

[66] Ms. Lambert testified that in her opinion the Petitioner continues to suffer from Post Traumatic Stress Disorder and that she would benefit from a slower pace at work.

[67] While I have no doubt that the parties had serious problems in their marriage I am not convinced that the Respondent abused the Petitioner. I am also not convinced that the Petitioner is not able to return to full-time work. Even if I am wrong Ms. Lambert testified that she believes that the Petitioner, within a year, is probably "going to be doing okay".

[68] The Petitioner's decision to leave her hospital position, which was encouraged by the Respondent, was categorized as an economic disadvantage which should now entitle her to compensatory spousal support. As a consequence of leaving that position she lost the ability to continue contributing to a pension, her health plan and her seniority.

[69] The Respondent did agreed with the Petitioner's decision to leave her employment and to some degree even encouraged it. He thought that they would be able to spend more time together as a couple. However, the ultimate decision to resign was made by the Petitioner. Further, the Court cannot overlook the fact that the Petitioner chose to leave her position because she found it too stressful and too much to handle. It was the long hours, the shift-work and the stress that she emphasized when she explained her reasons for giving up her job. The fact that the family may have benefited from her more relaxed work schedule was almost secondary. The Petitioner's ability to leave her stressful employment was made possible by the fact that the Respondent was earning a six figure income. That was an economic advantage enjoyed by both parties during their marriage.

[70] While the Petitioner lost some seniority by leaving her position she admits that she could quite readily return to nursing. She is only 50 years of age. By her own admission there are a significant number of employment opportunities available in the nursing field in the Halifax area. She also testified that by working full-time as a nurse she could earn approximately $55,000.00 per year. If she chose that route she likely would have the opportunity to take part in a group health plan offered by her employer. Rather than return to nursing the Petitioner has chosen to pursue a business in diabetic foot care. She believes that she will be able to obtain self-sufficiency and all that she needs is time to attract more clients.

[71] The Petitioner also argued that she sacrificed financially by paying off the Respondent’s tuition bills. During the marriage the parties had acquired rental properties. They used their combined resources to purchase them. The money came from the Respondent's income and from RRSP's that the Petitioner had accumulated. When the Respondent completed his university education those properties were sold to pay off family debt including loans taken out to pay for the Respondent's tuition during his final three years at university. The rental properties belonged to both parties, not just the Petitioner. Their sale was a mutual decision and was made for their mutual benefit. The Petitioner has benefited from the Respondent's education and resulting increased income.

[72] The Respondent urged the Court to terminate his spousal support obligation. He argued that the Petitioner has the training, experience and ability to work full-time and be self-sufficient now but chooses not to.

[73] At the time of the parties' separation they had been together almost 24 years. They have four children.

[74] During the marriage both the Petitioner and the Respondent contributed to the marriage, to the accumulation of assets and to the care of their children.

[75] Both parties assisted the other at various times when circumstances required it. When the Respondent was injured the Petitioner took on more responsibility caring for the children and their home and also assisted the Respondent with his studies. When the Petitioner found work to be too stressful the Respondent’s income allowed her to be more selective with what work she accepted.

[76] Their separation has caused them both hardship.

[77] At the present time the Petitioner needs financial assistance from the Respondent and he is in a position to provide it. Given some time the Petitioner should be able to develop her foot care business to such a point that in the near future she will be self-sufficient or at least earn an income such that the spousal support paid by the Respondent can be significantly reduced. Should she be unable to expand her client base sufficiently over the next year then she will have to give serious thought to returning to full-time employment as a nurse while those opportunities remain open to her.

[78] After considering the circumstances of the parties and all of the factors and objectives contained in subsections 15.2 (4) and (6) of the ***Divorce Act*** including but not limited to the length of the parties' marriage, the training, experience, income and income potential of both parties, the financial statements put forward by both parties, the lifestyle that they enjoyed, the child support that will be paid by the Respondent and the tax consequences of a spousal support order, I have concluded that the Petitioner has earned an entitlement to spousal support on a non-compensatory basis and I order the Respondent to pay to the Petitioner spousal support in the sum of $2,700.00 commencing the first day of November, 2008 and continuing on the first day of each month thereafter until otherwise ordered.

[79] The Petitioner is to make diligent efforts to attain self-sufficiency as soon as reasonably possible. If her optimism regarding her foot care business is well founded the Court expects that within one year she will more fully develop her client list. Failing that I would expect her to seek out and obtain a full-time nursing position. It will therefore also be ordered that the quantum of spousal support will be reviewed by me in approximately one year's time with a view at that time to reducing if not terminating the Petitioner’s spousal support entitlement. Counsel should therefore secure as soon as possible a half day hearing on my docket to take place in approximately a year’s time to be preceded by a pre-hearing conference, also on my docket, approximately eight weeks in advance of that hearing. Should the parties reach an agreement prior to that review hearing then the hearing date can be cancelled.

[80] Counsel for the Petitioner will prepare the necessary orders. If the parties are unable to agree I am prepared to hear them on the issue of costs. I understand that it was previously agreed that the costs of the various appraisals (totalling approximately $2,000.00) will be shared equally between the parties.

J.