

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *M.M. v. A.M.*, 2015 NSSC 332

Date: [2015-11-23]

Docket: 1217-000903

Registry: Port Hawkesbury

Between:

M. M.

Petitioner

v.

A.M.

Respondent

Editorial Notice: Identifying information was removed from this electronic version of the judgment.

Judge: The Honourable Justice Legere Sers

Heard: June 19, 2015 August 25, 2015, and August 26, 2015 in Port Hawkesbury, Nova Scotia

Decision Delivered: November 23, 2015

Redaction: February 2, 2016

Counsel: M. M., Self-Represented
Dianne Paquet for the Respondent

By the Court:

[1] Mr. M. filed a petition for Divorce on the July 3, 2014 to have a determination on custody and access of his son, costs and division of matrimonial property.

[2] The Respondent filed an Answer on August 6, 2014 seeking relief including custody and access, child support, spousal support, costs, exclusive possession of the home, division of assets and pension and change of name.

[3] This was a high conflict proceeding. Court proceedings were required to resolve even the smallest details between the parties.

Details of marriage

[4] The couple began to co-habit in March 2002; married on October 5, 2002 and separated on January 28, 2014 some 11 years and 11 months later .

[5] The Respondent came into the relationship with a child born, December [...], 1996, from a previous relationship.

[6] One child was born of this union, A. E. M., born August [...], 2005.

[7] Historically, the mother had been the primary parent of both children.

Previous Court Orders and Litigation history

[8] On **February 5, 2014** the Respondent made an Emergency Application alleging she was being denied access to her son. The Petitioner refused to return their son after a visit. He also cut off her access to family income.

[9] A parenting schedule was reinstated and child support of \$800 a month was set out in the first Interim Order dated February 10, 2014.

[10] On **March 4, 2014** the Petitioner filed his Emergency Application alleging that he was being denied access.

[11] On **May 8, 2014**, the Court delivered an oral judgment (issued August 6, 2014) granting the parents joint custody. Primary residence of the child remained with the Respondent mother.

[12] Child support was adjusted to \$1047 per month based on the Petitioner's annual income of \$99,789.13.

[13] Spousal support of \$1000. per month was ordered effective May 11, 2014.

[14] The Respondent was granted exclusive possession of the home.

[15] On **May 25, 2015** a further Interim Order was issued.

[16] The Respondent withdrew her request for child support for the oldest child.

[17] The child support payments were reduced to \$837 per month based on an income of \$100,000 for the 2015 year commencing on June 1, 2015.

[18] The Petitioner was permitted to enter the home to determine what household possessions were to remain in the home.

[19] The parties also agreed the Petitioner would have exclusive possession of the home effective June 1, 2015. He was to be responsible for all occupancy costs in the same manner as the Respondent was earlier.

[20] **The pretrial directions** are contained in Pretrial Conference Memorandum dated March 11, 2015 and March 31, 2015.

[21] Only by Order to Disclose issued August 21, 2015 could the Respondent finally obtain the remortgage details directly from the Petitioner's bank.

Custody Assessment

[22] An order for Assessment of the custody and parenting issues was issued March 30, 2015.

Consent order

[23] The parties entered mediation and a Consent Order resulted.

[24] I have accepted this Consent Order based on the recommendations of the assessor as adopted by the parties.

[25] I make the following findings of fact in the event the conflict between the parties does not abate and the parents return to the court for resolution and relief.

Fact Finding

[26] Historically, these parents have not been able to resolve even the smaller issues.

[27] Initially on separation, the Petitioner and Respondent engaged in blaming behavior that spilled over into their small community.

[28] This behavior involved their friends, employers and members of the sporting community.

[29] The Respondent was the first to realize the damaging effects and began to show a clear understanding of the need to compromise.

[30] The Respondent and her counsel found it difficult to negotiate with the Petitioner.

[31] The Petitioner bombarded the Court with motions to resolve matters, copied the Court in his negotiations and tried to involve the Court in out of court discussions.

[32] He involved the larger community in his demeaning comments and multiple allegations of wrongdoing against the Respondent thereby adding to her difficulties in obtaining employment.

[33] The Assessors Report discusses the animosity between the two parents and the effect on their son. The assessor drew two conclusions summarized at page 19 of his report. I concur with these comments as set out below:

“A. is correct in her view that the situation as it exists, is not workable. M. appears to want to win every battle...*Perhaps in the future it will be in A.'s best interests to have one parent with primary care*, before considering that option however, A. deserves to have both parents finally make a united and serious effort to work together in his best interest while he is still young enough to reap the benefit”

and further:

“...It is my assessment that between M. and A., *that the greater responsibility for the caustic communication pattern that exists with this couple belongs to M.*. As a result he must take advantage of all available resources to help him gain insight, awareness and self-knowledge for the purpose of acquiring the necessary skills to work towards improving the co-parenting relationship with his son's mother.”
(Emphasis mine)

[34] The mother has a history of being able to co-parent. Her former partner J.B. and his current partner attested to the fact that the mother has been able long term to achieve a peaceable and respectful relationship with him in the care of her oldest child.

[35] Mr. B. testified that he was able to work effectively with the Respondent to raise their child. He credits the Respondent for the success they have had raising their daughter.

[36] The Petitioner has demonstrated in this divorce proceeding an inability to compromise and reach agreement and maintain his agreement without changing the conditions surrounding his consent.

[37] His emails, submission and affidavits are replete with largely unsubstantiated attacks on the Respondent's integrity and credibility.

[38] Even two years into the proceedings the Petitioner cannot reply to correspondence without bitterness or antagonism.

[39] This type of communication creates a toxic environment.

[40] **The Petitioner requires professional intervention to improve his ability to communicate and co-parent effectively.**

[41] The Respondent is not blameless. Her initial conduct was hostile. To avoid being involved in the unproductive discussions she became uncommunicative respecting her whereabouts and her child's whereabouts when he was with her.

[42] She was however better able to compromise.

[43] A shared parenting relationship requires cooperation, communication and compromise. The parties agreed to try a shared parenting arrangement as recommended by the assessor for the benefit of the child.

[44] The schedule of parenting time was based on a 28 day cycle with the ability to enhance that schedule as agreed upon.

[45] See Schedule "A" for their Memorandum of Agreement.

[46] The parenting arrangement may have to be adjusted to protect the child should this child suffer further because of the conflict between the two parents.

[47] To that end, I remind each parent of section 16(10) of the *Divorce Act* where in Courts are directed as follows:

Maximum contact

(10) In making an order under this section, the Court shall give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child and, for that purpose,

shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact.

[48] The caution for both parents and in particular the Petitioner is that each parent must immediately access whatever therapeutic assistance they need to begin to alter their mode of communication to focus on their son and to cease and desist the hostile communications.

[49] The parent who fails to take this warning may well find they lose what custody and decision making rights they retain by this decision should the matter return to Court for further resolution.

Two Residual Issues

[50] The two residual issues not agreed to by the parties relate to (1) transportation, and (2) designing limits to the sporting and extracurricular events each wish for their son.

Transportation

[51] Regarding transportation I adopt recommendation two in the mediators report, as follows:

“In the event of other obligation during their access time, it is the responsibility of the parent who is caring for A. to ensure appropriate care for him at all times. Arrangements may include asking for assistance from the other parent this is not an obligation it is a choice.”

Number of Extracurricular Activities

[52] I have imposed a limit on the number of activities the child can be enrolled in without consent of both parents.

[53] The parents agreed to hockey and the rep team involvement during the regular season. I endorse that agreement.

[54] The Respondent has also agreed to the one time opportunity for a hockey camp in the United States (Page 262) and the two week Whitty Sports camp he can attend in the summer. I endorse that agreement.

[55] Both parties agree on the basketball after hockey ends.

[56] They do not agree on the three on three hockey. This is an additional activity in the spring that could involve 6 sessions and run for 8 days.

[57] I do not endorse this activity unless agreed upon by both parents, in writing, in advance.

[58] The summer choice is either baseball or soccer. They both agree it should be up to the child which he prefers. I endorse that agreement.

[59] The parties could not decide and thus the decision as to whether he is involved in **select baseball** is up to the Court.

[60] After reading the recommendations of the assessor and reviewing all the child's activities and the desire to balance his activities with summer family activities, I direct that the child should be on a **regular** team of his choice either baseball or soccer unless both parents agree, in writing, in advance.

[61] Any further activities must be agreed to by the parties, **in writing, in advance of registration.**

[62] The terms and conditions of the Memorandum of Understanding together with the direction on the two residual matters shall be incorporated into and form part of the Corollary Relief Judgement.

Child Support

Financial statement of Petitioner

[63] On July 3, 2014, the Petitioner filed a statement of income indicating he earned \$85,251 per annum. However, historically each year he earns considerable overtime bringing his 2014 income to \$111,000.00.

[64] His Notice of Assessments for 2013 show income of \$105,092; his 2012 income was \$99,464; in 2011 the evidence suggests income of \$94,881.

[65] In 2010 the Petitioner's line 150 income from his Notice of Assessment was \$187,009.00; in 2008 he earned \$190,805; in 2007 he earned \$159,812; and in 2006 he earned \$125,470;

[66] The Petitioner suggests he will be unable to take on the same amount of overtime he used to because of the shared parenting relationship.

[67] No evidence was provided to support this or to allow the Court to consider what diminution in income if any would be likely.

[68] The Petitioner will have ample time during the Respondent's parenting time to continue as in the past with his ordinary employment habits.

[69] The most reliable evidence I have for determining prospective child support is his 2014 income. A change in income can be adjusted in June 2016 if it occurs.

Respondent

[70] The Respondent's August **2015** Statement of Income shows annual income of \$11,000 coming from various jobs. (Estimated)

[71] In **2014**, her Notice of Assessment income shows annual income of \$23,137 comprised of \$12,000 spousal support, UCCB of \$1,487 and employment and other income.

[72] The Respondent worked at various [...] jobs and earned income from EI and [...].

[73] In **2013** she earned from the [...] (\$1,402) plus [...] (\$2,817); the [...] (\$3,582) and (\$21,366) EI.

[74] Her Notice of Assessment shows a total income of \$26,351.

[75] Her **2012** income from her tax statement shows annual income of \$41,195.91, most of which came from employment with [...].

Section 9 Child Support Guidelines

[76] Using the 2015 estimated income of \$11,000 for the Respondent, the first stage of a child support calculation yields a payment by the Petitioner to the Respondent of **\$908** for the months commencing with the shared parenting arrangement in 2015.

[77] From January 2015 up to and including the date the parents commenced the shared parenting arrangement the Petitioner should have paid \$923 a month for the one child.

[78] Neither party has introduced evidence of the circumstances and needs of the parties and the effect of the shared parenting agreement that would permit the Court to weigh and modify the set off amount.

[79] The Respondent does not have access to the same employment opportunities or level of income. She has had to turn down an excellent retraining opportunity to continue to care for her son.

[80] There is vast disparity in their income and earning ability. The Respondent is without transportation and must rely on others. The effects of the breakdown and the circumstance following separation have had a significant impact on her ability to address her shared parenting responsibilities.

[81] Retraining is her best chance at self-sufficiency.

[82] I set the child support using the set off method without further adjustment at **\$908** per month.

Child Support-Section 7 Expenses

[83] The Petitioner is prepared to pay up front for the child's hockey and sporting equipment (Transcript Page 387). He believes he is better able to make the right choices as to what to buy.

[84] The current incomes yield a percent sharing of section 7 expenses of 91 percent for the Petitioner and 9 percent for the Respondent.

[85] The parties agreed to share the net costs of hockey fees and equipment, agreed upon high school trips and school sports in proportion to their incomes.

[86] The balance of medical and health related expenses not covered by insurance shall be shared in proportion to their incomes.

[87] Any costs associated with extracurricular expenses not mentioned herein shall first be agreed upon and then if agreed upon, shared in proportion to their incomes.

[88] Ordinary school supplies are not considered an extraordinary expense.

Division of Property /The Matrimonial home

Exclusive Possession

[89] The Parties lived in this four bedroom matrimonial home from purchase to separation, January 28, 2014.

[90] The Petitioner remained in the home after separation to May 18, 2014. (Approximately four months)

[91] There is no evidence of any attempts made by him to ready the home or list the property for sale during this time.

[92] The Respondent and the two children lived in a bachelor cottage through the winter months of 2014 up to the date when the Court granted her exclusive possession of the home.

[93] There is sufficient reliable evidence (paragraph 22, *Exhibit "G"*- *Respondent's affidavit of June 17, 2015*) to suggest that the home was in a state of disarray during the Petitioner's occupancy.

[94] When the Petitioner vacated the home, he cancelled the insurance policy. Since only his name was on the deed, the Respondent had difficulty obtaining insurance. The home was uninsured for three months.

[95] While the Respondent was in the home she was responsible for the occupancy costs including mortgage taxes, maintenance utilities and insurance.

[96] Immediately after the Respondent obtained exclusive Possession of the home the Petitioner retained Ms. B. as a Realtor to place the home for sale. The deed is in his name exclusively.

[97] On his instruction Ms. B. contacted the Respondent asking her to list the home.

[98] The Respondent advised the agent that she was not prepared to list immediately, although she would be interested in listing the home in the fall (2014).

[99] The home was listed for sale on February 14, 2015. The Realtor testified that it was not listed in January due to the Realtor's illness.

[100] Between February 15 and March 15, 2015 the agent advised the Respondent she could not show the house as she was having difficulty getting into the house.

[101] In early March, there was a potential buyer who had only one month to find a home. The Respondent did not make the home available for showing.

[102] The Realtor advised the Respondent told her she was not ready to list as she was unable to find alternate accommodations during the winter for her two children, two dogs and two cats.

[103] On March 16, 2015, the Realtor sent a message advising that she had to get into the home.

[104] The Realtor advised that after that email she had no further difficulties getting cooperation from the Respondent. She advised she was very cordial and “everything was perfect”.

[105] By Consent Order the Petitioner regained exclusive possession of the home on June 1, 2015.

[106] As of the date of this decision no sale has taken place.

The Flood

[107] In March 22, 2015, during the Respondent’s occupation, there was a flood in the basement of the matrimonial home.

[108] According to the appraiser (Page 25 of his report) there was water build up in the ditch two properties down from the subject home.

[109] The backup resulted in a flood in the subject home. The insurers covered the damage subject to the payment of the deductible.

[110] The April showing did not go well. The house was still in a state of damage from the flooding downstairs, cats were on the table, the home needed painting and the carpets were in need of repair. The Realtor suggested lowering the price or offering a painting and carpeting allowance.

[111] While this was suggested at the initial listing, it had not been formally incorporated into the contract.

Valuation of the Matrimonial Home

[112] The January 9, 2015 Municipal assessment was \$168, 500.

[113] In his June 2015 statement the Petitioner valued the home at \$120,764.

[114] He listed the home for sale at \$189, 900.

The Appraisal

[115] Mr. Robert Wambolt's May 28, 2015 report assessed the current value of the home at \$170,000.00; conditional upon the completion of all flood reparations.

Mr. Robert Wambolt

[116] Mr. Wambolt was qualified by consent as an expert in residential property appraisal.

[117] He viewed the home on May 28 and June 1, 2015.

[118] In the course of his assessment, he spoke to the contractor engaged by the insurance adjustor to attend to the repairs.

[119] Mr. Wambolt advised that the effect of flooding due to a backup two properties down, resulted in a backup of approximately three inches of water in the basement. The property that had the blocked drain was at a lower elevation than the subject property. He advised the water receded quickly when the ditch opened up.

[120] The appraiser distinguished between a sewer line and the ditch and drain that went into the home (Page 186).

[121] He advised that the likely cause of mold or dirt on the siding in the back of the home was the presence of trees that prevented the sun from drying the back of the home.

[122] He did not recall a lot of dog feces; he identified a small amount in the back left hand corner of the garage.

[123] He noted there was an area in the backyard where the grass was not as green as the other grass.

[124] He advised of a number of deficiencies; the door handle needed paint, a small pin was missing in the clip at the top of the door, a piece of molding at the

top of the stairs needed replacing, the carpet replaced (bare from use), a piece of siding on the very bottom of the right hand side needed to be clipped, a couple of holes on the driveway side of the siding, “stuff you commonly see with vinyl siding”.

[125] Nothing on the side nor the front of the house needed to be done.

[126] Mr. Wambolt did not observe the vast amount of damage alleged by the Petitioner.

[127] His evaluation as to the major defects was generally the same as Ms. B.. Other than the flood damage which was corrected the carpeting and painting were the major deficiencies.

[128] The Petitioner agrees with the current value of \$170,000.

[129] He alleges however that the Respondent’s failure to keep the storm drain clear was the cause of the flooding in his basement on March 22, 2015.

[130] He contends that the home value deteriorated to the \$170,000 due to the Respondent’s failure to maintain the home and the damage inflicted on the home by their animals while she had exclusive possession.

[131] The insurance and the property is in his name. He was in the best position to confirm his allegations if objective proof existed. He did not provide sufficient proof to support his allegations.

Deficiencies

[132] At the original listing, Ms. B. identified the need for reparations to floors and walls. The carpets were in a bad state of repair.

[133] The furniture was in poor condition due to the animal scratches; the leather chesterfield in the living room, the corner sofa and the kitchen chairs were clawed by cats and dog. The dog was on the back of the chesterfield when the agent was there. The painting issue was not unusual according to Ms. B..

[134] She discussed a cash back option for decorating purposes. She identified various, not unusual deficiencies including a dent in the siding, the need to clean the back siding and dog feces in the garage area and back yard and a stain on the bathroom wall.

[135] When the home was listed and by the time she took pictures of the listing, the stain had been washed.

[136] In spite of the Petitioners claim that the dog is one of the animals that reduced the value of the interior, the Petitioner claims the dog as his possession and asks the Court to grant him possession of the dog (Transcript Page 575).

Allegations

[137] The Petitioner alleged the Respondent left the matrimonial home in a dirty condition when she vacated.

[138] The Respondent tendered pictures she took at the time of her move. They did not substantiate the Petitioner's testimony.

[139] Ms. B. admitted other than the garbage and animal droppings, the home was clean. She advised the beds were always made, dishes were done and everything she saw was neat.

[140] She advises that while she was not in the home since the reparations were completed, she has been advised by another agent that the home looked lovely and was all fixed. The basement level, in fact, looks better than it did when she first listed the home. It has been redone with new walls, new painting and new flooring.

[141] The Petitioner offered the testimony of his girlfriend, **Ms. F.**

[142] Ms. F. has been involved with the Petitioner since early 2014.

[143] She testified as to the state of the home on May 10, 2014 and on June 1, 2015 when the Petitioner moved back into the home.

[144] She advised that the Petitioner's mother, a cousin E. and she cleaned the home before the Petitioner moved out in May to June 2014.

[145] She testified that the home in 2015 was in a much worse state than when the Petitioner moved out in 2014 presumably after they cleaned.

[146] However, she was not present on June 1, 2015 when the Petitioner resumed possession until 4:00p.m. that afternoon.

[147] She did advise the fridge was leaking and there was a strong smell likely to due to the broken dishwasher.

Listing price

[148] The first listing price was \$189,000 without a cosmetic clause allowance. Because it was winter, Ms. B. suggested they would go with the listing price just to see what, if any, interest existed.

[149] After the flooding, she decided to wait to value the home until the repairs were completed. These repairs included new carpeting in the basement and other changes.

[150] She later advised the Petitioner to drop the listing price.

[151] She was unable to offer the court advice as to what the current price should be because repairs were underway to fix the damage from the flood.

[152] The effect of the repairs were not valued at the time of the hearing (Transcript Page 130).

[153] The Realtor was in the home taking pictures after the Respondent moved out June 1 (2015). The repairs necessary to get a better price had not been done by either party.

[154] According to the Petitioner's witness, they agreed that they would wait until the flood repairs had been done to undertake the other painting and repairs necessary on the first floor.

[155] The Petitioner decided to paint it himself and was attempting to do the yard work and fix the appearance to get the best price.

[156] **S.H.** is the Petitioner's sister and witness. He wished her to speak to the state of the home.

[157] Ms. H. first saw the home on June 12, 2015 and again later in July, 2015. She advises she saw some animal damage and a smell (from an animal she surmises). She notes that in July the home was painted and new flooring put down making it appear to her much cleaner. Apparently it was in a good state.

Summary of Valuation

[158] In summary, the most credible evidence from Ms. B., from her initial viewing and the pictures taken by her, demonstrate generally a clean, presentable home.

[159] Mr. Wambolt saw nothing fundamentally wrong with the home when he attended on June 1, 2015, other than the same recommendations as to internal cosmetic repairs.

[160] Because of the allegations, the Respondent also took pictures before she left the home. These pictures do not depict the dog feces and garbage the Petitioner indicates were present when he took pictures.

[161] There is insufficient reliable evidence to conclude that the state of the home was other than one might find when a person is moving out of a home.

[162] There is insufficient evidence to support the Petitioner's claim that the Respondent's occupancy reduced the selling value of the home any more than his occupancy did.

Conclusion on Valuation

[163] The weight of the evidence causes me to conclude that the most reliable current value of the home is, \$170,000.

[164] There is evidence that neither party, during their exclusive possession of the home, undertook substantial repairs other than those resulting from the insurance claim.

[165] There is also evidence that the bulk of the day to day cleaning was completed by the Respondent. She completed the only painting that was done during their marriage.

[166] The major repairs recommended by the Realtor resulted from larger projects, not undertaken by either during the marriage since purchase nor during their separate period of occupation.

[167] They are both responsible for the state of the home and must therefore accept the market value on an equal basis.

Remortgage

[168] The Petitioner is listed on the mortgage and the deed to the home.

[169] He consistently objected to and delayed the production of bank documents. They were eventually disclosed pursuant to a Court Order.

[170] The Petitioner remortgaged the home on March 25, 2014 for \$124,374. He advises the proceeds were paid to creditors including the line of credit and BMO Master Card of \$16,872.33, mentioned below.

[171] The Respondent provided the most reliable evidence of the outstanding mortgage as of August 25, 2015.

[172] The Bank account records indicate that the information offered is “for information only”. There is no evidence of the exact account of closing costs relating to the mortgage (Exhibit 8).

[173] These records show the balance as of August 13, 2015 is \$120,000 with accrued interest of \$131.49. If sold at this date the penalty was \$989.71. The maturity date is May 1, 2016.

[174] There was a credit in the tax account of \$2,695.44. I have disallowed the reinvestment fee as speculative.

[175] This leaves a net mortgage payout as of August 2015 in the amount of \$118,426. The ordinary disbursement costs of 5 percent real estate fees, HST and legal of \$1000. shall be deducted to arrive at a net equity of \$40,799.

Pensions

[176] The Petitioner has four pensions:

- 1) [...] Pension, \$2605;
- 2) [...] Pension, \$48,396.27; (value at separation unknown)
- 3) [...] Defined Benefit Pension, \$484.29 per month;
- 4) [...] Supplementary Retirement Pension \$11,667.90 as of March 31, 2014.

[177] The Respondent has one pension:

- 1) [...] Defined Contribution Pension in the amount of \$2,605.

[178] There is agreement that there is to be an equal division of these pensions from the date of marriage to the date of separation, January 28, 2014 (Page 26).

[179] The fourth pension was not disclosed by the Petitioner. This pension was consistently missing from his statement of property.

[180] By way of an Order for Production, the Respondent's counsel obtained access to documentation confirming its existence.

[181] The Petitioner advises he was unaware of its existence until late in the proceedings.

[182] He does not agree to the division of this fourth Supplementary Pension.

[183] There is no evidence under Section 13 of the *Matrimonial Property Act* to justify an unequal division.

[184] All the pensions shall be included and divided equally at source to the date of separation.

[185] A separate Pension Order shall be drafted by the Respondent's counsel to include the usual provisions of instruction to the pension administrators.

RRSP's

[186] The Petitioner obtained a mortgage on the property by alleging he has an RRSP with the Bank of Montreal in the amount of \$55,000 as shown on his August 9, 2011 application for financing (Page 529 to 531 and 542) & (Exhibit 8 Page 36).

[187] The application is in his name and signed by him.

[188] He also included this RRSP information in an application for personal credit in 2012 (Page 542 to 543) (see attachment-Statement of Property of Respondent filed March 10, 2015).

[189] This RRSP no longer shows up in his January, 2014 application for credit (Exhibit 8, Page 46).

[190] Despite the documentation, the Petitioner maintained no such plan existed.

[191] After many attempts to find disclosure from the bank; which attempts were frustrated by the Petitioner; the Petitioner admitted there was no such RRSP and that he misled the bank to obtain the mortgage.

[192] On June 17, 2015 the Petitioner provided a letter prepared by another bank manager advising as follows:

“To further our conversation earlier today, you do not currently have a RRSP with the Bank of Montreal. I am not able to locate and close investments in our data base...”

[193] While this is not entirely satisfactory to dispel any notion that one did exist in the past; given his own admission that he lied on the application form; I conclude there is now no such RRSP as he now asserts.

[194] Based on the Petitioner's testimony, absent evidence of misrepresentation, the Respondent relies on the Petitioner's assertions as supported by the letter from the Branch Manager.

[195] To the extent possible I reserve for the Respondent the right in future to share in the RRSP should this information not be fully accurate.

Bank Accounts

[196] The Petitioner alleges the Respondent left him without any money in their bank account.

[197] The separation occurred on January 28, 2014. The Petitioner's pay was habitually deposited to the household account the parties used to pay bills.

[198] On January 17, 2015 the Respondent transferred \$1,000.00 to her account, leaving \$659.65 in the joint account. The Petitioner's cheque (usually \$2,579.12) was to be deposited on January 30, 2015.

[199] Before month end the Petitioner diverted his pay from the joint account to his personal account thereby arresting the flow of funds from his income to their joint account.

[200] The monetary advantage was the Petitioner's. In the end there was little to divide.

Child support saved for the oldest child

[201] Child support for oldest child is held by J.B.. He advised the sum he saved for his child is \$5,030 as of January, 2015.

[202] An additional \$3,900 was sent to this child via e-mail transfers.

[203] The Petitioner listed the value of this “account” at \$21,600. The Petitioner wants to consider this a matrimonial asset and divide the proceeds.

[204] He subpoenaed the child’s father to speak to the support he provides.

[205] The Petitioner seeks to be compensated for his contributions to the older child while they were living together or for the short period of time after separation when he was ordered to pay child support.

[206] There is no evidence that supports this claim or justifies a reimbursement to the Petitioner for past monies spent towards a child with whom he was in loco parentis.

Vehicles

[207] **The** [car], in the Petitioners name and possession, was appraised on January 15, 2015 at an agreed price of \$14,000.00 as of January 15, 2015 (Page 17).

2003 Saturn

[208] The Petitioner seeks to include the Respondent’s oldest child’s car as a matrimonial asset.

[209] Exhibit “H”, to the Respondents affidavit of June 17, 2015, is a letter from the oldest child’s biological father. He confirmed that he saved \$8,330 between February, 2010 and 2014, \$3,000 was taken for the oldest child’s car and \$300 for a Canadian Tire bill.

[210] The testimony of J.B. confirms that the car was largely purchased from monies he held for his daughter E..

[211] I decline to include the account or the [car] as a matrimonial asset subject to division.

The Zodiac

[212] The Zodiac has an agreed value of \$500.

[Bike]

[213] The Petitioner valued this at \$12,000. There is no evidence to support this valuation . I accept the Respondent's value of \$5,000. She is prepared to sell the bike and he is prepared to transfer ownership to her for that purpose.

[214] The motor cycle was in the home when the Respondent took possession.

[215] The Petitioner originally valued the motor cycle, at separation, at \$5,000. The Respondent agreed.

[216] At the hearing the Petitioner changed his valuation to \$3,000.

[217] I have no independent appraisal.

[218] The Petitioner alleges that the Respondent's boyfriend has used the bike and that the value has deteriorated.

[219] The Respondent and her boyfriend deny this.

[220] Mr. P.J., the Respondent's boyfriend, gave evidence on this point.

[221] He advises that the motorcycle works well.

[222] He moved the bike from behind the garage to the small garage when they were cleaning out the big garage. He put it behind the shed with a cover on it where it remained for a while.

[223] He took the bike from behind the shed, cleaned the small garage and drove the bike into the small shed for the winter. He removed the battery lugs to save the battery life.

[224] Otherwise the only other use made of this vehicle, was while his two children (an 8 and 6 year old) were visiting him at the home.

[225] The bike was used by him in the back yard with his daughter on it. He did a loop in the back yard, put his son on it and drove forward.

[226] The Respondent is prepared to have this value credited to her. The Petitioner must provide the replacement registration form and the keys.

Motor Home with Gas and Engine

[227] The parties agreed on a value of \$7,000.

[228] The Petitioner shall provide the owner's material, ownership paper and keys to the Respondent immediately, to allow her to proceed to dispose of these articles or deal with them as she wishes.

Boat

[229] There is agreement that the boat and motor are to be valued at \$1,250.

Tax Refund

[230] There is a 2013 and 2014 refund in the Petitioner's name and a debt owing in the Respondent's. Using a separation date of January 28, 2014 that which occurred in the marriage prior to separation are matrimonial in nature.

[231] The tax refund for the 2013 year shall be shared equally and one month of 2014 shall be included as a matrimonial asset.

[232] If the Respondent's tax debt minus penalties continues to exist for the 2013 year after refile of taxes, it shall be shared between the parties.

Post Separation Child Tax Benefit

[233] The Petitioner sought a share of the post separation child tax benefit, paid by Revenue Canada to the Respondent.

[234] Revenue Canada determines who receives the child tax benefit not the Court.

Jewelry

[235] The Respondent advised her wedding ring is missing from the possessions.

[236] The Petitioner has made allegations that the Respondent is in possession of many thousands of dollars of jewellery, some of it gifted by his mother. He admits he has no evidence of value (Page 580).

[237] His witnesses did not provide evidence to support this claim.

[238] The Petitioner's mother, C.R., spoke to the jewelry, specifically the Respondent's wedding rings, earrings, and bracelets.

[239] The Petitioner's mother recalls she purchased earrings approximately three or four times during the relationship. No values were given.

[240] She did not confirm the value of the jewelry she gave, as represented by the Petitioner. She indicated that any one piece would be valued at purchase as under \$100.

[241] Because of an estrangement between himself and his mother, there were a number of years during which they had no contact. When they reconnected there was not a lot of visiting. They lived apart geographically. She believes she saw the couple every three or four months.

[242] The Petitioner's sister and witness **S.H.** was not able to provide useful information as to the value of the Respondent's jewelry.

Deductible

[243] The Petitioner seeks to assign to the Respondent responsibility for the \$1,000 deductible payable by the home owner as a result of the damage caused by the flooding. The Respondent was in exclusive possession of the matrimonial home at the time of the water damage.

[244] The insurance company has investigated the cause of the water back up and addressed the damage all but for the deductible.

[245] The home and the insurance are in the Petitioner's name.

[246] The evidence from the Respondent regarding the circumstances surrounding the flood are contained in her affidavit of June 17, 2015 (Page 58 to 65).

[247] Despite the many unsubstantiated allegations of the Petitioner, there is no evidence the flood was caused by the Respondent.

[248] There is evidence that she acted quickly to mitigate and contain the problem and to alert the insurer.

[249] The Petitioner was not immediately informed and that was an oversight.

[250] The Petitioner also argues that the Respondent was responsible to pay this in accordance with the May 8, 2014 order governing her occupancy.

[251] Paragraph 6 of the Exclusive Possession Order states that the Respondent shall be responsible for the occupancy costs from the date of occupation including but not restricted to mortgage payments, principal and interest, taxes, maintenance insurance and utilities.

[252] The deductible was not in the contemplation of the Court or the parties when this was ordered. I also question whether an insurance deductible could be considered ordinary occupancy costs.

[253] There is no evidence that the ordinary maintenance costs extend beyond paying the monthly insurance costs, mortgage and utilities.

[254] It would be unjust to ask the Respondent to bear a larger portion of the cost by absorbing the deductible. The Petitioner benefits as much as the Respondent from the reconstruction of the basement as a result of the insurance coverage.

[255] I conclude, this was not intended or anticipated to be one of those costs covered.

[256] The responsibility for the deductible shall be borne equally by both parties.

Household Possessions

[257] The insurance cheque for the loss of house hold possessions is to be divided equally. I understand that has occurred.

[258] The entirety of the evidence on the value of the remaining household possessions is subjective and unreliable.

[259] The Petitioner lists the value of their belongings both inside and outside the home at \$17,000. The valuation is not supported by reasonable or credible evidence of market value.

[260] The Petitioner argued at length about lost or damaged possessions. The parson's bench and rocking chair that was given to the Petitioner's parents at their housewarming and subsequently given to him by his parents, has sentimental value only.

[261] There was a coffee table in 1993 that moved with him from his college days to Alberta to Port Hawkesbury. The coffee table was made of press board was spray painted a greenish and yellow colour. He retrieved it from his backyard fire pit, partially burnt. It has sentimental value only.

[262] Absent reliable evidence of value I decline to value the household possessions and determine that what each possesses (aside from what is agreed upon) is the final division.

House Hold Assets Sold by the Respondent

[263] The Petitioner has made many allegations about the sale of matrimonial property. Beyond this he has not provided proof nor are his allegations credible.

[264] The Respondent admits to selling \$170 worth of matrimonial assets (coffee maker, old love seat and used dog kennel).

[265] I have not included this insignificant amount in the division as the Court has not been able to establish any credible value to the remaining household possessions to determine what if any equity occurred in the division of household possessions (other than the insurance cheque).

The Old Fridge

[266] The Petitioner made many allegations about the removal of the old fridge which came with the home when they acquired it.

[267] He alleged that the Respondent sold an old fridge.

[268] I accept the Respondent's testimony regarding the process she followed to determine the old fridge was not fixable and the new one purchased July 11, 2014 cost \$803.93. She has provided proof of the cost of the new fridge.

[269] This cost shall be included.

Debts incorporated into the mortgage

[270] While the Petitioner was in possession of the home the mortgage payments had a balance of \$88,000 with biweekly payments of \$390.

[271] When he remortgaged he consolidated the matrimonial debts as of March 2014 into the mortgage increasing the monthly payments considerably.

[272] I have not included in the division of debts the portion of the mortgage relating to the debts resulting from the consolidation as requested by the Respondent's counsel.

[273] The Petitioner is now responsible to pay those as they are incorporated into the mortgage. I have not allowed an adjustment for that which he has paid either.

[274] It is impossible to quantify or set off what each has paid in this regard because the home has not sold as of the date of the decision.

Higher insurance rates

[275] The Petitioner seeks to have the Respondent bear responsibility for his *estimated costs* of \$300 per year, over 3 years for higher insurance rates due to the water back up.

[276] The evidence supports a conclusion that the flood was caused by extreme weather conditions in the area and the blockage of a drain in a home two doors down.

[277] While the Petitioners alleged that the Respondent caused the damage he did not provide proof in support of his allegations.

[278] In any event, the Petitioner maintained that he cannot afford the home and must sell this home, making this not only speculative relief but a non-issue.

BMO Credit Card

[279] The Respondent acknowledges this is her debt of \$10,138.29.

[280] **Line of credit** of \$15,000, was incorporated into the mortgage in March 2014.

[281] **Credit Card (matrimonial)** had a balance of \$16,872.33, as of February 2014. The Petitioner incorporated this debt into the mortgage in March 2014.

Bell Aliant

[282] The Respondent had an account with Bell Aliant for cell phones for herself, the Petitioner and her oldest daughter. From January 24, 2014 to December 24, 2014, the charges were \$1,267.90 (Exhibit "A" Statement of Property March 10, 2015, Page 6 and 65).

[283] The Petitioner's cell continued in his possession from separation although it appears he allowed their son usage.

[284] The Respondent confiscated the cell phone after seeing what she considered [...] downloads on the phone in May 2015.

[285] The Petitioner refused to pay for his post separation use.

[286] The Cell phone debt in the name of the Respondent was paid off with the remortgage.

[287] This is the Petitioner's phone. The service was cut off in July, reinstated in August and disconnected in December 2014.

[288] The Petitioner shall be responsible for post separation costs of **\$1,267.90** relating to this cell phone whether it was in his or his son's possession.

The Family Dog

[289] The Petitioner asks for custody of the family dog he values at \$11,000.

[290] This is an example of an exaggerated valuation tendered without any verification or connection to fair market value.

[291] The dog is currently with the Respondent. The only evidence I have relating to caring for the dog comes from the Respondent. She has absorbed this responsibility.

[292] The Petitioner acknowledges he is involved in his son's sporting events (which are numerous) and aside from working, he is also a coach and on the road for various tournaments.

[293] If the Respondent is unable to care for the dog, she shall give the Petitioner first option to take the dog off her hands.

[294] The division of assets is as follows:

	Assets	Petitioner	Respondent
Matrimonial home (net)	\$40,799	\$40,799	
Car	\$14,000	\$14,000	
Zodiac	\$500		\$500
Bike	\$5,000		\$5,000
Motorhome	\$7,000		\$7,000
Boat	\$1,250		\$1,250
CRA Refund	\$1,067	\$1,067	
TOTAL	\$69,616	\$55,866	\$13,750
Matrimonial Debts			
Fridge	\$804		\$804
	\$68,812	\$55,866	\$12,946

Equalization	\$34,406	-\$21,460	+\$21,460
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[295] The equalization payment shall be paid in trust to the Respondent's solicitor to ensure proper credit is given to the petitioner for the BMO debt in full and to ensure the Petitioner absorbs the cell phone debt. In return for and simultaneous to the transfer of the equalization payment as adjusted to the Respondent; the Respondent shall sign a quick claim deed to the Petitioner as proposed by the Petitioner's solicitor.

[296] As noted above the cell phone charges are to be entirely borne by the Petitioner. He shall pay an additional \$1,267.90 to the Respondent for his post separation cell phone charges.

[297] The appraisal costs for Mr. Wambolt are a shared expense and adjustment shall be made to account for that cost.

[298] The Respondent is responsible for the BMO credit card balance of approximately \$10,000. If this has been paid out she must reimburse the Petitioner out of her share of the equity.

[299] These responsibilities will be effected before any remaining equity is distributed to either party.

[300] Each party shall provide such documentation in a timely fashion as is necessary to effect this division. They may return to the Court in the event one or other of the parties fails to provide the necessary signatures or documentation as required.

Spousal support

Impute Income and Self Sufficiency

[301] The Petitioner would like the Court to impute income to the Respondent.

[302] While he does not know what income to impute, he also does not have any notion as to what he considers self-sufficient. He suggests the court average her last five years of income.

[303] He suggests the Respondent go on social assistance.

[304] He alleges that the Respondent is not doing enough to become self-sufficient.

[305] He alleges she is hiding income. He offered no proof to support this allegation.

History

[306] The parties co-habited from March 2002, married October 5, 2002 and separated January 28, 2014. The relationship was 11 years and 11 duration.

[307] The Respondent is 40 years of age. The Petitioner is 39 years of age.

[308] The Respondent has some post-secondary education and some continuing education courses including [...] Administration (13 courses) and a [...] Certificate.

[309] The Respondent has, in the past, worked as a nanny, a cleaner, a bar tender and waitress.

[310] She has a high school diploma, worked as a Nanny for a year, enrolled in [...] Program at Nova Scotia Community college, delivered her first child mid-way through that year and obtained a job locally for \$18.00 per hour, until the project finished in 1998.

[311] The Respondent met the Petitioner in 1998 when her oldest child was 2 and ½ years old.

[312] They co-habited in March and married in October 2002.

[313] During her marriage, she worked as a waitress, and then at a call centre while the Petitioner worked locally as a [...].

[314] The weight of evidence suggests the Respondent did most of the house work and child care and the Petitioner was the principal financial provider.

[315] The Respondent stayed home on the birth of their child for 9 months. She was on maternity leave for their child, moved with the Petitioner to Alberta and worked again when their child was 10 months old.

[316] They purchased a home there.

[317] The Respondent worked in office administration and then obtained a good paying job at [...].

[318] She began working for [...] in November 2006 and left that job when the Petitioner wished to return to Nova Scotia.

[319] They moved back to Port Hawkesbury in 2010.

[320] The Petitioner moved first and the Respondent followed in November, 2010 after she made the Alberta home ready for sale.

[321] The Petitioner wanted to relocate because the relationship was in trouble. He wanted to return to an area in which he felt supported, should the relationship terminate.

[322] The Respondent reluctantly agreed.

[323] In Nova Scotia she worked from mid-2011 to November 2012 as an administrative assistant.

[324] She returned to work in May 2011 at the [...] project working 4, ten hour days. She continued to be responsible for home and child care.

[325] The Respondent notes that the Petitioner was unwilling to assist in the home or with child care. In a letter he wrote to the Respondent in March of 2014 he admitted as much.

[326] She stopped working in February 2013. She was unable to manage the children, the home and working without what she considered sufficient help from the Petitioner.

[327] She began casual work thereafter and remained at home to care for the children and the home.

[328] Since leaving Alberta, the Respondent has had difficulty obtaining full time work.

[329] Immediately after separation, she obtained some cleaning jobs.

[330] Since then, she has been on EI and been able to obtain part time work only.

[331] Concerned about her employment prospects, the Respondent applied to the Nova Scotia Community College campus in HRM and was accepted to start a program in a [...] Course, beginning September 2015; building on the [...] Administration courses she already completed.

[332] The Petitioner did not consent to the removal of their child to the Halifax area while she completed this course.

[333] Due to the recommendations of the assessor, she agreed to a shared custody arrangement requiring she stay in Port Hawkesbury while operating under a shared custody agreement, at least for the foreseeable future.

[334] There is legitimacy to this decision given during the marriage she was primarily responsible for the care of the children and home care.

[335] The Respondent advises it will be 2017 before she can find an appropriate course space in the Port Hawkesbury site of Nova Scotia Community College.

[336] She will be applying for a [...] program at the Strait Area Campus which when accepted will take her two years to complete. She may have to look at other course content.

[337] She is currently working part time as a waitress. From June to August 20, 2015, she earned \$3,423.83.

[338] The Petitioner admits that the Respondent always earned considerably less than him with the exception of the years they spent in Alberta.

[339] Since they returned to Port Hawkesbury in 2010, he admits the Respondent has not been employed in any permanent full time work.

Effects of Marriage Breakdown

[340] The marriage breakdown has taken a financial toll. The Respondent literally left the home with no resources.

[341] Her living circumstances and finances were very poor for at least the first four months while she remained living in a [...].

[342] Prior to the Order granting her exclusive possession, the Respondent lived in a [...] throughout the first year, including the winter. She stayed with friends and had the children with her while the Petitioner stayed in the matrimonial home.

[343] At separation, the Petitioner immediately changed his account to stop the January pay cheque from being deposited into their joint account. She was immediately without adequate funds to support herself and the children.

[344] Spousal support did not commence until May 2014.

The Petitioner's Conduct

Local Employment Opportunities

[345] Ms. F. was the Petitioner's girlfriend and witness called to support his assertion that work is available in the local area.

[346] Ms. F. is a [...] responsible for hiring at [...].

[347] She advises that there is full time work available in Port Hawkesbury, St. Peters, and Auld's Cove.

[348] Ms. F. has been in relationship with the Petitioner for a year and a half. That would put the beginning of their relationship *around* March 2014 shortly after this couple separated.

[349] Prior to her involvement with the Petitioner, she did not know the Respondent.

[350] Ms. F. at first testified that the Petitioner did not speak negatively to her about the Respondent.

[351] In subsequent testimony, she admits he has, "put her down a few times". Based on what she has heard from the Petitioner, she has formed a very negative opinion of the Respondent.

[352] Ms. F. advises that if the Respondent brought in her job application, she would give it to another person in [...]. She admits she would have an opportunity to speak to the application.

[353] It would be fair to conclude the likelihood of the Respondent being hired by [...] while the Petitioner's girlfriend holds a position of influence is miniscule.

A. M.

[354] The Petitioner subpoenaed Ms. M., the Respondent's current employer to testify.

[355] The Petitioner suggested he wanted Ms. M. to obtain the Respondent's paystubs.

[356] His real purpose was to discredit the Respondent. He wanted her to testify as to the reason she left her previous employment with [...].

[357] Ms. M. is the owner of [...] and the Respondents employer. She is also the cousin to the Petitioner's girlfriend, H.F..

[358] Ms. M. hired the Respondent in May, 2015 as a part time employee.

[359] Ms. M. testified that she has hired a recent employee full time after hiring the Respondent.

[360] The Petitioner sought to elicit from her employer what her husband learned from enquiries he made prior to hiring the Respondent. The witness herself did not make these enquiries.

[361] On cross examination she admitted that the Petitioner spoke very badly about the Respondent before she hired her. She admits he tried to give her information about the Respondent that would work against her being hired.

[362] The Petitioner established nothing of consequence from this witness, as it relates to the issues before the Court, except to support the Respondent's contention that the Petitioner has made it more difficult for her to get meaningful employment in Port Hawkesbury.

[363] The evidence tendered by the Petitioner's witness confirms that the Petitioner spoke to various family and community members in derogatory terms regarding what he believes is the lack of honesty and integrity of the Respondent.

[364] He testified that the Respondent was fired from her employment. He has discussed this with these named individuals as well.

[365] The Record of Employment does not support his allegation.

[366] Rather than obtaining proof of this, he called his girlfriend and the Respondent's current employer as witnesses to say what he believes is generally known in the community.

[367] This cannot help her employment prospects locally.

[368] The Petitioner admitted after considerable questioning that he has discussed with people in the community that he believes the Respondent is a liar (Page 482).

[369] He believes his allegations cannot be classified as rumors because he believes them to be true. When asked if he was spreading rumours, he denied doing this. He did not deny having discussions with people in the community (including her former co-worker) as to what he thinks of his estranged wife (Page 483).

[370] He admits, reluctantly, that he spoke of her in very negative terms as to her personal and professional integrity (see Transcript Page 395, 481 to 483).

[371] These parties live in a small community.

[372] There can be no doubt that this would have a negative effect on her employability.

[373] The Petitioner has made allegations but he has failed to provide reliable proof of the truth of his allegations.

[374] This can have a deleterious effect on her ability to find employment in the area.

[375] Given the history of her earnings, the Respondent will be required to focus more diligently on obtaining full time employment in the area.

[376] Her trips to Halifax with her boyfriend and her attempts to relocate have taken her focus away from employment.

[377] However, her efforts to be accepted in a two year retraining course has potential to assist her in her long term efforts to obtain self-sufficiency.

[378] I find the Respondent to be entitled to support given the history of the marriage, the roles each played and the effect of the breakdown on the Respondent.

[379] This support will be reviewable in three years on application of either party or on a material change in circumstances.

[380] I accept her current declared income as her annual income for 2015.

[381] She will be required to disclose her efforts annually with the provision of her Income Tax Returns on or before June 1st of each year and she shall immediately advise if she is accepted into an alternate retraining program with any institution.

[382] She shall take seriously her obligation to improve her employability and move towards self-sufficiency.

Quantum

[383] I have considered the parties financial income and expenses, the child support payable, the disparity of income the length of the marriage the roles of the parties and other factors noted in the *Divorce Act*.

[384] I have also considered the extent to which the Petitioner went to denigrate the Respondent in the small community. I find he has hampered her ability to re-establish herself.

[385] Her historic role as primary parent reasonably demands she stay close to her son as the parents try to pilot their way through this shared parenting arrangement.

[386] The evidence is heavily weighted in favour of a conclusion that the Petitioner's post separation conduct and the shared parenting plan have negatively impacted the Respondent's ability to retrain and prolonged her dependency.

[387] While the Respondent has submitted suggested guidelines suggesting a larger award I am satisfied that a continuation of the current spousal support award of \$1000 per month will assist the Respondent maintain her household in concert with the monthly child support award of \$908. and such other earnings she can acquire.

[388] Retraining is her best bet at achieving self-sufficiency as soon as possible.

[389] I decline to impute her income based on a five year average at this time because her actual income is far less.

[390] I have considered the unusual number of unproven allegations, the length of time this has taken to resolve given the Petitioner has unreasonably prolonged resolution of the matters and the effect of the shared parenting arrangement on her ability to retrain immediately as she had planned.

[391] Next year the Respondent, once re-established, will be expected to work towards earning an income equivalent to her historical income barring a specific reasonable program of retraining.

[392] Commencing January 2016, the Respondent should be working to increase her income to at least \$20,000 based on a 30-35 hour week either cleaning or child care or other equivalent function as in her past.

[393] If the Respondent is fully engaged in an educational course as described below, that is sufficient to vary the current Order.

[394] Her 2016 income for the next year for the purpose of calculating s. 7 expenses and child support set off will be imputed to be the greater of \$20,000 or what she actually earns.

Medical Coverage for the Respondent

[395] The Petitioner agreed in paragraph 6 the Memorandum of Understanding that the child and the Respondent shall remain on the medical coverage provided by the Petitioner's employment.

[396] The Petitioner shall maintain the Respondent and child on his medical, dental and drug plan available through his employment as long as he is permitted **according to the plan details** until further order of the Court and in particular as long as he is responsible to pay support.

[397] The only caveat to this, is if the employer required the Respondent to be removed upon divorce because of existing policy conditions of coverage, not related to the Petitioner seeking to add another adult.

[398] The Petitioner agrees to reimburse the Respondent for any medical expenses submitted and paid for by the plan within five days of receiving a reimbursement.

[399] He shall provide her and keep her current regarding the information pamphlets and updates.

[400] They shall share, in proportion to their income, the net uninsured costs of their son's medical dental and drug expenses.

[401] Removal of the Respondent shall be sufficient change to trigger a variation application to adjust the spousal support to meet the Respondent's medical needs.

[402] The Petitioner shall provide proof that the Respondent remains covered.

[403] In the event he is unable to continue her coverage for reasons beyond his control, he shall provide immediate notice to her in order to allow her to obtain the necessary coverage and determine whether to make an application to increase spousal support.

Life Insurance

[404] The Petitioner's life insurance names his mother or sister as the trustee of the proceeds in the event of his death.

[405] The Petitioner's employment life insurance is two times his salary to a maximum of \$200,000 with a dependant life spouse rider of \$10,000 and child of \$2,500.

[406] Until he is no longer required to provide child or spousal support, the benefit of these proceeds shall be to secure his ongoing obligations to the Respondent and child.

[407] He shall be required to name the Respondent as beneficiary of the proceeds as long as he is obliged to provide child or spousal support.

[408] He shall provide the Respondent with proof of this designation within thirty days of the date of this Order.

[409] The Respondent may file the Order flowing from this decision, with the Applicant's employer or for privacy sake the parties may agree on a separate order respecting the beneficiary designation.

Credibility

[410] I include these findings to be dealt with on the question of costs.

[411] In weighing credibility, I am conscience of the fact that the Petitioner is self-represented while the Respondent has had counsel throughout.

[412] The Petitioner has admitted to having the advice of counsel at various steps in this proceeding although he indicates he did not have sufficient funds to hire a lawyer.

[413] To prove his assertions regarding the Respondent's employment circumstances, the loss of previous employment, he has offered the evidence of his girlfriend, her cousin and his friends to establish facts that should have been established, if true, by or from those who had knowledge and could testify.

[414] He did not want to bring those people to Court, so he provided the Court with gossip and hearsay evidence to attempt to discredit the credibility of the Respondent.

[415] He provided letters from his friends who assisted him in his move back in the home.

[416] The letter writers were not subject to cross-examination and the deponents did not appear. Their unsworn evidence was not entered with consent of the

Respondent. I do not consider this evidence as reliable. I reject this evidence outright as inadmissible and improper.

[417] The Petitioner has made many exaggerated allegations throughout course of these proceedings. Many of these allegations remain unproven.

[418] He advises the Respondent stole his cell phone (Transcript Page 393). He gave his cell phone to his son, and she removed it from her son, when she found graphic material she considered unsuitable for her son to see.

[419] He admits that for the four year duration of their stay in the home, since 2011, he has not done any painting in the home or filled any nail holes left by pictures. The Respondent painted the bedrooms.

[420] The Petitioner denied that he wanted to move from Calgary where the Respondent and he had solid employment. He was evasive about his reasons. When pressed he admitted he was concerned about their relationship and wanted to move home.

[421] He claimed the Respondent stole money from the joint account leaving him without money. He admits however, that she left some money in the account and it was he who diverted his pay to his personal account immediately after separation.

[422] The Petitioner remained in the home at the time and paid the mortgage from his personal account. So from January 2014, onward, he the principle income earner had access to his entire pay.

[423] At times, he denies closing their bank account; although, he says he signed off on the account. He equivocates rather than testifying in a forthright manner (Page 469).

[424] The Petitioner alleged there was lots of money missing (Page 402) although, this was a joint account he advised that the bank would not give him a copy of the details. No proof was offered and no one subpoenaed.

[425] He denies promising to keep the Respondent covered under his medical contrary to the written memorandum which he endorsed in Court. He then tempers

his statements by indicating that as long as he is permitted, he will keep her under his plan (Page 406 and 440).

[426] He does advise that he wants to remove her to add another, should his current relationship become more permanent.

[427] He sought to have the [car] classified as a matrimonial asset.

[428] He advises the Respondent was fired from her employer. Her Record of Employment did not confirm this. It listed shortage of work and end of season (Page 476).

[429] The Petitioner did not readily make admissions on matters which were straight forward, creating an unnecessary need for proof of these facts.

[430] He did not readily admit, that the Respondent was admitted into Nova Scotia Community College without proof of registration (Page 478 to 9, line 17 to 18).

[431] He makes a baseless claim that she has thousands of dollars' worth of jewelry.

[432] He did not admit her [...] courses.

[433] He valued his dog at \$11,000 without any verification (Page 36).

[434] Should the parties wish to address costs they must file their submissions on costs within two weeks of the date of this decisions.

[435] Should disbursements be claimed given the Petitioner was self-represented and the Respondent was issued a legal aid certificate proof of disbursements must be submitted.

[436] The Respondent's counsel shall prepare the order.

[437] Included in the order shall be a clause requiring each party to indemnify the other from any responsibility for the specific liabilities associated with ownership of assets and responsibilities for debts in each person's name.

[438] A date will be set for appearance before the court for signing the order and finalizing all documentation.

[439] I am satisfied on the on the evidence that the jurisdictional elements of the divorce petition have been proven.

[440] I grant the divorce pursuant s. 8(2)(a) of the *Divorce Act*.

Justice Legere Sers

SCHEDULE “A”

MEMORANDUM OF UNDERSTANDING

Custody and Access

- 1 The Petitioner, M. M. and the Respondent, A. (M.) M. shall have shared custody of the child A. E. M., born August [...], 2006.
- 2
- 3 Commencing August 16, 2015 at 6:00 p.m., the child shall reside with the Petitioner until August 23, 2015 at 6:00 p.m., at which time the child shall reside with the Respondent on a week on, week off basis. Pick up and return time shall be 6:00 p.m.
- 4 The Petitioner and the Respondent shall share in major decisions as they relate to the health, education and religious issues regarding the child.
- 5 Both the Petitioner and the Respondent shall have access to medical and educational reports and records as they relate to the child.
- 6 Both the Petitioner and the Respondent will whenever possible in the case of

a medical emergency, make joint medical decisions as they relate to the child.

- 7 That the child and the Respondent shall remain on the medical coverage provided by the Petitioner's employment.

Holiday Access

- 8 That on September 12, 2015, the child will be with the Petitioner overnight to participate in the annual golf tournament. This event shall be attended by the child in the Petitioner's care each year.
- 9 Commencing December 24, 2015, the child will be in the care of the Respondent from 9:00 a.m. Christmas Eve to 9:00 a.m. on December 25, 2015, Christmas Day, at which time the child will be in the care of the Petitioner until December 26, 2015, returning to the care of the Respondent at 6:00 p.m.
- 10 This agreement regarding Christmas shall alternate each year unless varied by agreement of the parties.
- 11 Commencing March 2016 (March Break) the Petitioner and the Respondent shall share equally the March Break period with times and dates to be agreed upon between the parties.
- 12 The child shall be in the care of the Petitioner on Father's Day from 10:00 a.m. to 6:00 p.m.
- 13 The child shall be in the care of the Respondent on Mother's Day from 10:00 a.m. to 6:00 p.m.
- 14 That on the Birthdays of both the Petitioner (July [...]) and the Respondent (December [...]), the child will be in the care of the respective parent from 10:00 a.m. to 6:00 p.m.
- 15 That on June [...] of each year, the Petitioner shall have access from 6:00 p.m. to 7:00 p.m. to attend a Memorial service for the Petitioner's father.

Summer Access

- 16 That commencing July 24, 2016, to August 7, 2016 at 6:00 p.m. the child shall be in the care of the Petitioner for summer vacation.
- 17 The commencing August 7, 2016 at 6:00 p.m. to August 21, 2016 at 6:00 p.m. the child shall be in the care of the respondent for summer vacation.
- 18 That further periods of vacation access will be discussed and agreed upon prior to June 30th of each year.

Child's Birthday

- 19 The on the child's birthday and whenever periods of access coincide, the child shall remain in the care of the access parent. The affected parent will celebrate the child's birthday one week prior or one week after the child's birthday.
- 20 **That the parties agree to use respectful language when communicating about periods of access and will not make derogatory or offensive remarks of the other parent in the present of the child.**