

IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Myatt v. Myatt, 2004 NSSC 119

Date: 20040702
Docket: SATD-017103
Registry: Antigonish

Between:

Marlene Ann Myatt

Petitioner

v.

Blaise John Noel Myatt

Respondent

DECISION

Judge: The Honourable Justice Hilroy S. Nathanson

Heard: May 4 and 5, 2004, at Pictou, Nova Scotia

Counsel: Marlene A. Myatt, on her own behalf
Blaise J. N. Myatt, on his own behalf

By the Court:

[1] In the trial of this divorce action, the parties contested almost everything. Neither of the parties was represented by counsel. Some of the evidence was confusing or incomplete; much of it was unsatisfactory.

[2] In a Consent Interim Order dated June 13, 2003, Justice MacLellan ordered:

(A) That the respondent Blaise John Noel Myatt shall file with the Court and serve the petitioner Marlene Ann Myatt the answer to the Petition for Divorce, a copy of his Statement of Property, Statement of Financial Information, three previous years of income tax returns, plus Notice of Assessments on or before July 31, 2003;

The husband did not file an Answer to the wife's Petition, nor the other documentation, although in January of the following year he did file a list of his monthly expenses, lists of household effects and income tax returns for 2000 and 2001. He filed a copy of his 2003 income tax return shortly before trial.

[3] The parties were married on October 20, 1984. They had two children, namely: Blake John Patrick, born April 14, 1988, and Allison Nicole, born September 11,

1995. The parties separated on June 30, 2001, when she left the matrimonial home with their daughter. He continued to reside there with their son.

[4] The husband was virtually the sole shareholder of J. Alcide Myatt Excavating and Landscaping Limited. The wife appears to have been the company's bookkeeper. She also looked after the family's money and banking. He is now employed by A.C.L. Construction Limited as a heavy equipment operator. The wife is employed by Jazz Air as an accounts payable coordinator.

ISSUE #1: DIVORCE

[5] The Court heard evidence establishing jurisdiction, the grounds alleged in the Petition, and all other matters required to be proven by the **Divorce Act** (Canada). The Court is satisfied that there is no possibility of reconciliation. Therefore, the Petition for Divorce will be granted.

ISSUE #2: CUSTODY

[6] The parties have informally agreed out of court that the husband will have custody of their son and the wife will have custody of their daughter. This informal arrangement was given effect to some time ago, so that the son has been residing with his father and the daughter has been residing with her mother. The parties wish this arrangement to continue and be formalized. Therefore, the Court will order that the husband will have custody of the son, Blake John Patrick, and the wife will have custody of the daughter, Allison Nicole.

ISSUE #3: ACCESS

[7] The son apparently comes and goes as he pleases, and the parties are content that he should continue to do so. However, the wife asks the Court to order that the son reside with her when the husband must be away from home overnight, rather than be allowed to fall back on his own resources while alone. The wife's request is reasonable but, in view of the fact that the son is now 16 years old and substantially independent, the Court will limit its order to directing the husband to urge the son to move in with his mother on those occasions when the husband must be absent overnight from his home.

[8] The husband's access to the daughter was dealt with in the Consent Interim Order signed by Justice MacLellan, as follows:

(A) (3) That the respondent Blaise John Noel Myatt shall have access to Allison Nicole Myatt commencing this Friday, June 13, 2003 at 7 o'clock to be picked up by the respondent until Sunday, June 15, 2003 at 6 o'clock to be picked up by the petitioner and to continue every second weekend thereafter, and any other access arrangements as agreed to between the parties. The respondent Blaise John Noel Myatt shall not consume alcohol while exercising access with Allison Nicole Myatt.

[9] The wife says that this provision reflects what she requested, but she made a mistake. The daughter has a friend with whom she associates on weekends, and the second weekends are the ones they are able to spend time together. Therefore, the wife requests that the husband's access be set for every first and third weekend. This is a reasonable request, and will be granted.

[10] In addition, upon any occasion when the husband is unable to exercise his right of access, where it is practicable he shall give 24 hours advance notice thereof to the wife.

ISSUE #4: ASSETS

[11] Following are the possible matrimonial assets as disclosed in evidence:

- (1) Matrimonial home
- (2) Registered Retirement Savings Plans
- (3) Land at Hazel Hill
- (4) Cash
- (5) Furnishings

[12] Each of these items will be discussed in sequence.

(1) Matrimonial Home:

[13] Upon agreement of the parties prior to trial, the matrimonial home was sold and the net proceeds of \$40,000 was being held upon interest in trust by Wayne J. MacMillan, Esq., Barrister and Solicitor, pending the outcome of the present divorce action. The wife applied at trial for an order directing that the sum of \$1,250 be paid out of the trust funds to pay the accumulated indebtedness of fees and charges of the

daycare school being attended by the daughter, Allison Nicole. Subsequent to trial, the Court issued an Interlocutory Order giving effect to that application. Thus, the net amount being held in trust is \$38,750 (plus accumulated interest).

(2) Registered Retirement Savings Plans:

[14] The wife disclosed that she owned three R.R.S.P.s as of the date of separation, the values of which on that date were as follows:

CI	\$6,13 6
BMO	\$8,95 8
Franklin	<u>\$18,53</u> <u>6</u>
Total	\$33,63 0

[15] The wife testified that she redeemed two amounts from the CI R.R.S.P., namely: \$3,000 on October 23, 2001; and \$3,200 on April 3, 2002. She said that she

needed the money to help pay her (and her daughter's) living expenses because her necessary living expenses showed a deficit every month.

[16] The husband disclosed that he owned three R.R.S.P.s as of the date of separation. However, the values given in evidence for two of them (i.e. AIM and CI) were as of December 31, 2000 and December 31, 2001. Therefore, it was necessary to estimate the values as of the date of separation. The three R.R.S.P.s are enumerated and valued as follows:

AIM	\$15,85
	1
CI	\$23,00
	7
BMO	<u>\$17,19</u>
	<u>3</u>
Total	\$56,05
	1

The parties did not disclose the values of their R.R.S.P.s as of the date of trial.

(3) Land at Hazel Hill:

[17] The parties own 32 acres more or less at Hazel Hill, Guysborough County, the title of which is registered in both their names. The only evidence of value is that the property is assessed at approximately \$9,000. The husband testified that he has been paying the taxes. The wife claims one-half of the property. The husband wants to gift it to their two children. The property will be sold in the manner set out hereinafter in Issue #11: Disposal of Assets and the net proceeds divided between the parties as described hereinafter in Issue #6: Division of Assets.

(4) Cash:

[18] The husband testified that the wife, when she left the matrimonial home, took with her a large sum of cash, between \$20,000 and \$25,000. It is not clear whether the cash belonged to the husband or to the husband's company in that he testified that about \$15,000 was the proceeds from two demolition jobs, approximately \$8,000 was

the proceeds of the sale of a building to the Chedabucto Clinic, and he has four receipts for scrap totalling approximately \$1,600. The money was intentionally kept out of the bank and was hidden. House cleaners found \$1,000 cash. He did not report the missing money to the police. The wife testified that the husband was in the habit of keeping small amounts of cash in the house, but there was none on hand on the date of their separation, and she took none with her when she left the matrimonial home.

[19] The husband did not offer any documentary or confirmatory evidence as to the sources of the money, the amount, its existence on the date of separation, or that the wife took it when she left the matrimonial home. The burden of proof on these points is on the husband, and I hold that he has not carried it.

(5) Furnishings:

[20] At trial, the wife filed a list of 39 items in her possession which she valued at \$4,165; she said that the husband valued 15 of those items at \$9,080. The husband submitted a list of some 37 items allegedly in the wife's possession to which he attributed a value of between \$10,640 and \$10,700.

[21] The wife also submitted a list of 52 items which she alleged were in the husband's possession. She attributed a value to those items of \$39,110. She said that the husband had valued 12 of those items at \$4,505. The husband also submitted a list of 17 items in his possession to which he attributed a value of \$4,950.

[22] The husband also submitted a list of 17 items in storage at the property of the wife's parents to which he attributed a total value of \$1,240. The wife testified that he could have had free access to any of the items on this last list at any time by contacting her parents, but he said that he did not get along with them.

[23] The husband also submitted a list of miscellaneous assets, together with his comments, as follows:

- Digital Camera and Printer . . . belongs to the husband's company
- Large Shed \$ 2,000.00
- Large brick barbeque no monetary value. The wife said that she would like to have this item.
- Propane barbeque \$ 75.00
- Picnic table no monetary value
- All terrain vehicle belongs to son, Blake
- Car \$ 500.00, registered to wife

— Travel Trailer	\$ 34,000.00, payments all made by the husband
— Satellite Dish & Receiver . . .	no value
— Scroll Saw	\$ 200.00, in storage
— Sander Belt	\$ 150.00, in storage
— Storage Building	\$10,000.00 to be paid to husband's company from trust proceeds sale of matrimonial home

[24] None of these items were valued independently by a third party. The valuations by the parties are not in agreement, and there is no master list of all the furnishings. It is impossible to ascertain with any degree of certainty what are all the assets and their fair values.

[25] I propose to discuss the specific items on the husband's list, and then deal with the remaining items in the various lists.

[26] In the absence of evidence to the contrary, I find that the digital camera and printer are owned by the husband's company, and are not matrimonial property.

[27] The large shed is probably attached to the land where it is located and, therefore, should not be valued separately.

[28] The large brick barbeque is valued by the wife at \$900, and she would like to have it. The husband will make it available to be picked up by her at her convenience. She must pay him his proper share.

[29] The propane barbeque is matrimonial property. It must be sold.

[30] The husband testified that the picnic table was a gift from his father, and he has returned it to him. The wife does not object. It is not matrimonial property.

[31] The parties disagree as to whether the all terrain vehicle (ATV) is owned by the son, Blake, as asserted by the husband, or by the husband, as asserted by the wife. Since monthly payments regarding this item are included in a document on file entitled "Blaise's financial statement", I hold that it is matrimonial property. Its value is approximately \$8,000. It must be sold.

[32] I understand that the value of the car has been written-off.

[33] The travel trailer is registered in the names of both parties. The husband testified that the balance owing at separation was \$26,232, while the present balance owing is \$18,935. He wants credit for the payments which he has been making subsequent to separation. Since he was the sole user during that period, she is not responsible for those payments or for the costs of operation. This is matrimonial property, and should be sold at an early date to pay off the balance of indebtedness owing. It is my impression that there will not be a surplus after the balance is paid.

[34] In the absence of evidence to the contrary, the satellite dish and receiver has no value.

[35] The scroll saw and sander belt are matrimonial assets, and are among items in storage. They will be sold.

[36] The storage building was sold with the matrimonial home which was registered in the names of both parties, requiring the husband to sign the deed. He must be deemed to have agreed to the sale of both together and, therefore, he is not entitled to any compensatory amount out of the proceeds of sale held in trust.

[37] There are some additional items concerning which there are disputes.

[38] The first of these is a quantity of insulation. The wife testified that this is worth \$4,000, and was sold by the husband. In the absence to evidence to the contrary, it is matrimonial property. He must pay her a proper share.

[39] A \$3,000 credit at Monastery Furniture. The wife testified that this was obtained by the husband in exchange for a load of fill. In the absence of evidence to the contrary, it is matrimonial property. He must pay her a proper share.

[40] The husband testified that Blake's bunk bed was purchased with his company's money. In the absence of evidence to the contrary, this is not matrimonial property.

[41] A Husky dog. The wife testified that the husband dropped it off at her home, and she gave it away to someone who would care for it. She received no money. I hold that this item is not matrimonial property.

[42] Guns. The husband requested that these (there is nothing in evidence concerning the makes, models and values) be excluded from matrimonial property and

be given to the son when the R.C.M.P. gives approval for registration in the son's name. The wife agreed to this. This may not have been a wise decision. In my experience, when one party requests that an item be excluded from the pool of matrimonial assets, the purpose is often to retain some control over the asset, the division or the other party. In this particular case, because the husband has custody of the son, who resides with him, the husband may also retain an ability to use the guns for his own enjoyment. In any event, the agreement between the husband and the wife will be confirmed.

[43] A computer and printer appear to be the property of the husband's company. They are not matrimonial property.

[44] Except where a specific item has been explicitly dealt with previously in this Decision, each party will retain those matrimonial assets which are presently in his or her possession. All other matrimonial assets, including all items in storage at the home of the wife's parents or elsewhere, but excluding specific items given to specific persons, shall be sold as directed in Issue #11: Disposal of Assets.

[45] To summarize, the furnishings will be dealt with as follows:

To be sold:

All items in storage
Propane barbeque
ATV
Travel Trailer

He will pay her for her share:

Insulation	\$2,000
Credit at Monastery Furniture	<u>\$1,500</u>
Total	\$3,500

She will pay him for his share:

Large brick barbeque \$450

ISSUE #6: DEBTS

[46] The husband claims various monies owing to him by the wife.

[47] The husband claims \$847, being the balance owing on the wife's Scotia Bank Visa card, which he paid off. She testified that the money went into his company. Since she forthrightly accepts responsibility for other indebtednesses I accept her refusal to accept responsibility with respect to this debt. No amount is owing by her to him with respect to this item.

[48] The husband claims the amount of \$900, being the balance which she alleges was owing at separation to Sears Canada with respect to an account in his name. The wife accepts responsibility, but wishes to confirm the exact amount of the balance owing. The records of the Sears Company reveals that the amount owing on the date of separation was \$1,082.91. This appears to be a matrimonial debt for which both parties are responsible.

[49] The husband claims \$400 as the value of four snow tires which he purchased for her after separation. She accepts responsibility but testified that he removed the tires from his own car, although they were fairly new. I hold that she owes him an amount which I set at \$300.

[50] The husband claims the amount of \$60 which he advanced to her for a haircut. She acknowledges this debt.

[51] The husband claims \$66, being the amount of dividends paid to her by the Guysborough Co-op. She acknowledges this debt and that she owes him one-half of the amount.

[52] The husband claims \$200 for property taxes for the year 2000 - 2003 which he paid, and approximately \$1,100 for house insurance for 1.5 years. Since he occupied the matrimonial home after separation, any indebtedness incurred for taxes and insurance ought to be paid by him in lieu of paying some rent to the wife. Any indebtedness for these items incurred prior to the date of separation are matrimonial debts and are the responsibility of both parties. In the absence of evidence as to the amount actually incurred to separation, I arbitrarily set the amount at \$750. The wife will reimburse him for her share.

[53] The husband says that about a month before the parties separated the wife wrote a cheque drawn upon the husband's company in order to make a Mastercard payment of \$1,000; but the subsequent Mastercard statement showed a payment of only \$200.

Therefore, she owes him \$800. Assuming these allegations to be true, the money would be owing to the husband's company, not to him. He cannot claim it personally.

[54] The husband claims the proceeds of a number of his company's cheques totalling \$4,080 which were issued prior to separation. The wife testified that the monies went to pay household bills and, therefore, were used by both of them. I find that this amount is not a matrimonial debt nor a debt of any kind.

[55] The husband complains that the wife did not contribute to the monthly payments which he made for the ATV, bought for the use of their son, nor for the travel trailer, and that she should reimburse him for her share. Any amount owing for these items as of the date of separation would be a matrimonial debt, but the husband has not stated any amount in evidence. And it may be noted that since this is a matrimonial debt, it tends to confirm that the assets (that is, the ATV and the travel trailer) are matrimonial assets owned by both of them.

[56] In summary, the wife will pay to the husband the following:

Sears	½ of \$1,082 =	\$	541
Snow tires		\$	300

Haircut	\$	60
Co-op dividend: 1/2 of \$66 =	\$	33
Taxes/Insurance: ... 1/2 of \$750 =	\$	<u>375</u>
Total		\$1,309

ISSUE #7: DIVISION OF ASSETS

[57] Section 13 of the **Matrimonial Property Act**, R.S.N.S. 1989, c. 275, authorizes the court, where it is satisfied upon taking into account the factors prescribed therein that an equal division of matrimonial assets would be unfair or unconscionable, to divide matrimonial assets unequally or to include non-matrimonial assets in the division. After considering those factors as well as the submissions of the parties, I find no evidence that it would be unfair or unconscionable to divide the matrimonial assets equally.

[58] The liquid matrimonial assets, and their values, may be summarized as follows:

Matrimonial home	\$	
		38,75
		0

R.R.S.P.s	\$ <u>89,68</u> 1
Total	\$128,43 1

[59] Of these assets, the wife is deemed to hold one-half of the proceeds of sale held in trust ($\frac{1}{2} \times \$38,750 = \$19,375$) and the R.R.S.P.s registered in her name (\$33,630) for a total of \$53,005, while the husband is deemed to hold the other half share of the proceeds of sale (\$19,375) and the R.R.S.P.s registered in his name (\$56,051) for a total of \$75,426. In order that these assets be divided equally between the parties, it is necessary to calculate a balancing figure of \$11,210 which the husband must pay to the wife so that each of them will then hold assets worth \$64,216.

[60] This balancing figure should then be adjusted to account for amounts owing by one party to the other, as follows: the balancing figure will be increased by \$3,050, being the total set out in paragraph 45 (i.e. \$3,500 minus \$450), and will be reduced by \$1,309, being the amount set out in paragraph 56, to yield a net balancing figure of \$12,951.

[61] The amount of \$12,951 will be paid out of his share (\$19,375) of the proceeds of sale of the matrimonial home being held in trust.

[62] The non-liquid matrimonial assets are enumerated as follows:

Land at Hazel Hill

Furnishings

With the exception of those furnishings which are held to be owned by a specific party, these non-liquid assets will be sold as hereinafter directed in Issue #11: Disposal of Assets, and the net proceeds will be divided equally between the parties as ordered in this Issue #7: Division of Assets.

ISSUE #8: INCOME AND EXPENSES

[63] The husband's income tax return for the year 2003 discloses employment income of \$48,760 and two deductions (CPP - \$1,801 and EI - \$819) totalling \$2,620. He testified that he expects that his income in 2004 will be lower. The wife's 2003 income tax return discloses employment income of \$32,809, taxable capital gains of

\$209 and R.R.S.P. income of \$2,701. It also discloses two deductions (CPP - \$1,440 and EI - \$687) totalling \$2,127. I exclude all deductions from income. I also exclude the R.R.S.P. income because it resulted from the wife's need to cover her monthly deficit by cashing portions of an R.R.S.P. at times when the husband was not paying spousal support, and because it is not true recurring income.

[64] Despite being required to file a statement of property and a statement of financial information by Order of Justice MacLellan dated June 13, 2003, the husband has not filed such statements. However, I have found in the court file an undated document entitled "Blaise's financial statement", signed by the husband but not sworn, showing his wages at \$3,600 per month and his monthly expenses totalling \$3,503, for a surplus of \$97 per month.

[65] The enumerated expenses include the following:

X-mas, birthday, events . . .	\$200
Dental - Blake's braces . . .	\$100
Daycare	\$200

[66] There is no evidence as to the particulars of “X-mas, birthday, events”, but the amount of \$200 appears to be excessive in the circumstances. The wife says that the husband has not been contributing to the cost of Blake’s braces, and that he has also not been paying any amount towards Allison’s daycare. Therefore, the husband’s expenses should be deemed to be reduced by an amount which I set at \$400.

[67] Finally, when the travel trailer is sold as ordered herein and the proceeds used to pay the balance owing upon it, the husband’s expenses will be reduced by a further \$364 per month.

[68] At this point, I set his income at \$46,130, and his living expenses at \$32,868, for a surplus of \$13,262 per year or \$1,105 per month.

[69] The wife’s statement of financial information discloses monthly expenses totalling \$3,313.04, for a deficit of \$1,243.10/month. Her itemized list of expenditures does not include any items which appear to be inordinately high.

[70] I set the wife’s income at \$30,891 per year and her expenses at \$39,756 per year, for a deficit of \$8,865 per year or \$738 per month.

ISSUE #9: CHILD SUPPORT

[71] The Interim Order of Justice MacLellan includes two provisions with respect to child support:

- (A) (1) That the respondent Blaise John Noel Myatt shall pay child support to the petitioner Marlene Ann Myatt for the child Allison Nicole Myatt, in the amount of \$296.00 per month and the petitioner Marlene Ann Myatt shall pay child support to the respondent Blaise John Noel Myatt for the child Blake John Patrick Myatt, in the amount of \$260.00 per month, the difference being the respondent Blaise John Noel Myatt shall pay child support to the petitioner Marlene Ann Myatt in the amount of \$36.00 per month commencing June 30th, 2003 and the 30th day of each month thereafter unless varied by a Court with competent jurisdiction;
- (B) (2) That in addition to the child support the respondent Blaise John Noel Myatt shall pay to petitioner Marlene Ann Myatt for child care costs for the child Allison Nicole Myatt the amount of \$160.00 per month for all non-summer months, beginning June 2003 and for July and August for amount of \$240.00 until varied by a Court with competent jurisdiction;

[72] The amounts stated for each of the children were based upon incomes earned, and acknowledged, at the time. The incomes have changed, and so must the amounts payable for the children.

[73] The **Federal Child Support Guidelines** are mandatory. Those **Guidelines** mandate that, based upon the husband's income, he is required to pay \$383 per month for the support of the daughter and, based upon the income of the wife, she is required to pay \$266 for the support of the son. Offsetting one amount against the other, the difference is \$117, being the amount which the husband shall pay to the wife commencing on the last day of the month following the date of this decision and continuing on the last day of each and every month thereafter unless or until varied by a court of competent jurisdiction.

[74] Section 7 of the **Guidelines** allows the Court to order that an additional amount of child support be paid to cover all or a portion of special or extraordinary expenses for a child.

[75] The parties previously agreed informally out of court to pay for certain special services for the children in proportion to their respective gross incomes. According

to this arrangement, the husband would pay 54% of the expense and the wife would pay 46%. However, their incomes are now higher; the husband's income is substantially higher. The proportionate share that each will pay in future must be adjusted accordingly. From this time forward, the husband will pay 59%, and the wife will pay 41%.

[76] These payments will apply to two of the following four special services to which the parties previously agreed: the daughter's daycare; the son's hockey equipment and fees; the daughter's study of violin; and Blake's braces. They will also apply to a fifth item, health care coverage.

[77] The parties previously agreed that the daycare costs for the daughter would be \$160 per month for all non-summer months and \$240 per month for July and August. This calculates and averages out to \$174 per month, of which the husband is responsible for paying \$103 and the wife is responsible for paying \$71. In the past, the husband has failed to make timely payments for this daycare expense. Therefore, from this time forward, he will pay the amount of \$103 in addition to the amount of spousal support and regular child support which he is required to pay. The wife will add her

\$71 to the amount which the husband will pay, and will be responsible for paying the total to the daycare facility.

[78] The son may be involved in a high school hockey program, and the daughter may take violin lessons. The expenditures for these two items are uncertain and varying. It seems to me in the best interests of the parties that contact between them be minimized. Therefore, on the theory that there will be no need to meet and negotiate if each party takes responsibility for the relevant expenses of the child of whom he or she has custody and, further, that one expense will more or less offset the expense of the other, the father will be responsible for the son's hockey expense while the mother will be responsible for the daughter's violin expense, if any.

[79] Blake's braces — the wife testified that each of them paid \$500 on account for a total expenditure of \$4,200, but he has not paid anything since then. She was forced to pay \$124 monthly plus the cost of travel, expecting to be reimbursed \$62 by him. Therefore, there must be added to each monthly payment of spousal support and child support an amount which I set at \$70 to reimburse the wife for his share of this special expenditure.

[80] In addition to those four special items, the wife wants the husband to pay for the cost of health coverage which, up to this time, she has been managing to pay. She finds it difficult to carry this burden. She believes that, if both of them purchased coverage for the children, it would not be open to claim against both coverages; therefore, a single coverage would be better. There must be added to the monthly payments of spousal support and child support, the sum of \$62 as his contribution to the cost of medical care coverage for the two children.

[81] In summary, the husband will pay each month for the children’s support:

Guideline amount	\$ 117
Daycare	\$ 103
Blake’s braces	\$ 70
Health coverage	<u>\$ 62</u>
Total	\$ 352

ISSUE #10: SPOUSAL SUPPORT

[82] I find that the wife is in need of support. I find that the husband can afford to pay his own living expenses, child support and spousal support. After considering the factors set out in s. 15.2(4) of the **Divorce Act** (Canada), and with the objectives

enumerated in ss. (6) in mind, this Court directs that the husband will pay to the wife the amount of \$700 per month, which equals \$8,400 per year. Such monthly payments will commence on the last day of the month after the date of this Decision and will continue on the last day of each and every month thereafter unless or until varied.

[83] In accordance with s. 15.2(1) of the **Divorce Act** (Canada), this Court thinks it reasonable that the husband pay to the wife a lump sum for spousal support from the date of separation to the date of trial, which is set at the amount of \$12,600. This reduced figure takes into account that the husband's earnings during some of the period were probably lower than they now are and, in addition, that the husband has paid some amounts on account of child support.

ISSUE #11: DISPOSAL OF ASSETS

[84] Within 30 days from the date of this Decision the parties shall agree upon the name or names of a person or persons to sell any of the items which were ordered herein to be sold. Without restricting the generality of the foregoing, these include the land at Hazel Hill, the furnishings in storage, and items specifically directed to be sold. If the parties are unable to agree within that time, either side may apply informally to

the Prothonotary at Antigonish to name such a person or persons, and that decision shall be final and binding upon the parties. The person or persons named shall move forthwith to sell to persons other than the parties or either of them, by public sale or otherwise in such manner as the person or persons reasonably may consider is likely, after any advertisement considered necessary to yield the best result for both parties. After sale(s), such person or persons will, after reimbursing appropriate fees and expenses previously agreed upon, divide the net proceeds into two equal parts, and will then pay one of such parts to the husband and the other of such parts for the wife to the Maintenance Enforcement Officer described in the next section

DISPOSITION

[85] The divorce is granted. The wife will submit a form of Divorce Judgment and Corollary Relief Judgment incorporating the findings of the Court herein. If any minor detail has been overlooked in the Decision, it may be spoken to at that time.

[86] The husband will pay to the Maintenance Enforcement Officer at 196 Riverside Parkway, New Glasgow, Nova Scotia, B2H 5X1, the following amounts at the following times:

- (A) (A) a lump sum of \$12,951, being the balancing figure of \$11,210 minus the amount of \$1,309 which the wife was ordered to pay to the husband in Issue #6: Debts, plus the net sum of \$3,050 in full payment of her share of the value of furnishings set forth in paragraph 45 of this Decision; and
- (B) (B) a lump sum of \$12,600 for past spousal support; and
- (C) a sum of \$700 for costs as hereinafter set forth; and
- (C) (D) a total sum of \$1,052 for child support (\$352) and spousal support (\$700), on the last day of each and every month after the date of this Decision, unless or until varied or terminated by this or any other Court of competent jurisdiction;

[87] The trustee of the proceeds of sale of the matrimonial home is directed to pay for the wife to the Maintenance Enforcement Officer the whole of the funds being held in trust for the parties, in payment of the wife's share thereof (\$19,375), the net balancing figure of \$12,951 and a portion (\$6,424) of the amounts owing by the husband for past spousal support (\$12,600) and costs (\$700).

[88] This will leave a remainder owing by the husband to the wife. The husband shall pay the remainder of \$6,876 in monthly installments of \$100 each payable on the last day of the month following this Decision and continuing on the same day of every month thereafter until paid in full.

[89] If any interest has accumulated in the trust account, the trustee is directed to pay the amount to the Maintenance Enforcement Officer as a credit against the remainder of \$6,876 payable by the husband.

[90] After reviewing the testimony of the parties and all of the evidence on file, I have come to the conclusion that the husband's actions have delayed the divorce process. This has increased the wife's expenses of trial. Moreover, she has been substantially successful in her claims. I consider it appropriate in the circumstances that he should pay to the wife some costs of the action, which amount is set at \$700.

J.