

IN THE SUPREME COURT OF NOVA SCOTIA  
(FAMILY DIVISION)

**Citation:** Cramm v. Mason-Cramm, 2009 NSSC 339

**Date:** 20091119

**Docket:** 1201-61929(SFHD-54086)

**Registry:** Halifax

**Between:**

Dennis Edward Cramm

Applicant

v.

Marcienne Mason-Cramm

Respondent

**Judge:**

The Honourable Justice Leslie J. Dellapinna

**Heard:**

November 10, 2009, in Halifax, Nova Scotia

**Counsel:**

Judith Schoen counsel for Dennis Cramm

Peter Crowther counsel for Marcienne Mason-Cramm

**By the Court:**

[1] Dennis Cramm has applied pursuant to Section 17 of the *Divorce Act* to terminate the spousal support provisions of the Corollary Relief Judgement dated December 5, 2008 and also to reduce the amount of child support that he currently pays to his former wife. Ms. Mason-Cramm opposes the application.

**BACKGROUND**

[2] By way of background, the parties were married on November 10, 1983 and separated in July 2007. Together they have four children. They were divorced on December 8, 2008 after a contested trial which took place over three days in September 2008. At that time the division of assets and debts, child support and spousal support were at issue. I reserved my decision and released a written decision on October 27, 2008. Among other things I concluded that only the youngest child, B.C., who was then 17, was a “child of the marriage” as defined by the *Divorce Act*.

[3] Mr. Cramm is an engineer by profession. I concluded that his income as of October 2008 was \$130,898.96 comprised of employment income (net of professional fees) of \$116,048.96 and a veteran’s pension which he receives on a tax free basis which I grossed up to a pre-tax figure of \$14,850.00 per year.

[4] Ms. Mason-Cramm is a registered nurse. At the time of the trial she was not working in a hospital setting because she found the nature of the work and the rotating shifts too stressful. She took a course in diabetic foot care and said that she was attempting to build up a clientele in that field. At the time of the trial she had 25 clients and estimated that once her client list grew to 200 she would be earning enough to be self-sufficient. Ms. Mason-Cramm was at that time earning only \$200.00 per month from her fledgling business.

[5] I ordered Mr. Cramm to pay Ms. Mason -Cramm child support in the sum of \$1,068.00 per month plus 98% of any portion of the cost of B.C.’s eyeglasses not covered by Mr. Cramm’s medical plan.

[6] With respect to spousal support I said the following:

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

The Petitioner is to make diligent efforts to attain self-sufficiency as soon as reasonably possible. If her optimism regarding her foot care business is well founded the Court expects that within one year she will more fully develop her client list. Failing that I would expect her to seek out and obtain a full-time nursing position. It will therefore also be ordered that the quantum of spousal support will be reviewed by me in approximately one year's time with a view at that time to reducing if not terminating the Petitioner's spousal support entitlement.”

[7] Rather than seek a review Mr. Cramm has applied for a variation. Therefore this decision is pursuant to section 17 as opposed to section 15.2 of the *Divorce Act*.

## LEGISLATION

[8] Section 17 provides in part as follows:

17. (1) A court of competent jurisdiction may make an order varying, rescinding or suspending, prospectively or retroactively,  
(a) a support order or any provision thereof on application by either or both former spouses;

...

(3) The court may include in a variation order any provision that under this Act could have been included in the order in respect of which the variation order is sought.

(4) Before the court makes a variation order in respect of a child support order, the court shall satisfy itself that a change of circumstances as provided for in the

applicable guidelines has occurred since the making of the child support order or the last variation order made in respect of that order.

(4.1) Before the court makes a variation order in respect of a spousal support order, the court shall satisfy itself that a change in the condition, means, needs or other circumstances of either former spouse has occurred since the making of the spousal support order or the last variation order made in respect of that order, and, in making the variation order, the court shall take that change into consideration.

...

(6.1) A court making a variation order in respect of a child support order shall do so in accordance with the applicable guidelines.

...

(7) A variation order varying a spousal support order should

(a) recognize any economic advantages or disadvantages to the former spouses arising from the marriage or its breakdown;

(b) apportion between the former spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;

(c) relieve any economic hardship of the former spouses arising from the breakdown of the marriage; and

(d) in so far as practicable, promote the economic self-sufficiency of each former spouse within a reasonable period of time.

## **THE POSITIONS AND PRESENT CIRCUMSTANCES OF THE PARTIES**

[9] Since my previous decision Mr. Cramm has moved from Nova Scotia to Newfoundland and has secured different employment. He is now employed at Memorial University in the Technical Services Department. It was his evidence that he moved to Newfoundland in April 2009 in order to avoid the acrimony that apparently still exists between him and his former spouse and also because his new position involves fewer working hours and reduced stress.

[10] Prior to the parties' divorce Mr. Cramm lived with Ms. P.B.. He continues to live with her in Newfoundland. According to her 2008 Notice of Assessment her total income last year was \$9,000.00. Presently she is not employed. She is convalescing from an operation. It has been agreed and I find that Mr. Cramm's current income including his veteran's pension comes to \$117,000.00 per annum.

[11] Mr. Cramm seeks to terminate his spousal support payments to his former spouse. It is his position that by now Ms. Mason-Cramm should either be self-sufficient from her business or alternatively should have returned to full-time nursing in an institutional setting.

[12] He is prepared to continue paying child support for the support of B.C. while she continues her education, which child support would be determined based on his current level of income. He also seeks a termination date linked to when B.C. will be completing her education.

[13] Ms. Mason-Cramm says that she now has 146 clients and that she works for five different agencies and generally works five days a week as well as one Saturday each month. She also works evenings when required.

[14] She testified that she is acquiring on average one to two new clients each week. Over the past thirteen months her client list has grown by an average of over nine a month and Ms. Mason-Cramm took one full month off between April and May 2009 to go to the Caribbean. In any event Ms. Mason-Cramm hopes to double the number of her clients over the next year.

[15] Ms. Mason-Cramm is now earning \$1,800.00 a month and acknowledges that her business is viable. She said, however, that she is not yet financially independent and continues to require spousal support from her former husband.

[16] As for the parties' daughter, B.C., she is attending the Nova Scotia Agricultural College on a full-time basis. She lives in residence.

[17] B.C.'s tuition, residence fees and other costs associated with her courses come to approximately \$11,000.00 per year. The school year runs from September to the Spring. She expects to complete her program of studies by the Spring of 2011.

[18] According to B.C.'s 2008 Notice of Assessment she had a total income last year of \$7,887.00. She also obtained a Canada Student Loan of \$7,000.00 which she applied to this year's tuition costs.

[19] I am satisfied that there have been changes in circumstances as described in the *Federal Child Support Guidelines* as well as changes in the circumstances of the parties since the granting of the Corollary Relief Judgement. Among those changes are Mr. Cramm's change of employer and new level of income, Ms. Mason-Cramm's increased income and B.C.'s new circumstances at the Nova Scotia Agricultural College and the costs relating to her education program. I have concluded too that as a result of these new circumstances the child and spousal support provisions of the Corollary Relief Judgement should be varied.

## **CHILD SUPPORT**

[20] With respect to child support, B.C. is still a child of the marriage. She is 18 years of age and is still dependent on the parties for support. According to Section 3 of *Federal Child Support Guidelines* the correct child support figure is the amount set out in the applicable table according to Mr. Cramm's income and the amount, if any, determined under section 7. At Mr. Cramm's level of income the presumed table amount figure is \$968.00 per month.

[21] Last year when arriving at my decision regarding child and spousal support I was prepared to accommodate Ms. Mason-Cramm's plan to accept a lower level of compensation so that she would have a reduced level of job related stress. I am similarly prepared to accommodate Mr. Cramm's desire to do the same thing. In different circumstances I may have been less willing to reduce the level of child support because of the payor's voluntary decision to accept less lucrative employment.

[22] B.C.'s education related expenses are an expense contemplated by subsection 7 (1)(e) of the *Guidelines*. It is an expense to which both of her parents should contribute if she is not able to pay the full cost out of her own resources.

[23] Last year B.C. earned less than \$8,000.00. It is unclear how much of that she was able to set aside for her education costs but I do not believe it would be unreasonable to expect her to have saved and applied \$3,500.00 to her expenses. That still leaves a shortfall of \$7,500.00. Considering that B.C. lives in residence the majority of the year and during that time she does not cause her mother any significant additional expense other than what Ms. Mason-Cramm may contribute to B.C.'s college expenses, I am not going to require Mr. Cramm to pay any amount over and above the table amount. The table amount payable by Mr. Cramm adequately covers his share of B.C.'s educational and other costs. B.C.'s student loan played no role in this decision. I expect that she will make use of that loan only if her contribution and the contribution from both of her parents is insufficient to cover her costs. Therefore, Mr. Cramm will pay to Ms. Mason-Cramm child support in the sum of \$968.00 per month effective the 1<sup>st</sup> day of September, 2009 and continuing on the 1<sup>st</sup> day of each month thereafter up to and including July 1, 2011. The "termination date" of July 2011 allows B.C. some additional time after her graduation to commence employment. Thereafter Mr. Cramm will have no further obligation to pay child support to Ms. Mason-Cramm for the support of B.C. unless the Variation Order is varied by further order of a court of competent jurisdiction.

[24] The child support payments are conditional upon B.C. continuing to attend school on a full-time basis and the Variation Order will contain a provision that will require Ms. Mason-Cramm to immediately inform Mr. Cramm, in writing, should B.C. end her education program sooner than her graduation in the Spring of 2011 or if she stops attending school on a full-time basis.

[25] The Variation Order will also contain a provision requiring the parties to exchange copies of their income tax returns and Notices of Assessment each year (no later than June 1 of the following year).

[26] Should B.C. stop attending school on a full-time basis Mr. Cramm may apply to the Court for a variation and/or termination of child support sooner than July 2011. Further, should B.C. decide to continue her education after July 2011 it

would be open to Ms. Mason-Cramm to apply for a variation. The Court would then make a decision based on all the circumstances existing at that time.

## **SPOUSAL SUPPORT**

[27] Regarding spousal support, it was established once again that Ms. Mason-Cramm could return to nursing in a hospital and if she chose to do so she would be capable of earning sufficient income to be self-supporting. She chooses not to do that.

[28] Ms. Mason-Cramm is developing her foot care business. She is earning \$1,600.00 a month more now than she was a year ago. If her client list continues to grow as it has over the past year than she should be self-sufficient in a year's time, if not sooner. Therefore, having considered the circumstances of the parties, the changes in the circumstances of the parties and their daughter since the granting of the Corollary Relief Judgement, their current levels of income, Ms. Mason-Cramm's income earning potential, their reasonable needs, Ms. Mason-Cramm's declining dependence on Mr. Cramm and all of the objectives listed in sub-section 17(7) of the *Divorce Act* I order that the spousal support provisions of the Corollary Relief Judgement herein be varied as follows:

[29] Commencing the 1<sup>st</sup> day of September, 2009 and continuing on the 1<sup>st</sup> day of each month thereafter up to and including the 1<sup>st</sup> day of February, 2010 Mr. Cramm will pay to Ms. Mason-Cramm spousal support in the sum of \$1,600.00 per month.

[30] Commencing the 1<sup>st</sup> day of March, 2010 and continuing on the 1<sup>st</sup> day of each month thereafter up to and including the 1<sup>st</sup> day of August, 2010 Mr. Cramm will pay to Ms. Mason-Cramm spousal support in the sum of \$800.00 per month after which his spousal support obligation to Ms. Mason-Cramm will terminate absolutely.

[31] Any overpayment of support made by Mr. Cramm since September 2009 resulting from his payments made in accordance with the Corollary Relief Judgement may be applied to future support payments that are payable by virtue of the Variation Order.

[32] Counsel for Mr. Cramm will prepare the Variation Order. I am prepared to hear further submissions should either party wish to be heard on the issue of costs.

J.