

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: J. P. v. K. P., 2011 NSSC 142

Date: 20110414
Docket: 1201-064095
Registry: Halifax

Between:

J. P.

Petitioner

v.

K. P.

Respondent

Editorial Notice

Identifying information has been removed from this electronic version of the judgment.

Judge: The Honourable Justice Moira C. Legere Sers

Heard: March 28, 29 and 30, 2011

Counsel: Elizabeth Wozniak, for the petitioner J. P.
Colin Campbell, for the respondent K. P.

By the Court:

[1] This is the divorce proceeding between J. P. (hereinafter the "petitioner") and K. P. (hereinafter the "respondent"). They were married in a civil ceremony in * on December 25, 1982 followed by a religious ceremony. This is a 26-year marriage.

[2] The parties separated on November 14, 2008. Of their three children, only one remains a dependent within the meaning of the *Divorce Act*: A. P., born April *, 2001.

[3] The Petition for Divorce was issued on November 4, 2009.

[4] The respondent filed an Answer on March 30, 2010 at which point she suggested reconciliation may be a possibility.

[5] I am satisfied by the evidence before me there is no possibility of reconciliation. A divorce is granted based on one year's separation in accordance with section 8(2)(a) of the *Divorce Act*.

[6] There were some agreements made by the parties and placed on the record prior to the commencement of the divorce proceeding. These agreements include the following:

The petitioner's military severance pay will be divided equally at source if and when it is scheduled to be paid out. The administrators of the military severance plan have the authority by way of this consent incorporated into their Corollary Relief Judgement to divide the military severance pay for the period April 2005 to the date of the marriage.

The petitioner's employment pension earned from the date of the marriage, intending to include the date of the commencement of the pension to and including their separation date of November 14, 2008, shall likewise be divided equally at source.

The petitioner shall execute any and all documentation required to effect this division and shall be personally liable in the event any funds to which the respondent is entitled are paid to him.

The RRSP held in the respondent's name shall be valued as of the date of this proceeding that being March 30, 2011, and shall be divided equally. One half shall be transferred to a plan in the name of the respondent. The respondent shall immediately advise the petitioner as to the details of the RRSP documentation available to receive these funds.

The petitioner agrees to pay child support in accordance with the Child Support Guidelines. His annual income which has been determined to be \$68,259.60, results in a child support payment for one child of \$592 commencing January 2010.

[7] The issues that have not been resolved include:

- the wording of sole custody versus joint custody;
- parenting time for the father;
- the quantum of spousal support;
- the obligation on the respondent to work toward some level of self-sufficiency;
- retroactive child support to reflect the petitioner's actual income;
- division of property, including:
 - whether or not to defer sale of matrimonial home;
 - whether an emergency fund existed and if so, how to divide it;
 - classification and valuation of the petitioner's hobby items;
 - valuation of personal possessions in the matrimonial home;
 - investment income and savings.

Legal History

[8] On April 17, 2009, the parties entered into an interim consent order. Both parties were represented by counsel. The child, A., was placed with the father until further order of the court. The father was to be responsible for the day to day care of the child and the mother was granted unsupervised access.

[9] On July 22, 2009 after an interim hearing, custody of the child, A., was granted to the mother with reasonable access to the father at reasonable times upon reasonable notice including every second weekend from Friday at 5:00 pm until Sunday at 5:00 pm and access every Wednesday from 5:00 pm to 7:30 pm, with such other access as agreed upon.

[10] Child support was ordered in the amount of \$436 per month based on an income of \$53,100 which was projected for the 2009 year and spousal support of \$1,000 per month.

[11] A no-removal clause was ordered and the mother was given exclusive possession of the matrimonial home.

[12] Both parties were under order not to dispose of any contents of the matrimonial home.

History

[13] In 1995, the petitioner joined the Canadian Forces. Recently he had been largely absent from the home. In about 2008, the relationship between the petitioner and respondent significantly deteriorated. The respondent accused the petitioner of assaulting her and called the police to intervene. No charges were laid. The petitioner accuses the respondent of mental and emotional instability.

[14] Both parties speak English as a second language. Both have difficulties communicating even with the assistance of an interpreter.

[15] The petitioner appears to have more of a capacity to operate in English, whereas the respondent indicates she cannot write or speak English enough to speak without an interpreter or gain employment. The petitioner believes the respondent has a greater capacity to speak and understand English than she portrays to the court.

[16] The petitioner came to Canada in January of 1992. The respondent and two sons came in October of 1992.

[17] This is a traditional marriage. The respondent stayed at home principally, providing only supplemental income while the parties lived in O.. The petitioner was the principal financial provider.

[18] The petitioner had numerous jobs using his technical skills until he joined the military in March of 2005. Since that time, he has been deployed and trained in different parts of the country. He is currently stationed in Dartmouth.

[19] The parties separated first in September of 1993, reconciled in 1995 and separated finally on November 14, 2008.

[20] The respondent alleges that the petitioner was emotionally, verbally and mentally abusive. She acknowledges late in her testimony that she may have been verbally abusive and engaged in name calling. It is clear that there were serious difficulties in this relationship and that the parties' conduct deteriorated considerably.

[21] In the spring of 2008 the respondent began to believe that the petitioner was in a relationship outside the marriage. The marital relationship further deteriorated to the point of separation.

[22] The police had been called by the respondent a number of times in June 2008 and November 12, 2008. No criminal charges have been laid. There is insufficient evidence before me to conclude that the petitioner was physically abusive of the respondent.

[23] The respondent again called the police on November 14, 2008. At that time there were allegations made by the petitioner that the respondent was mentally unstable. Social workers and child protection became involved. Ultimately the father was advised to take the child to live with him pending investigation.

[24] On December 18, 2008, the child protection agency closed their file.

[25] The evidence supports the fact that when the child is with the mother, the mother has restricted the father's contact and when the child is with the father, the father has restricted the mother's contact.

[26] The petitioner has denied the allegations of abuse from the start of the proceedings. He confirms that the police did attend on June 28, 2008 and November 12, 13, 14, 2008 and December 5, 2008.

[27] The petitioner has attached the police recordings proving no charges were laid as a result of the police involvement. The police reports regarding the November 12th incident suggest that the allegations made by the respondent against

the petitioner appear to be unfounded. The police concluded that there were no threats at the home.

[28] The petitioner's affidavit (Exhibit #9) refers to allegations that continued to be made against him by the respondent. He acknowledged his concern about her mental state. He provided a copy of an email he believes to be sent by the respondent which makes assertions that he is possessed by the devil. Unfortunately, the email is in * and there is no translation.

[29] The petitioner alleges that the respondent's emotional conduct has been, at times, mentally and physically abusive toward him, that she has hit him repeatedly and became enraged on numerous occasions while their child was present.

[30] The most I can conclude from the evidence is that the parties' relationship deteriorated over the course of many years.

[31] The parties managed to attend to their responsibilities toward their remaining dependent child. The child has been doing well in school both while in the mother's care and then separately in the father's care.

[32] However, their conflict and verbal altercations escalated into name calling and mutual allegations: (1) that the respondent was unstable and (2) that the petitioner was an unsavoury character. The mother made more allegations than the father although the allegations against her mental stability did affect the chain of custody for a period of time.

[33] I have no evidence on which I could conclude with any certainty that the petitioner was physically abusive with the respondent. Certainly, the police records do not support evidence of abuse.

[34] I have reviewed the evidence submitted at the emergency protection order hearing initiated by the mother. It is clear that the Justice of the Peace had considerable difficulty, both with translation and finding sufficient evidence, to order anything other than a prohibition against the father contacting the mother at the home. He declined any further relief under the emergency protection order.

Custody

[35] There is no credible evidence before me to move from what should ordinarily be a joint custody order in which both parents remain significantly responsible for and involved in ensuring that their child is supported emotionally, physically and financially.

[36] I order joint custody to retain for each parent the right to be **consulted and participate equally** in the decision-making on all major issues affecting the physical, emotional, educational and spiritual welfare of their child. **They must consult with one another** and keep each other informed on all matters concerning the child, particularly major decision-making.

[37] While the child is with the mother in her day to day care, the mother shall make day to day decisions and while the child is in the father's care, the father shall be responsible for making day to day decisions.

[38] Both parents shall have access to all third-party service provider notes and reports and may be fully informed without restriction by the third-party service providers.

[39] In the event of an emergency, the parent with whom the child is shall immediately address the emergency and immediately thereafter contact the other parent to ensure that the other parent is informed.

[40] While the child remains dependent, both parties shall continue to keep each other updated with the provision of their phone numbers, addresses and the place where the child will be when in the physical custody of either parent.

[41] The geographical residence of the child shall not be changed without consent of the parents or court order.

[42] Neither of these parents has attended parent information. Fluency in the English language would obviously prove difficult. It is recommended that they both pursue parent information about children in separation and attend, if possible, with a translator at the parent information centre.

[43] Before a change to the current order of this court, both parents must provide proof that they have attended a parent information session, either with a translator or pursued another course, to inform themselves regarding the issues that arise for

children when parents are in the throes of separation and divorce and are forced to move back and forth between separated parents.

Parenting Time for the Father

[44] The mother proposes a continuation of the current parenting arrangements, which is every second weekend and Wednesday during the week.

[45] The father is responsible for all transportation because the mother does not drive a car. His access transportation costs in the course of a week require that he travel approximately 120 kms.

[46] Currently, the mother is a stay at home mother. The child goes to school full time. During the week the mother has all of her time with the child with no other competing requirements. The father has employment outside the home with regular hours; only his weekends are free.

[47] While that is the situation and the mother is not employed, the father shall have parenting time with the child three weekends a month from Friday at 5:00 pm to Sunday at 5:00 pm and one overnight during the week on Wednesday or such other days as the parents agree upon. The child will be returned on the Thursday morning to school at an appropriate hour when supervision at school is available.

[48] The parents may agree to rearrange the weekend visits. The mother and father shall make arrangements to make up any visits that do not take place due to scheduling difficulties with the child's school or activities.

[49] When the mother obtains employment outside of the home such that her weekend time is her principal time away from employment, the weekend schedule may be revisited.

[50] In the event that there is a statutory holiday during the father's parenting weekend, he shall be entitled to either the Friday or the Monday to include the total statutory weekend.

[51] The parties shall share equally major vacations including Christmas, March Break and Easter.

[52] The child shall be with the mother Christmas 2011 from Christmas Eve at noon to noon Christmas Day; the child shall be with the father from noon Christmas Day to noon Boxing Day. Thereafter, the parties shall split equally the remaining Christmas vacation. The parents should avoid multiple transitions.

[53] In all even-numbered years, including 2012, the child shall be with the father Christmas Eve and the schedule adjusted accordingly and on all future odd-numbered years, the child shall be with the mother Christmas Eve and the schedule adjusted accordingly.

[54] The parties will alternate March Break and may, if they agree in writing in advance, split the March Break if it is more accommodating with their schedule.

[55] In 2011 the child shall be with the father on Easter Eve and on every odd-number year thereafter. Otherwise, the parents will split the Easter vacation.

[56] Both parties must agree should the child be removed from the province of Nova Scotia for the purpose of travel arrangements or visits outside the country. Each shall provide the other in advance a written itinerary for ease of contact together with information and **promote** ongoing connection between the child and the other parent. They shall convey to any custodians or family members the requirement that contact with the other parents is to be respected. Failure to do so may result in an application to vary which may restrict future travel.

[57] The child shall not be removed from the province of Nova Scotia for the purpose of changing her residence unless both parties agree in writing or by court order.

[58] Commencing in the summer of 2011 and thereafter while the child remains a dependent, the parents shall split the summer, notwithstanding the mother's plans to return to * for a ten-week period. This trip to * was scheduled without the father's consent.

[59] The mother will have first choice of her month this summer. Each succeeding even-numbered year commencing in 2012, the father will have first choice. The father will have the remaining month in 2011 and the mother in alternate years.

[60] The father shall advise the mother in writing by May 1st each even-numbered year. Thereafter, the mother will have the remaining month.

[61] In odd-numbered years the mother will have first choice and she shall advise the father by May 1st.

[62] Should either parent fail to advise of their selection, by default the other parent may choose. This shall not alter the schedule of choice regarding summer schedules.

[63] Should the father wish, he can alter his current vacation this summer, but it must be done with his consent in order to assist the mother with her travel to *. Otherwise, block parenting time shall be as set out above.

[64] The father has indicated to the court that he has suitable sleeping accommodations for the child and he shall continue to provide the child with separate sleeping accommodations.

Division of Property

[65] The mother has asked for what is essentially an unequal division of property by requesting a deferral on the sale of the matrimonial home until the child graduates from high school.

[66] The mother has been in the matrimonial home since the separation since 2008 and wishes sale to be deferred. There is no evidence before me that would justify such a division or a deferral on the sale of the matrimonial home. The home will be immediately listed and sold.

[67] The home is unencumbered. The parties shall immediately agree upon a real estate agent and a lawyer to handle the sale of the home. The costs of preparing the home for sale and the sale shall be shared.

[68] Should there be disagreement on the property valuation, the party disagreeing shall immediately obtain a second appraisal and with the use of both appraisals, the parties shall agree on a listing price.

[69] Once sold, all net proceeds after all ordinary disbursements, including real estate taxes, mortgage charges and fees, legal fees and any other fees associated with closing, shall be put in trust to be divided equally between the parties. Both parties shall cooperate in signing documents necessary to effect the sale.

[70] The court reserves jurisdiction for the parties to return to court for resolution and direction with respect to the sale of the home in the event there is disagreement.

Child Tax Credit Monies

[71] Throughout the marriage the mother held for her own use the child tax credit, without interference from the father. While she has not disclosed this on her Statement of Income, she indicates she now receives \$320 per month. That may or may not be accurate as the mother did not have an accurate or confident recollection of any historical financial matters. She did not occupy herself with the details.

[72] On June 20, 2008, prior to the separation, the respondent encouraged the petitioner to take her to the bank to have them print out a statement of their assets. The statement is dated June 20, 2008 and is in his name only.

[73] The respondent subsequently attached this to her Statement of Property. The petitioner cooperated with that effort in order to provide disclosure to her. He said he wanted to appease and placate her. Without his permission, she would not, without court order, have had that statement of total assets in her hands available to her for submission to the court.

[74] The attachment shows total assets of \$48,867 as of June 2008, inclusive of \$12,205 in an RRSP, his investment account and two other accounts. That is \$36,662 as of June, without the RRSP.

[75] The value of the RRSP has diminished. It is excluded from this discussion. The parties agreed on an equal division of its current value as of the decision date by way of spousal rollover.

[76] The respondent alleges that the petitioner secretly transferred money from his account. He has admitted this and advises that he did in fact transfer \$35,071

out of his account, paying approximately \$25,000 to his son to be held in trust because he wanted to preserve the asset. He also paid legal fees.

[77] The petitioner did this on **November 30, 2008**. He learned subsequently that this would not be allowed in the divorce proceedings.

[78] The petitioner testified this was in retaliation for the disappearance of what he believes was \$5,000 and \$7,000 in the emergency monies in the respondent's hands.

[79] It could not be said, however, that this transfer was hidden. The petitioner had already in June 20, 2008, i.e., six months previously, provided the respondent with a statement which contained the account number holding these investments. This is not a situation where the existence of the funds was hidden; it was well known to the respondent. She knew of its existence and she knew because he told her.

[80] In the throes of the divorce proceedings, in order to save the investment, the petitioner unwisely transferred it to his son. His evidence is his son kept some of the proceeds. That is a matter between him and his son. I have no evidence as to what his son did with that money.

[81] However, it is acknowledged by him and his counsel that the respondent is rightfully entitled to one-half of the investments that existed as of separation.

[82] It is the responsibility of the parties to provide accurate, reliable and credible information as to valuation of assets in order to assist the court in making reasonable findings of fact. The burden on valuation is a civil burden.

[83] There is significant difficulty with the accuracy of the valuations attached to the division of property items which are contested between the parties.

The Van

[84] There is only one valuation of the van by the respondent. The van is a * , valued as of September 2008 at \$2,000. The respondent's Statement of Property indicates it is "to be assessed." Neither party gave evidence that would allow the

court to draw a reasonable conclusion as to the market value of the van as of the date of separation.

[85] The petitioner does not agree with the respondent's appraisal. He indicates now that he has not been able currently to sell the van as advertised on Kijiji for \$700.

[86] The respondent admitted her ignorance of cars and financial matters. She does not drive a car. She could have but did not offer verification to assist the court. However, hers is the only evidence of the value of the van at separation.

[87] The petitioner has the van in his possession and he is the driver, the financial provider and requires it for his work and to facilitate access. Absent more evidence, I will include the value of the van at \$2,000 in the division of property.

Hobby materials

[88] There has been much evidence about the valuation of the petitioner's hobby materials. In the heat of the dispute over the period of December 28, 29 and 30, 2009, the petitioner removed his mechanical gear including a lathe and other unspecified tools of his craft to his home in *. He did so at the insistence and with the knowledge and consent of the respondent.

[89] The accuracy of the valuations in Exhibits #14 and #16 are in dispute.

[90] The petitioner admits signing under duress an acknowledgment that the mechanical lathe he retrieved from the house had a value of \$1,000. His signature is affixed. Anything written following his signature on the Exhibit #14 was information added by the respondent after the petitioner's signature was affixed and was signed by her two sons.

[91] There is insufficient evidence to cause me to conclude that there was any meeting of minds on the valuation of the remaining items, specified and unspecified, relating to the petitioner's hobby materials that he removed from the matrimonial home in those last three days of December 2009.

[92] Attached to Exhibit #16, which is a replica prepared by the respondent in preparation for trial, unsigned by the petitioner, is a receipt indicating that when

the lathe was purchased and shipped on what appears to be October 13, 2007, the lathe price was \$949.05 new.

[93] I cannot conclude that the current value would be slightly greater in 2011 than the price in 2007. In any event, it is rare that purchase price is the valuation used in the division of personal possessions. Current fair market value would be a more reliable valuation.

[94] These hobby items, therefore, are unreliably valued.

[95] These are hobby items and have not any specific distinguishing feature. Although the respondent has alleged that the petitioner was involved in a business with his hobby items she has not provided convincing evidence to prove this.

[96] I exclude the petitioner's hobby items as his personal possessions just as I exclude the respondent's jewelry, to which the petitioner has made no claim and which the respondent has kept for herself.

Furniture

[97] The furniture has been under valued in the respondent's statement at \$1,800. She subsequently amended this valuation to \$4,500 without any explanation as to how either figure was determined to properly reflect the value of the household furniture.

[98] There is no information that would cause me to conclude that either is particularly accurate, although the \$4,500 is likely to be more accurate given that she retained the majority of all household possessions. I accept \$4,500 as a more accurate value of household possessions largely in the respondent's possession.

[99] The hobby items and the van rest with the petitioner; the furniture and the jewelry with the respondent.

Plane Tickets

[100] The parties did not officially separate until November 2008. Clearly, the last number of years they did not reside together due to the petitioner's posting. They had some considerable difficulties in their marriage as far back as 1996 and further,

from June 2008 there was a steady deterioration in their relationship. There was increased hostility and the beginning of fairly frequent police intervention.

[101] After a trip to * in September of 2008, the respondent convinced the petitioner that she should be entitled to go to * and that they should purchase tickets. She indicates she gave him the child tax credit monies in the amount of \$2,400 that she had been saving. That was matrimonial money. He believes he paid for the tickets and she retained the child tax money.

[102] The petitioner admits that he did not at any point have access to the child tax credit and did not have any objection to how she spent those monies. She advises she gave him the money to purchase the tickets on Visa in order to obtain a small discount.

[103] The petitioner's Visa statement shows that he purchased the tickets in October 20, 2008 for the summer of 2009. I do not have the evidence that would allow me to conclude in which month he paid this debt from his ordinary checking account out of which he paid the property taxes and other matrimonial bills.

[104] I cannot, therefore, conclude this was a debt that existed at the time of separation.

[105] The parties officially separated November 14, 2008. The respondent indicates that these child tax funds had been depleted as of the date of separation. The petitioner has no proof otherwise, although he believes he paid out of his account for the Visa for the plane ticket.

[106] There is no proof on the balance of probabilities that the fund and the debt existed as of the date of separation and it will not be counted in the equalization chart.

Emergency Fund

[107] The petitioner gave evidence that over the years, due to his absence from the home, the parties had an emergency cash fund in the home. He believes that in or about May 2008 this fund existed and equalled approximately \$5,000 to \$7,000.

[108] The petitioner advises that each time he returned from a trip he would make sure that he topped up the emergency fund to ensure that there were funds available in his absence.

[109] During the marriage it makes absolute sense that the petitioner would have an emergency cash fund in the household, given he was largely responsible for the financial welfare of the family and was almost totally responsible for the management of any matrimonial funds, paying bills, etc..

[110] The petitioner testified that he had no difficulty whatsoever with the manner in which the respondent spent the money up to the June 2008 date. He trusted her to deal with this fund appropriately and believed that she would do so. He believes that she retained what was left of the emergency fund and has not declared them in her Statement of Income.

[111] The respondent denies that there was an emergency fund. The petitioner cannot prove there was an emergency fund as it was cash. The respondent's testimony is less believable on this point.

[112] It is clear that both parties worked very hard to arrive at a situation in which their children were looked after. By all evidence before me, the youngest child, if she is an example, was well looked after and is flourishing with the contribution of both of her parents. It is entirely reasonable to assume that there was an emergency fund. I am inclined to believe the petitioner that this fund existed.

[113] However, the last time the petitioner looked at the emergency fund was in May 2008. The separation occurred in November 2008. Without further evidence to assist the court in valuation as to what was in this fund from May to November, I am unable to include that in the equalization chart.

[114] Neither party provided sufficient accounting documentation to allow for a tracking of the money nor to confirmed their own testimony with respect to what existed or to verify their information.

[115] The petitioner provided little current documentation on accounts and could not clarify dates and times. The respondent copied her information from the statement of assets given her by the petitioner in June prior to separation.

Investments/Accounts

[116] Given what was filed, it appears that as of November 14th in the household general account the petitioner had \$4,416.71 after his pay was deposited. In his other account he had a total of \$35,071.25 for a total of \$39,487.96.

[117] The petitioner did file immediately before the commencement of the proceedings an Exhibit #5 which is likely the best information the court has before it. The respondent did not know what assets existed prior to receiving the bank statement in June 2008.

[118] The petitioner testified he thought that out of those assets subsequent to June he paid the respondent's share of taxes for property in * and \$3,000 for roof and floor repairs. Unfortunately, he does not know exactly when this was paid and there is no verification of payment making it impossible for the court to apply a deduction to what existed at the date of the statement and Exhibit #5.

[119] I adopt the statement closer to the date of separation to value the investments at \$39,487.96.

RRSP

[120] The statement attached to the respondent's Statement of Income is dated and included a value for the RRSP which is not currently accurate. The petitioner's statement for the period October to December 2008 indicates a value of \$9,717.01. I am excluding from the investments attached to Exhibit #5 the RRSP as that will be by way of spousal roll over to arrive at my figure. Valuation will be current.

Conclusion

[121] The hobby items belong to the petitioner; the respondent's jewelry is hers; the contents of the emergency fund unknown; the child tax credit spent before separation; the furniture given to the petitioner very minimal and of little value; the * property excluded; and the RRSP, pension, severance and home proceeds agreed upon.

	<u>Remaining Assets</u>	<u>Petitioner</u>	<u>Respondent</u>
Investments:	\$39,487.96	\$39,487.96	
Furniture:	\$4,500.00		\$4,500.00
Van:	\$2,000.00	\$2,000.00	
TOTALS:	\$45,987.96	\$41,487.96	\$4,500.00
½ of Total:	\$22,993.98		

Result: Equalization from Petitioner to Respondent = \$18,493.98

Retroactive child support

[122] The Interim Order dated July 22, 2010 worked with a projected income of \$53,100. The payment ordered was \$436 per month. (The actual table amount is \$462.)

[123] The petitioner's actual income for 2009 was \$64,974 which would have yielded a monthly payment of \$564 for the nine months from April 2009 to 2010, for a difference of \$1,152.

[124] The table amount for 2010 on an annual salary of \$68,259.50 would have been \$592, for a difference for the 2010 year of \$1,872.

[125] The three months in 2011 would result in an underpayment of \$468 for a total underpayment of **\$3,492**.

[126] The petitioner shall pay this out of the proceeds of sale of the home.

Spousal Support

[127] This is a 26-year marriage. There is no issue as to entitlement. The petitioner is 51 years of age and the respondent is 54.

[128] It is acknowledged that this is not the time for a terminal spousal support award. However, there are disagreements with respect to quantum and with

respect to the respondent's lack of effort looking for a job and moving toward whatever self-sufficiency is attainable at this stage.

[129] I have no medical evidence to suggest that either party is unable to work.

[130] The petitioner has indicated that he is suffering health difficulties as a result of the stress of the separation. He is currently being treated for insomnia, depression, nosebleeds, eczema and a heart condition. He is on multiple medications and was treated in April 29, 2010 for stroke symptoms at the Dartmouth Hospital. He is listed in a temporary medical category with the military in order that he can have time off to get to his medical appointments. He believes this will prevent advancement in his rank and prevent his deployment.

[131] The respondent was educated as a textile worker, sold food, souvenirs and products, was a talented cook and was good at all things domestic.

[132] The petitioner admits that the respondent was not formally employed for the last 20 years, although she had occasional part-time jobs.

[133] While residing in O. the respondent had a home-based business preparing and delivering * food to * delis and private customers. She has also worked as a nanny and cleaned houses.

[134] In 1982, the respondent managed a department store fruits and flower section. She started working in September 1996 to June of 1997 in the capacity of a nanny, providing meals and cleaning. Again, between May 11, 1998 and July of 1999 she worked as a nanny and from November 1, 1998 to February 2000. She worked for a parish office in 1999 to 2000 and during the year 2000 she acted as care giver part-time for two people.

[135] Not all of the respondent's income was declared.

[136] The respondent advises that she is able to understand English well enough to get by but not fluently or perfectly.

[137] During the period of time the respondent resided in the matrimonial home, from the date of separation in 2008 to the current date, she has not had to pay rent. The home is mortgage free.

[138] The respondent has lived in the home with almost all of the furnishing retained by her and has had few other expenses. Both parties live frugally.

[139] The respondent has been able to use the child tax credit and received \$400 from the petitioner on a regular basis to supplement her income prior to the court order.

[140] Taxes for the respondent's share in property in * and other expenses associated appear to have been paid out of the petitioner's account.

[141] It is clear that the respondent thinks her inability to speak English fluently absolutely prohibits her from obtaining employment.

[142] There is no indication in the evidence that the respondent has any intention of looking for work. I have no information as to any efforts she has made to become employed or to look at educational opportunities to improve her employability.

[143] I have no evidence to support that the respondent is interested in retraining or has looked for jobs in the areas of her expertise in child care, cooking and cleaning.

[144] I have no information or evidence to suggest that the respondent intends to improve her English or indeed to evaluate the level of her fluency. The petitioner believes she is able to understand English when it profits her.

[145] I have no reason to conclude the respondent is medically incapable or limited in finding work.

[146] It is expected in accordance with the legal directives under the *Divorce Act* that the respondent make diligent efforts to obtain some degree of self-sufficiency in order to assist her supplement her income as may be possible.

[147] The respondent's failure to make attempts with due diligence will have a direct impact on her financial situation.

[148] The petitioner seeks to have the right to have a review and to request of the respondent confirmation of efforts she has made to retrain or to find employment and confirmation of any income she earns by way of employment, whether cash jobs or otherwise.

[149] In assessing a spousal support order, the petitioner asks the court to consider the fuel expenses of approximately \$350 per month as the result of the requirement that he continue to do all transportation relating to access with his child.

[150] The respondent cannot currently assist as she does not drive and does not have a car.

[151] The petitioner shows a surplus in his budget. However, he has a marginal budget with no margin for error. In my view, he will be unable to maintain this budget given there are so many items for which he has not included a budget.

[152] Clearly, the *Divorce Act* requires that the respondent attempt to find some kind of employment to supplement her income. There is no reason why she is unable to do this at this time. If she relies solely on the petitioner's income, her lifestyle conditions will of necessity deteriorate.

[153] The respondent will be in receipt of one-half of the equity in the unencumbered home assessed at \$202,400. Market value is unknown. She will receive an equalization payment of approximately \$18,493.98, plus child support arrears of \$3,492, as well as one-half of the petitioner's pension entitlement, severance pay entitlement and RRSP valued as of the date of this decision.

[154] I have considered the evidence tendered regarding income and expenses and the parties' positions regarding spousal support as well as the petitioner's access costs.

[155] I have reviewed the spousal support guidelines as prepared by counsel.

[156] I order the petitioner to pay \$1,000 for the maintenance and support of the respondent up to the date of the sale of the home and \$1,200 per month thereafter, commencing the month after the sale of the matrimonial home and continuing thereafter every month until altered by agreement of the parties or court order.

[157] The parties may apply for a review to require the respondent to provide information as to her efforts to supplement her income and to obtain employment.

[158] While the child remains dependent, the parties shall exchange full and complete copies of their income tax returns, together with all schedules of income whether filed or not, each year on or before May 1st.

[159] The petitioner shall keep the respondent named as a beneficiary on his employment insurance policy which currently provides a death benefit of two years' salary.

[160] The parties may agree to an equivalent policy of insurance but this shall be the respondent's choice. Her consent in writing is required before she is removed from his life insurance at work.

[161] The respondent shall remain the beneficiary of the work policy until such time as an alternate agreed upon policy of life insurance is established. The petitioner shall upon request provide proof of continued coverage as long as he is obliged to pay support to the respondent or the child.

[162] The petitioner shall keep the respondent covered on his health plan benefits as long as permissible by the plan administrators.

[163] There will be no retroactive spousal support order.

[164] Counsel for the petitioner shall draft the divorce and corollary judgment orders. The usual police enforcement clause shall be included.

Legere Sers, J.

April 14, 2011
Halifax, Nova Scotia