SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: MacPhee v. Browne, 2010 NSSC 38

Date: 20100210
Docket: 1217-000646
Registry: Port Hawkesbury

Between:

Gerard MacPhee

Petitioner

v.

Laurel Browne

Respondent

Judge:	The Honourable Justice Moira C. Legere Sers
Heard:	January 19, 2010, in Port Hawkesbury, Nova Scotia
Counsel:	Adam Rodgers, for the Petitioner Wayne MacMillan, for the Respondent

By the Court:

[1] The petitioner, Gerard MacPhee, commenced this divorce petition on the 25th of January, 2008. He and the respondent, Laurel Elizabeth Browne, were married on March 17, 2003, in Peterborough, New Hampshire, U.S.A. The parties ceased to cohabit on June 4, 2007

[2] This union lasted 4 years. It was the first marriage for the petitioner, the second for the respondent. There is no period of pre-marriage cohabitation that needs be considered. There are no children of this marriage.

[3] This is a short term, four year marriage.

[4] The petitioner was born at Inverness, Nova Scotia, on October 2, 1963. He was 39 year of age when he married. He is currently 46 years old.

[5] The respondent was born on May 21, 1958. She was 44 years of age when she married the petitioner. She is currently 51 years old.

[6] No claim is being made by either party for an interest in the business assets of the other.

[7] The petitioner is seeking an unequal division of matrimonial property. He is a cattle farmer and earns supplementary employment as a bus driver. The respondent is currently an instructor for voice students and a baker.

The Respondent's prior education and employment

[8] The respondent has her Bachelor of Music Performance from the University of Lowell, Massachusetts, U.S.A. She began her employment with the Franklin Pierce College in New Hampshire, U.S.A., in the early 1980's. She has 23 years of experience teaching voice lessons and some classes. She was senior lecturer, being a three quarter time employee and had an annual salary in her last full year of work at this college in 2002 of $30,570.00(U.S.)

[9] As a three quarters employee, she shared in pension and medical benefits, although she was restricted in the number of courses she could teach.

[10] She has been a professional vocalist having sung in and around Boston and New Hampshire. She has directed two church choirs.

[11] Prior to her entertaining her first leave of absence, she had signed a two year contract with her college in the United States. Her last full year of teaching was in 2002 when she earned $30,579.00 U.S. She applied for her first leave of absence to be effective in the fall of 2003. She has never returned to the college or the U.S.

[12] The respondent testified that her initial primary intent on coming to Nova Scotia did not relate to the petitioner or marriage. She had a traditional connection to the province and to Cape Breton Island through her mother and father and began regular summer visits in late 1980's, early 1990's.

[13] Prior to her relationship with the petitioner, she planned to obtain a leave of absence from her work for a period of six months to live in Nova Scotia to take classes in Gaelic in order to enhance her ability to sing in Gaelic. This plan was implemented prior to her starting a relationship with the petitioner.

[14] On one of these visits, in 2001 or 2002, she met the petitioner at a dance.

[15] When they met again in October of 2002, they discussed dating. They eventually married and when the six month leave ended, she applied for a second leave, retaining her ability to return to her employment in the United States.

[16] The respondent confirmed that she did not initially leave her employment as a result of being persuaded to leave by the petitioner. After living in Cape Breton, meeting and marrying the petitioner, they jointly decided that she would apply for another sabbatical and eventually she remained in Nova Scotia.

[17] It is clear that her interest in coming to Cape Breton predated her relationship to the petitioner. It is equally clear that her interest in living in Cape Breton continues. Subsequent to her separation, she applied to become a Canadian citizen and awaits processing in order to complete her wish to become a citizen.

[18] She testified that she has not made any serious inquiries about returning to the United States to live or to work in her field of professional development. She had not, when coming initially to Nova Scotia, or recently, made any serious

inquiries about using her historical educational and professional development to become a full time teacher or to pursue any other profession other than that which she is already involved.

[19] Initially, the respondent remained on the farm with the petitioner, assisting somewhat in hay making, etcetera and affecting what were not significant cosmetic upgrades to the matrimonial home in order to prepare it for the possibility of a Bed and Breakfast. She acknowledges that they agreed her role related more to household duties.

[20] The Bed and Breakfast did not materialize.

[21] In January of 2006, she officially began her current business of making organic bread to distribute to farmers markets. She is expanding this business to supply certain cafe's.

[22] Sometime after the parties talked about separation, she began to work in a café as a baker from May 2007 to September 2009. Her employment ended when

she incurred a repetitive motion injury in her back. I have no medical documentation whatsoever to indicate she is disabled.

[23] She has currently left that employment and is now focusing solely on increasing the number of students she has for voice lessons. She also seeks to enlarge her homemade bread making business. She decided not to go back to the U.S. because she became part of the community and she clearly chose to stay in Cape Breton.

[24] The respondent is seeking either lump sum or periodic spousal support and an equal division of matrimonial assets. I have received no submissions concerning the spousal support guidelines nor have I received an equalization chart.

[25] I look to the circumstances of the marriage, her historical income, her current income to address the issue of entitlement and self sufficiency as it relates to the factors the Court must consider under s.15.2 and in particular (4) and (6) of the *Divorce Act*.

[26] In the final full four years of her employment, from 1999 to 2002, her income started at $20,060.00 (U.S.); in 2000 - $22,857.00 (U.S.); in 2001 - $27,170.00 (U.S.); and in 2002 - $30,570.00 (U.S.). As the respondent records only a partial year in 2003, I have not included that as indicative of her annual income in the U.S.

[27] Her income statements from her employment in Canada for 2007 and 2008 indicate her net business income in 2007 was $24,442.00 and in 2008 was $22,737.00. She projects that she will not make the $20,000.00 mark in 2009. Her employment income in 2007 in Cape Breton as $7,439.00, increasing to $11,439.00 in 2008. Her self employment earnings of $17,708.00 (bread making) in 2007 were reduced to $11,879.00 in 2008 due in part to the rising costs of materials.

[28] The respondent argues, essentially, that the petitioner enticed her away from her U.S. employment of 23 years, promising a future together and has placed her in a position where she is unable to re-enter the workforce in the manner in which she left it. She suggests she is not able to earn an income equivalent to or better than her income using her academic qualifications.

[29] The respondent advised that she would not be able to return to her job or pursue career development. I have no evidence that would support that as a valid conclusion. I have no evidence concerning her possible professional development were she to return to the U.S. and possible employment opportunities.

[30] The conclusion is more fragile given the respondent has not made serious efforts at re-entering the workforce, provided research supporting the conclusion or made efforts in Canada to determine what would be required to upgrade her professional qualifications to make her skills more marketable.

[31] The respondent was able to earn slightly more income with working as a baker in a café than she is able to in her current circumstances. She currently has 11 students as vocal students. Certainly, the combined income will not equal her previous income.

[32] I cannot conclude that the level of income that she is currently earning is what one can reasonably expect from a person with her educational background

and qualifications. In large part, the decision making relating to her current employment status is a personal life style decision.

[33] It would be fair to conclude on the evidence that it is likely that the respondent is underemployed and that the conditions of her employment do not relate directly to the marriage. She has clearly chosen a life style that does not currently produce the economic advantages her former employment would yield. This is not intended to be a criticism of the respondent, it is simply a factual consequence of her own choice .

[34] It is also fair to conclude that since 2002 there has been a gap in her professional development in part due to her decision to come to Canada and to marry the petitioner. Clearly, this is only one aspect to a greater decision making process.

[35] Her loss can best be identified by the absence of continuing pension contributions that occurred when in the employ of the college and lack of medical benefits associated with employment income and the cash contribution she made towards their living expenses and home when she came to Canada. .

The Petitioner's Income

[36] The petitioner's income fluctuates. He has presented his five year comparative tax summary. Averaging of his income will assist in producing an average available for the purposes of determining spousal support in the year 2010.

[37] In the year 2008, he has received a $9,000.00 farm subsidy. I recognize this is a potential non recurring income. His income tax summary over the last five years is as follows: in 2008 his line 150 was $40,164.77; in 2007 - $20,323.43; in 2006 - $23,600.23; in 2005 - $44, 094.91; and in 2004 - $24,242.60.

[38] An averaging of those five years produces an income of $30,485.00. If, on the other hand, I use the 2008 income and deduct the $9,000.00, subsidy the annual income is $31,164.77.

[39] I have no information for 2009. It is up to the petitioner to provide timely, accurate and updated financial information. Any errors that arises as a result of his failure to do so are avoidable errors had he simply provided appropriate

information and calculations. I am left, therefore, with an annual income in the approximate amount of $31,000.00.

[40] He has steady income as a bus driver and, although he projects he will earn less, he has provided no reliable proof of this assumption. He has traditionally relied on employment insurance benefits for a number of months and his 2008 EI benefits were included in his total salary. He has taxable dividends reflecting a fairly significant increase in interest from his investment income and he has his farming income.

[41] Mad cow difficulties and other cross boarder difficulties have seriously affected the farming and beef industry. These difficulties are not recent. They arose around the same time the parties to this petition met and married. The petitioner continues to struggle with deciding whether he should leave farming entirely.

[42] For spousal support purposes, I will assume that his income will be fairly consistent on a yearly basis.

[43] The respondent comes to this short term marriage with academic qualifications that far exceed the petitioner's. This is her second marriage occurring after she had established herself as a professional in an academic community. She had, at 44 years of age, an ability to earn income that in 2002 was equal to, in Canadian dollars, to that which the respondent currently earns (minus the subsidy).

[44] Her 2002 income was $30,570.00 U.S. With an exchange rate of 1.3036 in December 2002, that resulted in an income far closer to $40,000.00 than $30,000.00.

[45] The current exchange rate would yield an equivalent, in Canadian dollars, of approximately $31,000.00.

[46] She was able to be employed in the situation in which she retained medical benefits. The loss of her medical benefits is the most significant loss that would relate to her decision to stay in Nova Scotia and relate to her marriage to Mr. MacPhee. Although had she been employed, other than as currently chosen by her, certainly medical benefits may have been more readily attainable.

[47] The petitioner has lived on his father's farm and inherited this farm when his father and sister were killed in a car accident. He believes there is approximately 350 acres with ocean access. Approximately 50 of those are pasture, 50 are hay fields and 250 wood land. In the centre of the land is the matrimonial home, which the parties agree has been assessed at $107,000.00.

[48] For the purposes of the assessment, the parties have agreed to include 2.5 acres around the matrimonial home and attribute to the matrimonial home. The land runs approximately 1.5 miles back from the water and he has access to two beaches approximately one mile and three miles away . He is able to create water access from his property.

[49] The petitioner has suggested in the past that the property in total is probably worth approximately a million or so. For the purposes of this proceeding, we are only discussing the 2.5 acres together with the matrimonial home valued at $107,000.00. This property has been family property for a considerable period of time.

[50] The petitioner brought into the marriage the home, appraised at $107,000.00 (before disbursements); a half ton 1979 Ford with an agreed value at the time of separation of $1,000.00; his pension plan with a current value of $ 7,846.57; RRSP's with the Credit Union in a total of $7,115.78; other savings and accounts in the amount of $120,824.46; and securities in the amount of $40,071.57.

[51] He has advised that there was a transfer of some money from one of his savings and other accounts to a funeral co-op, which would not change the ultimate total. The petitioner has been debt free for approximately 15 years.

[52] When the respondent can into Canada in May 2003, with the bulk of her personal effects, she was required to fill out an accounting document for Canada Customs. The estimated value of her possessions was $39,270.00. This would include her estimated value of $8,525.00 for her jewellery, personal possessions passed down to her by her maternal and paternal grandparents in large part.

[53] Separately, the vehicle carrying her possessions, a 1999 Ford Escort was valued by her at $9,450.00. Both agree that it is not operational now and both

agree that the separation value of both vehicles was $1,000.00. Both parties had use of the Ford Escort after separation. It is not possible to place this in either of the parties possession for the purposes of valuation and determination of equalization.

[54] The evidence on these possessions is not entirely precise. A comparison of the personal affects accounting document and appendix ‘A’ to the respondent’s statement of property brings me to the conclusion that much of what she brought in was at separation considered her personal property, even though it had been used for matrimonial purposes. She retained most of her property and personal possessions. The property has not been professionally assessed. Obviously, the value of the possessions now is less than when she first entered Canada.

[55] In addition, she has retained for herself many of the purchases that were made during the marriage and the bulk of the property of the personal possessions that existed between the petitioner and the respondent are in the respondents possession in her new home.

[56] She also brought in $11,000.00 to $12,000.00 (U.S.). That, she testified, was invested in the home and for expenses.

[57] The respondent has a U.S. pension plan, which was valued in her statement of property at $54,108.41 (U.S.) and is currently valued at $44,871.55. She also has an investment with Ocean Bank valued at $5,121.03 as of June 30, 2009.

[58] The respondent also testified that both she and the petitioner put money in a U.S. checking account with the Sovereign Bank. The petitioner does not seem to have included in his statement of property the Sovereign Bank account wherein he apparently deposited his inheritance money valued at $6,250.00 (Canadian) and now $5,934.00(U.S.).

[59] The respondent does show a chequing account with the Sovereign Bank in which there is $3,300.00 (U.S.). This account contains two deposits, one of $800.00 (U.S.), her initial deposit, and the second deposit was $5,934.00 (U.S.). It is difficult to determine whether the balance includes the original deposit in November, 2005. The evidence does not allow for a clarification on this point nor is there clarification as to why it was valued at the hearing at $3,300.00 (U.S.)

[60] While reviewing the exhibits after the hearing it became apparent that the account number in exhibit 14 relating to this account did not accord with the account number in her statement of property. The statement of property shows incorrectly a present balance; the actual bank account had $3,300.00 (U.S.). The petitioner did not show this account in his statement of property.

[61] The statement of account dated November 2005 showed a balance of $5,916.79, $800.00 of which was her deposit and the balance of which is an inheritance he placed in this U.S. account. I sought clarification regarding this discrepancy in account numbers and received from counsel a letter copied to the petitioner's counsel by which I was informed that there was an error in the account number. Exhibit 14 bears the correct account number.

[62] In addition, I was informed that the most up to date statement shows a balance of $1,683.76 . The respondent admits to using this account post separation to purchase a mixer for her business and to pay her income taxes for 2008 for her business. She made a recent withdrawal to pay her 2009 business taxes. She

confirms that the petitioner told her she could use this account whenever she needed it. Thus she has had the benefit of almost all of his inheritance.

[63] I have received no contrary indication from the petitioner's counsel on this point.

[64] The petitioner wishes to compensate the respondent for any improvements she made to the home. The evidence suggests that these are minimal, although they may have been labour intensive. I have no receipts or evidence that itemizes the repairs. The respondent painted the upstairs and two or three rooms downstairs. There was some evidence a granny flat was started although whether it was finished was not established. The purpose, originally, was to allow the petitioner's mother to have her private space. This did not materialize.

[65] The respondent advises she spent the $10,000.00 to $12,000.00 cash she brought into the country on expenses and the home.

[66] The petitioner advised that his out of pocket costs for the granny flat were $3,500.00. He advised that he paid $5,800.00 for electrical upgrades for the house

and the addition. This would have already been factored into the value of the matrimonial home.

Conclusion

Property

[67] The relevant clauses in Section 13 of the *Matrimonial Property Act* are as follows:

> 13. Upon an application pursuant to Section 12, the court may make a division of matrimonial assets that is not equal or may make a division of property that is not a matrimonial asset, where the court is satisfied that the division of matrimonial assets in equal shares would be unfair or unconscionable taking into account the following factors:
>
> (b) *the amount of the debts and liabilities of each spouse and the circumstances in which they were incurred;*

The petitioner had no debts. The respondent's debts appear to be post separation.

Section 13 of the *Matrimonial Property Act* continues:

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

This short term marriage was entered into by two mature individuals after already having established themselves in professions. He was 39, never married and she 44 and divorced.

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

The petitioner brought his investments and property in having already acquired them through inheritance and otherwise without contribution by the respondent. There did not appear to be any confusion about what was the petitioner's and what was the respondent's assets. Neither significantly contributed to the assets of the other during the short marriage. Section 13 (f) of the *Matrimonial Property Act* further states:

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

There were no children. There is no evidence to support either played a role that interfered with the other. The facts do not support a significant investment of money or effort in the pre-acquired family home and business by the respondent.

The efforts invested in the farm and home are historic efforts from the petitioner's parents family and himself.

The *Act* continues:

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

The petitioner carried on as usual. The respondent received the benefit of the petitioner's establishment to start her business and facilitate a new way of life. He supported her in this. Section (h) and (I) of the *Matrimonial Property Act* further reads:

> (i) *the contribution made by each spouse to the marriage and to the welfare of the family, including any contribution made as a homemaker or parent;*

Clearly he had a firm financial base and she had fewer assets. Neither appeared to be in debt. Section (j) and (l) of the *Matrimonial Property Act* states:

> (j) *whether the value of the assets substantially appreciated during the marriage;*

There is no evidence of this .

> (l) the value to either spouse of any pension or other benefit which, by reason of the termination of the marriage relationship, that party will lose the chance of acquiring;

An equal division of the respondent's pension benefit would be greater than that which would result to the respondent from an equal division of the petitioner's pension. Her pension is larger than his although his investments far exceeded hers. All were essentially acquired before the marriage.

[68] The law on unequal division and, in particular, on the meaning of unfair and unconscionable was recently reviewed in a decision of Justice Beryl MacDonald in **T.L.S. v. D.J.M.** [2009] N.S.J. No 100 commencing at paragraph 30:

> 30 However, it may be unfair and unconscionable for the husband to receive a "windfall" when it is clear the matrimonial home could never been constructed without the mother's gift. (**Klain v. Klain**, [1998] N.S.J. No. 340 (N.S.S.C.))
>
> **UNEQUAL DIVISION OF THE MATRIMONIAL HOME**
>
> 31 In **Voiculescu v. Voiculescu**, [2003], N.S.J. No. 204, 2003 Carswell NS 252, Justice Dellapinna said the following about the meaning to be attributed to the wording of section 13 of the *Matrimonial Property Act*:

37. Matrimonial assets are to be divided equally unless there is strong evidence showing that an equal division would be clearly unfair and unconscionable based on the factors listed in s. 13 (see **Harwood v. Thomas** (1981), 45 N.S.R. (2d) 414 (N.S. C.A.)). It is not enough to simply find a rationalization or an unequal division in s. 13:

> ...it is not sufficient, for an unequal division of matrimonial assets, that one of the s. 13 factors be present. The judge must make the additional determination that an equal division would be unfair or unconscionable. The terms “unfair” or “unconscionable” do not have precise meaning. Lambert, J.A. wrote in **Girard v. Girard** (1983), 33 R.F.L. (2d) 79; B.C.J. No. 4 (Q.L.) (B.C.C.A.) supra, at p. 86:
>
> I come then to the legislative purpose expressed in the word "unfair". That word evokes ethical considerations and not merely legal ones. It is not a lawyer's word. The section does not give a judge a broad discretion to divide property in accordance with his own conscience. There can be no doubt about that. There must be uniformity and predictability of judgment. The question of unfairness must therefore be measured by an objective standard. The standard is that of a fair and reasonable person whose values reflect those generally held in contemporary British Columbia. Such a person, while not insisting that everyone adopt his or her behaviour preferences, can recognize unfairness in the form of a marked departure from current community values.”
>
> As directed in **Harwood v. Thomas**, supra, the judge must look at all of the circumstances, not simply weigh the respective material contributions of the parties. In **S.B.M. v. N.M.**, [2003] B.C.J. No. 1142 (Q.L.) (C.A.), a recent decision of the British Columbia Court of Appeal, the court was asked to review the trial judge's unequal division of family assets. *The Family Relations Act*, R.S.B.C. 1996, c. 128, s. 65(1) permits a deviation from the prima facie unequal division of family assets, where an equal division would be "unfair". I would endorse the approach to the question of unfairness outlined by Donald, J.A. for the court. It is consistent with the direction in Harwood, supra and the cases in this province which have followed:

> 23 ... The question is not whether an unequal division would be fair; that is not the obverse of the test in s. 65(1). The Legislature created a presumption of equality - a presumption that can only be displaced by a demonstration that an equal division would be unfair. So the issue of fairness is not at large, allowing a judge to pick the outcome that he prefers from among various alternative dispositions, all of which may be arguably fair. He must decide, in accordance with the language of s. 65(1), that an equal division would be unfair before he considers apportionment. Otherwise, although an equal division would be fair, a reapportionment could be ordered on the basis that it is more fair, and that, in my opinion, is not what the statute intends. (**Young v. Young**, [2003] N.S.J. No. 193, (supra) paragraphs 18 and 19."

32 In **Jenkins v. Jenkins** (1991), 107 N.S.R. (2d) 18 (T.D.), Richard J. reviewed the meaning of unfair or unconscionable as set out in s. 13 of the Matrimonial Property Act:

> I propose now to deal with the division of matrimonial assets in accordance with the law as set out in Donald, [1991] N.S.J. No. 214, supra, while remaining mindful of the comments of MacDonald, J.A., in **Nolet**, [1985] N.S.J. No. 26. To support a finding that a division is "unfair and unconscionable" it seems that there must be something more than mere inconvenience. The Random House Dictionary defines "unconscionable" variously as "unreasonable", "unscrupulous", "excessive" and "extortionate". These are strong words, and when coupled with the requirement that "strong evidence" must be produced to support an unequal division the burden upon the party requesting an unequal division of matrimonial assets is somewhat onerous.

[69] In this case, the factors that apply are the short term marriage, the date and manner of acquisition of assets, the lack of significant sacrifice/contribution on the

part of the respondent to the assets, and the fact that the petitioner's assets were almost totally accumulated prior to the marriage.

[70] An equal division would indeed be unconscionable. It would be excessive and it seems to me a reasonable person entering into marriage in these circumstances would not conclude an entitlement to share equally in all the prior acquired assets given the marriage lasted but 4 years.

[71] It appears that she has removed much of her personal possessions and some of the jointly acquired property; as well, she had the use of the bulk of the jointly held money in the Sovereign bank account. It also appears that this was not a contentious issue between them .

[72] To expect, on entering into the marriage, that marriage in itself would mean an automatic equal division having made no previous contributions to the family home, to the respondent and his parents and siblings would be unreasonable, akin to expecting a windfall.

[73] The petitioner lives frugally, cutting his wood for heat, with minimal expenses.

[74] The contribution of the respondent to the home was not substantial, although she invested her cash and labour.

[75] The parties did not mingle their investments except for the Soverign Bank and the household accounts and respondent seems to have used most of the funds in that account.

[76] Neither party prepared an equalization chart. Based on a total of the assets, not all of which were clearly defined or valued with precision, should they have really expected an equal division, the total assets of the two parties would be in the vicinity of $326,841.77, with an equalization payment of $112,219.00 payable to the respondent. The evidence simply does not support this kind of division.

[77] Although it is not safe to assume the accuracy of the figures in the statement of property (having heard the evidence) the petitioner brought into the marriage something in the vicinity of $283,797.00 (considering only the land directly related

to the home) and the respondent possibly between $102,828.00 and $106,000.00. Her pension declined in value due to market conditions and not matrimonial usage. I note in this analysis that I do not have a value for the petitioner's car for the same valuation date (marriage and separation) as is evidenced in the respondents evidence.

[78] It appears that the evidence provided would not be conducive to effecting an exact accounting for all the assets such that an accurate equalization chart could be created.

[79] This is simply a late marriage of two parties who came from very different cultures, hoping to make a marriage work. Once both were together in a marital situation they were too far apart to establish a solid foundation. Neither appears unkindly towards the other. They simply are having difficulty making the financial break. The only asset, accounts that were mingled were two household accounts. The other accounts, securities etcetera remained separate.

[80] Having regard to all factors replacing the respondent's contribution, considering the cash she brought into the marriage, putting a factor to account for

her labour, a generous assessment would be that the petitioner pay the respondent $20,000.00 in full and final satisfaction of any matrimonial interest she may have.

[81] He shall keep his investments and pension and she hers.

Spousal Support

[82] Having regard to the factors set out in the *Divorce Act*, the loss suffered by the respondent essentially amounts to the loss of her medical benefits. Having decided not to pursue employment with pension benefits, that loss is again a personal choice. Having decided to stay here rather than return to the U.S. where she qualified is another personal choice reflecting her personal values and life style options more so than dependancy arising form the marriage.

[83] The medical benefits she estimates will cost her $150.00 per month.

[84] The petitioner volunteered to leave his home for in excess of one year to allow her to remain and use the kitchen to bake bread and continue her business. I have assessed this as a contribution in kind from the petitioner to the respondent.

He supplied her wood for the interim period, in exchange she supplied him with bread.

[85] The respondent has now purchased her own home.

[86] Her spousal support entitlement would relate more to the disruption caused by the separation and the inevitable costs associated with re-establishing herself. The fact that she remains in the community is a personal choice, as is her lack of pursuit of professional development in her historical profession of teaching. Notably, she is taking on students on her own.

[87] Subsequent to this 4 year marriage from June 2007 until October 2008, she lived rent free in the farm house.

[88] Considering all, factors the petitioner shall pay the respondent $ 1,000.00 per month for a period of 1 year commencing January 1, 2010, with a final payment on December 1, 2010.

[89] Counsel for the petitioner shall draft the order.

Moira C. Legere Sers, J.