

**SUPREME COURT OF NOVA SCOTIA**  
**Citation:** Andrist v. Andrist, 2010 NSSC 285

**Date:** 20100720  
**Docket:** 1204-005025  
Ken No. 064361  
**Registry:** Kentville

**Between:**

Sharon Elaine Andrist

Petitioner

v.

Michael Douglas Andrist

Respondent

**Judge:** The Honourable Justice C. Richard Coughlan

**Heard:** March 4, 10, 11 and 12, 2010, in Kentville, Nova Scotia

**Final Written  
Submissions:** April 12, 2010

**Written Decision:** July 20, 2010

**Counsel:** Thomas R. MacEwan, for the Petitioner  
Angela A. Walker, for the Respondent

**Coughlan, J.:** (Orally)

[1] While attending nursing school in Dartmouth, Nova Scotia, Sharon Elaine Andrist went out with a friend to a bar. There she met Michael Douglas Andrist, who was unemployed. They hit it off right away. Ms. Andrist owned a home in Pictou County. She had custody of two children from her previous abusive marriage. In 1997, Mr. Andrist needed a place to stay and moved in with Ms. Andrist. They married July 24, 1999. The issues before the Court arise from the termination of the marriage.

[2] The facts are as follows:

[3] Sharon Elaine Andrist and Michael Douglas Andrist married July 24, 1999. Ms. Andrist has two children, both girls, from a previous marriage. Ms. Andrist's previous marriage had been an abusive relationship and she had sole custody of the two girls. The children's father paid maintenance for them.

[4] Ms. Andrist met Mr. Andrist while attending nursing school in Dartmouth, Nova Scotia. She met him at a bar with some friends. They hit it off right away. Ms. Andrist owned a home at Lamont Road, Edgerton, Pictou County, Nova Scotia. When attending school, she went home on Wednesdays and spent the rest of the school nights with Mr. Andrist. On weekends she went home to Pictou County.

[5] In the spring of 1997, Mr. Andrist needed a place to stay and moved in with Ms. Andrist. Mr. Andrist was not employed and took care of the children at the Lamont Road property while Ms. Andrist was working. Mr. Andrist proposed to Ms. Andrist around Christmas, 1998.

[6] Prior to their marriage on July 24, 1999, Mr. Andrist suggested they enter into a prenuptial agreement, stating he was not here "to take" Ms. Andrist. Mr. and Ms. Andrist signed a marriage contract dated July 22, 1999. I find the marriage contract or prenuptial agreement was Mr. Andrist's idea, made in contemplation of their marriage which took place July 24, 1999. It was a valid marriage contract.

[7] In the last half of 1999, Ms. Andrist was working at a number of nursing jobs including St. Martha's Hospital, Aberdeen Hospital, two home care cases and Eastern Canso Memorial Hospital. Mr. Andrist was employed in a number of jobs

including on a farm, Home Hardware, Maritime Steel, on an oil rig, and in 2000 at Trenton Ironworks. When Ms. Andrist was working, Mr. Andrist looked after the children and if Mr. Andrist was working, Ms. Andrist's parents kept the children.

[8] Mr. Andrist decided to study nursing, but could not get into nursing school as he had a criminal record. Eventually Mr. Andrist received a pardon and studied nursing.

[9] After Mr. Andrist graduated from his nursing course, he obtained a part time position at the Valley Regional Hospital in Kentville, Nova Scotia. Ms. Andrist obtained a full time position at the same hospital.

[10] Ms. Andrist listed her house on Lamont Road for sale. The property was owned by Ms. Andrist. The property sold on February 14, 2003, and after paying the mortgage and other disbursements, the balance received was \$40,961.93.

[11] Mr. and Mrs. Andrist purchased property at 8 Rosalind Drive, Centreville, Kings County, Nova Scotia on February 14, 2003. Title to the property was taken in both their names. The proceeds of the sale of Ms. Andrist's property at Lamont Road was used in the purchase of the Centreville property. In addition, the property was mortgaged to the Bank of Nova Scotia for \$85,000.00, the proceeds were used partly to purchase the property and partly to finance renovations to it.

[12] Ms. Andrist's brother, a contractor in Ontario, worked on the renovations with one of his employees. Ms. Andrist's brother worked at a favourable rate, charging \$10,000.00. Mr. and Ms. Andrist had received quotes of between \$48,000.00 and \$60,000.00 for the renovations. Ms. Andrist's father also assisted with the renovations for a few weeks. A dispute arose with the brother's employee, who then returned to Ontario.

[13] In March, 2004, Mr. and Ms. Andrist separated. Ms. Andrist consulted a lawyer and a deed was prepared in which Mr. Andrist quit claimed his interest in the Centreville property to Ms. Andrist. While Mr. Andrist did not have legal advice, he realized he was conveying the Centreville property to Ms. Andrist and she was to be responsible to pay the mortgage on the property, which Mr. Andrist described as "quite high". After approximately a week, they reconciled and Mr. Andrist moved back into the Centreville residence. Mr. Andrist knew there never was a deed conveying an interest in the property back to him. The quit claim deed

was registered in the Kings County Land Registration Office on November 19, 2007.

[14] In March, 2005, Mr. Andrist rejoined the Canadian Armed Forces (Navy). He had previously been in the Navy for two and half years. He obtained funding from the Navy for an apartment in Halifax, Nova Scotia, where he was posted. Ms. Andrist and the children remained in Centreville. Ms. Andrist and the girls often stayed in the apartment when visiting Halifax. He returned to Centreville every weekend and came home during the week sometimes.

[15] Mr. Andrist was sent to British Columbia for training in the summer of 2006. While he was there, Ms. Andrist arranged for a garage and decks to a hot tub to be built at the Centreville property.

[16] In July, 2006, Mr. Andrist purchased a Smart Car for \$25,000.00. In August, 2006, financing was obtained from the Bank of Nova Scotia to finance the Smart Car and renovations to the Centreville property. Mr. Andrist signed the personal credit agreement as a borrower.

[17] Ms. Andrist flew to British Columbia to visit Mr. Andrist. They drove back to Nova Scotia through the United States. While at Yellowstone National Park, an incident took place during which Mr. Andrist assaulted Ms. Andrist. Park officials or police were called by persons in adjacent hotel rooms. Ms. Andrist did not press charges. The next day Mr. Andrist apologized and the trip continued uneventfully.

[18] In April, 2007, Mr. and Ms. Andrist purchased property at Big Island (Merigomish Island), Pictou County, Nova Scotia. Ms. Andrist's parents owned property on the island. A friend of Ms. Andrist's father offered to sell land to her parents. Ms. Andrist's father, John Armsworthy, introduced Ms. Andrist to the vendor and Mr. and Ms. Andrist purchased the Big Island property for \$45,000.00. Financing of \$35,000.00 was obtained from the Bank of Nova Scotia and \$10,000.00 from Ms. Andrist's parents.

[19] Ms. Andrist and her father cleared the property. Her father had 24 loads of fill placed on the lot. Ms. Andrist paid to have the property bush hogged to keep the grass short. Shortly after the purchase was completed, Mr. Andrist wanted the Big Island property sold. The property was listed for sale for \$135,000.00. No

offers were received. The listing expired and Ms. Andrist re-listed it for sale for \$129,500.00 in October, 2009.

[20] Mr. and Ms. Andrist and the children went to Ms. Andrist's parents home in October, 2007 for the Thanksgiving holiday. There was an argument between Ms. Andrist's mother and Mr. Andrist. Mr. Andrist left the house and went to another building. Ms. Andrist took Mr. Andrist's dinner to him. Mr. Andrist returned to Centreville. Her mother drove Ms. Andrist and the children back to Centreville. Mr. Andrist was not home when they arrived.

[21] Ms. Andrist was told Mr. Andrist had assaulted her daughter, Justine. Ms. Andrist was concerned physical assaults by Mr. Andrist had gone from her to her children. She arranged for Justine to stay with her parents in Pictou County and her other daughter, Alyssa, to stay with a friend. Ms. Andrist contacted a lawyer, Jean Dewolfe, Q.C., stating she needed a separation agreement. Ms. Dewolfe drafted a separation agreement. Ms. Andrist signed the agreement on November 9, 2007. She took the agreement to Halifax for Mr. Andrist to sign. Ms. Andrist drove Mr. Andrist to the office of Mr. Bruce Davidson, Q.C., in Halifax. Mr. Andrist signed the agreement. Mr. Andrist did not receive legal advice concerning the separation agreement. He acknowledged he was advised to obtain independent legal advice, but did not do so.

[22] Ms. Andrist said the parties separated on October 5, 2007. After October 5, 2007, Ms. Andrist continued to visit Mr. Andrist at his apartment. She agreed it was possible she went to Halifax to celebrate Mr. Andrist's birthday on December 5, 2007. She visited Mr. Andrist to celebrate her birthday on January 1, 2008. On either January 1 or 2, 2008, they went to Da Maurizio's Restaurant in Halifax to celebrate. During the visit, Ms. Andrist stayed in Mr. Andrist's bedroom. Ms. Andrist had sexual relations with Mr. Andrist after October 5, 2007, stating the last time they had sexual relations was in February, 2008. Mr. Andrist leased an apartment at Green Village Lane, Dartmouth, Nova Scotia. Ms. Andrist went with Mr. Andrist when he viewed the property. Ms. Andrist is shown as next of kin on the lease for the Dartmouth apartment, which was dated July 11, 2008.

[23] At the end of June, 2008, Mr. and Ms. Andrist spent a weekend in Lockeport, Nova Scotia. It was a rainy weekend. They walked on the beach. On January 26, 2008, Mr. and Ms. Andrist went to an Ozzie Osbourne concert together. In December, 2008, Ms. Andrist was with Mr. Andrist when he

purchased a cat. Mr. Andrist was in frequent telephone contact with Ms. Andrist. Ms. Andrist continued to visit Mr. Andrist in his apartment in the fall of 2008.

[24] In October, 2008, Ms. Andrist had a breakdown. She was in a depression. She was off work on long term disability from October, 2008 until April, 2009.

[25] Ms. Andrist listed the Centreville property for sale in November, 2008. The property sold in May, 2009 for \$280,000.00. Ms. Andrist purchased a new residence on May 7, 2009. The Canadian Forces paid the expenses involved with selling the Centreville property. A moving company packed the furniture at Centreville, then took the contents to Ms. Andrist's new residence, except for a few items going to Mr. Andrist's apartment in Dartmouth.

[26] In December, 2007, Ms. Andrist changed the beneficiary on her life insurance and pension death benefits through her employment from Mr. Andrist to her children.

[27] Prior to the execution of the separation agreement on November 16, 2007, Mr. Andrist deposited his entire pay into the joint account he had with Ms. Andrist. Starting December 14, 2007, Mr. Andrist deposited \$900.00 the first of each month and on the 15th of each month into the joint account, which continued until the Centreville property sold in April, 2009. Regular monthly bills were paid from the joint account, including Nova Scotia Power for the Centreville property, Bell Alliant, Bell Express View and the parties' joint line of credit .

[28] Mr. Andrist testified the marriage contract was his idea. He thought it seemed fair. He considered he would have no claim on property in Ms. Andrist's name. He agreed any property in Ms. Andrist's name would be free of any claim by him. Property acquired jointly would be held jointly and shared by both of them. At the time the marriage contract was signed, Mr. and Ms. Andrist contemplated their marriage and living in the Lamont Road property. When signed, Mr. Andrist considered the marriage contract fair. I find Mr. Andrist fully understood what he was signing when he signed the marriage contract and signed it freely and voluntarily. I find the marriage contract was Mr. Andrist's idea, made in contemplation of the marriage of Mr. and Ms. Andrist which took place July 24, 1999, and is a valid marriage contract within the meaning of the *Matrimonial Property Act*, R.S.N.S. 1989, c. 275.

[29] I find Mr. and Ms. Andrist separated during the Thanksgiving weekend 2007, at least by October 8, 2007, and there was no subsequent reconciliation. Ms. Andrist was told at the time of separation that Mr. Andrist assaulted Justine. Mr. Andrist signed the separation agreement on November 16, 2007, stating the parties separated on October 5, 2007. In November, 2007, Mr. Andrist rented a U-Haul vehicle and moved furniture to his Halifax apartment. Prior to signing the separation agreement, Mr. Andrist deposited his entire salary into the joint account he had with Ms. Andrist. Afterwards, Mr. Andrist deposited \$900.00 into the joint account as provided for in the separation agreement. I do not accept Mr. Andrist's evidence that there were reasons other than the separation agreement which caused the amount he deposited in the joint account to change.

[30] The evidence is, and I find, that after October, 2007, Mr. Andrist did not attend family events with Ms. Andrist. Also, Mr. Andrist did not spend holidays with Ms. Andrist and her children.

[31] Mr. Andrist testified in the late spring of 2008, he readied the pool at the Centreville property for the summer season. He stated he visited Centreville after October, 2007 when Justine was at school or away. Ms. Andrist testified Mr. Andrist was only back at the Centreville property after the separation in March, 2009, when he broke into the property and telephoned her at her boyfriend's home. She then went to her home and asked Mr. Andrist to leave, threatening to call the police. She had the locks changed. I do not accept Mr. Andrist's evidence he readied the pool in 2008 and visited the Centreville property. I accept Ms. Andrist's evidence that Mr. Andrist did not visit Centreville after the separation except in March, 2009, at which time Ms. Andrist asked him to leave and changed the locks.

[32] I find Mr. and Ms. Andrist separated on October 8, 2007.

[33] Subsequent to the separation, Mr. and Ms. Andrist did have a relationship. Ms. Andrist visited Mr. Andrist in his apartment. They continued to have sexual relations, Ms. Andrist says until February, 2008. Mr. Andrist says sexual relations did not end until April, 2009.

[34] Christopher Hoddinott lived with Mr. Andrist from September, 2008 to October 31, 2009. He testified Ms. Andrist visited Mr. Andrist at their residence. Ms. Andrist slept in Mr. Andrist's bedroom. Mr. Hoddinott heard them having

sexual relations. Later in the fall of 2008, the frequency of Ms. Andrist's visits increased until February, 2009. Considering the evidence, including the weekend in Lockeport and Mr. Hoddinott's evidence, I find Mr. and Ms. Andrist continued to have sexual relations after February, 2008.

[35] Although Mr. and Ms. Andrist had a relationship subsequent to their separation, I find they did not reconcile and resume cohabitation.

[36] I find by the date of the hearing, March 4, 2010, the parties had been living separate and apart in excess of one year. I am satisfied all jurisdictional requirements of the *Divorce Act* have been met and there has been a permanent breakdown of this marriage by reason of the parties having lived separate and apart for a period in excess of one year, and a divorce judgment shall issue. As requested by her, I order Ms. Andrist's name be changed to Sharon Elaine Armsworthy.

[37] Mr. Andrist submits the separation agreement between he and Ms. Andrist dated November 16, 2007 cannot be enforced as it is unconscionable and unduly harsh on him. The approach a court is to take in reviewing the weight to give a separation agreement was set out in *Miglin v. Miglin*, [2003] 1 S.C.R. 303. The Court established a two stage approach to the exercise of a court's discretion.

[38] Stage one requires the court first look to the circumstances in which the agreement was negotiated and executed, to determine whether there is any reason to discount it, including any circumstances of "oppression, pressure or other vulnerabilities". Then the court is to determine the extent to which the agreement takes into account the factors and objectives listed in the *Act*, asking itself whether the agreement is in substantial compliance with the *Divorce Act*.

[39] If the separation agreement withstands the stage one analysis, the court should, in the words of Bastarache and Arbour, J.J. in *Miglin, supra*, at para. 87:

... assess the extent to which enforcement of the agreement still reflects the original intention of the parties and the extent to which it is still in substantial compliance with the objectives of the Act.

[40] In dealing with the stage one inquiry, Warner, J. stated in *Day v. Day*, 2006 NSSC 111 at para. 39:



Stage One deals with the validity of the agreement itself. **McLeod and Mamo**, supra, at pages 412 to 429, note that the issue of validity includes consideration of issues and factors that apply to all types of contracts (not solely domestic contracts); they examine such factors as:

- (1) the authority of counsel to settle the parties affairs (not relevant in this case);
- (2) the capacity or mental competence of the parties;
- (3) whether the parties failed to disclose material information;
- (4) whether each party understood the agreement and its effect;
- (5) whether the agreement was unfair or unconscionable (if such is permitted, as in the case for matrimonial property by s. 29 of the **Nova Scotia Matrimonial Property Act**);
- (6) whether the terms of the contract were unclear or uncertain;
- (7) whether a party signed under duress or “practical compulsion” (McLeod and Mamo note a difference between being under stress from a breakdown of the marriage and being under duress);
- (8) whether the agreement signed resulted from undue influence or was unconscionable because one side was aware of, and took advantage of, the other side’s vulnerable position (in particular, taking advantage of a pre-existing power/dependency relationship);
- (9) whether the agreement was signed under mistake;
- (10) whether the agreement was signed as a result of misrepresentation of a material fact; and
- (11) whether the parties received, or had the opportunity to receive, independent legal advice.

[41] In applying the factors set out above, I find:

- (1) The authority of counsel to settle the parties' affairs (not relevant in this case).
- (2) There is no issue as to capacity or mental competence of Mr. or Ms. Andrist.
- (3) In the agreement, Ms. Andrist's current income is said to be \$26,000.00. This is incorrect. Ms. Andrist's income for 2006 was \$43,628.00 and for 2007 \$44,654.00.
- (4) Mr. Andrist did not have legal advice concerning the separation agreement. Ms. Andrist gave instructions to Ms. Dewolfe to draft the agreement. Ms. Andrist signed the agreement on November 9, 2007. On November 16, 2007, Ms. Andrist took the agreement to Halifax for Mr. Andrist to sign. Ms. Andrist drove Mr. Andrist to the office of Bruce Davidson, Q.C., in Halifax, where Mr. Andrist signed the agreement without receiving legal advice.
- (5) The separation agreement is an unequal division of matrimonial assets in favour of Ms. Andrist.
- (6) The terms of the separation agreement are clear.
- (7) The circumstances surrounding the execution of the separation agreement by Mr. Andrist suggest compulsion to sign the agreement. It was alleged Mr. Andrist had physically assaulted Ms. Andrist's daughter, Justine. Ms. Andrist gave instructions to Ms. Dewolfe to draft the agreement. Ms. Andrist drove to Halifax, presented the agreement to Mr. Andrist and drove him to a lawyer's office to sign the agreement without legal advice.
- (8) See item (7) above.
- (9) There is no evidence the agreement was signed under mistake.
- (10) See item (3) above.
- (11) Mr. Andrist did not receive independent legal advice. He did not have much opportunity to receive legal advice. Ms. Andrist brought the

separation agreement to him in Halifax and drove him to Mr. Davidson's office the same day to have the agreement signed. Mr. Andrist acknowledged he was advised to obtain independent legal advice concerning the separation agreement, but did not do so.

[42] Dealing with the second part of stage one, I find the agreement is an unequal division of matrimonial assets in favour of Ms. Andrist.

[43] Considering all the evidence, including the fact Mr. Andrist did not have independent legal advice before signing the agreement, the misrepresentation of Ms. Andrist's income, and the unequal division of the parties' matrimonial assets, I find the separation agreement dated November 16, 2007 is unconscionable and unduly harsh on Mr. Andrist and should be set aside. I set aside the separation agreement.

[44] The same day Mr. Andrist signed the separation agreement, he also executed a quit claim deed to Ms. Andrist of his interest in the real property they jointly owned on Merigomish Island (Big Island), Pictou County, Nova Scotia. For the same reasons I set aside the separation agreement, the quit claim deed from Michael Douglas Andrist to Sharon Elaine Andrist dated November 16, 2007 is set aside. The quit claim deed was executed as part of the process which resulted in the separation agreement being signed on November 16, 2007.

[45] In early 2004, Mr. and Ms. Andrist separated. Mr. Andrist testified Ms. Andrist was not happy in her job and he was probably playing too many video games. He decided to move to British Columbia.

[46] The evidence is, and I find, on March 11, 2004 Ms. Andrist consulted a lawyer, Siobhan Doyle. The same day, Ms. Doyle drafted a quit claim deed of Mr. Andrist's interest in the Centreville property from Mr. Andrist to Ms. Andrist, and the deed was executed by Mr. Andrist. Mr. Andrist did not receive independent legal advice concerning the conveyance. Mr. Andrist signed the deed so that Ms. Andrist would not think she would be thrown out of the Centreville property. Mr. Andrist agreed to sign the deed of his interest in the Centreville property and Ms. Andrist was responsible for paying the mortgage on the property. Mr. Andrist realized he was conveying his interest in the property to Ms. Andrist. After signing the deed, Mr. Andrist left on his way to British Columbia. He went as far as Stewiacke, Nova Scotia. There was a reconciliation between Mr. and Ms.

Andrist. The separation lasted approximately a week. There was never a deed conveying an interest in the Centreville property back to Mr. Andrist. Title to the Centreville property remained in Ms. Andrist's name. The deed was registered at the Kings County Land Registration Office on November 19, 2007.

[47] The marriage contract the parties entered into on July 22, 1999 contains the following provisions concerning assets:

(b) Sharon and Michael agree that the residence in which they reside as a couple, whether married or not, shall remain the property of the one who holds the title and neither shall make any claim at common law or pursuant to the **Matrimonial Property Act** for possession or ownership of the property held by the other or for compensation by payment of an amount of money or share of the property for contributions of any kind, notwithstanding that if they reside together as a married couple in the property, it is a "matrimonial home" within the meaning of the **Matrimonial Property Act**;

....

(e) Sharon and Michael agree that any property or asset acquired by either of them shall be held in the name of the one who acquired the property and the other shall make no claim for a share in, ownership of or possession of the said property or asset. Sharon and Michael agree that how title is held or nominal ownership of property or assets shall be determinative of interest and ownership, such that sole title or ownership shall be the sole property or asset of the nominal party and joint title or ownership shall be the joint or shared property of the nominal parties.

[48] In the marriage contract, the parties agreed their matrimonial home would be the property of the person who has legal title to it. Mr. Andrist was aware of the provision. He knew the party who held legal title to the matrimonial home would have the property clear of any claim by the other spouse. He knew Ms. Andrist had legal title to the Centreville property. He signed the quit claim deed of his interest in it to Ms. Andrist in 2004.

[49] After the parties reconciled in 2004, although title to the Centreville property remained in Ms. Andrist's name, the property was treated as if title was in their joint names. The property was remortgaged in 2006, with Mr. Andrist as a co-borrower. At the time, title was shown in the Land Registration Office as in both Mr. and Mrs. Andrist's names. The quit claim deed was not registered until November, 19, 2007. In her testimony, Ms. Andrist acknowledged Mr. Andrist

was on the title to the Centreville property at the time of the remortgaging in 2006. Until the parties separated, Mr. Andrist's entire pay was deposited in the parties' joint bank account - the same account from which mortgage payments were made. Ms. Andrist took care of the finances. Considering the facts of the case, including Mr. Andrist's contribution toward payment of the mortgage on the Centreville property, his lack of legal advice at the time of executing the quit claim deed of the Centreville property and the manner in which the parties treated the property, I find it would be unconscionable for the Centreville property to be excluded as a matrimonial asset by virtue of the provision of the marriage contract set out in clause (e) under the heading "Assets". The Centreville property is a matrimonial asset.

[50] Having found the separation agreement does not govern division of matrimonial assets, from the facts of this case, I must decide the appropriate division of matrimonial assets.

[51] Section 4(1) of the *Matrimonial Property Act* defines "matrimonial assets" as follows:

**Matrimonial assets**

**4 (1)** In this Act, "matrimonial assets" means the matrimonial home or homes and all other real and personal property acquired by either or both spouses before or during their marriage, with the exception of

- (a) gifts, inheritances, trusts or settlements received by one spouse from a person other than the other spouse except to the extent to which they are used for the benefit of both spouses or their children;
- (b) an award or settlement of damages in court in favour of one spouse;
- (c) money paid or payable to one spouse under an insurance policy;
- (d) reasonable personal effects of one spouse;
- (e) business assets;

(f) property exempted under a marriage contract or separation agreement;

(g) real and personal property acquired after separation unless the spouses resume cohabitation.

[52] Possible matrimonial assets are: Mr. Andrist's pension, Ms. Andrist's pension, Ms. Andrist's registered retirement savings plan, joint account, land at Centreville, Kings County, Nova Scotia, land at Big Island, Pictou County, Nova Scotia, household furniture, 2002 Dodge Caravan and Smart Car.

[53] Pensions and registered retirement savings plan are normally matrimonial assets; however, in this case, the parties' pensions are exempted pursuant to the marriage contract dated July 22, 1999. Likewise, any registered retirement savings plan in the name of a spouse is also exempted under the marriage contract.

[54] The land at Big Island is a matrimonial asset. I am asked to value the property. In his post-trial submission dated April 5, 2010, counsel for Ms. Andrist, referring to the Big Island property, stated:

The property has been listed for some time (at a listing price of \$129,500.00) with no offers being received. The listing price is not the market value and there was no evidence on the market value of the property presented by either party.

[55] Counsel for Mr. Andrist, in her post-trial submission of April 12, 2010 submitted:

The parties agreed that the property is worth \$120,000. as evidence in their Statements of Property. ...

[56] The parties have not agreed on a valuation of the Big Island property. The property was purchased for \$45,000.00 in April, 2007. It is currently listed for sale for \$129,500.00. No offers have been received. I have no evidence before me upon which I am able to determine the value of the property. If the parties are unable to agree on a value, I will hear counsel as to how the value of the property is to be determined.

[57] I found the Centreville property is a matrimonial asset. It was sold in 2009 for \$280,000.00. Ms. Andrist's evidence is the net proceeds of the sale were

\$106,236.46. To determine the value of the property for the purpose of division of matrimonial assets, the adjustments to the purchase price must be taken into consideration. There is no evidence before me as to the closing adjustments to the \$280,000.00 sale price of the matrimonial home. If the parties are unable to agree on a value, I will hear counsel concerning the valuation of the Centreville property.

[58] The household furniture is a matrimonial asset. There is no evidence before me as to the value of the household furniture. If counsel are unable to agree on the value of the household furniture, I will hear them on the issue of the value of the furniture.

[59] The 2002 Dodge Caravan is a matrimonial asset with a value at the time of separation of \$4,000.00.

[60] The Smart Car is a matrimonial asset with a value at the time of separation of \$15,000.00.

[61] The joint account is a matrimonial asset. Used as an account for the payment of bills, the account does not appear to have a balance for division at the time of separation. Subsequent to separation, it was used by Ms. Andrist.

[62] The marriage contract dealt with debts as follows:

**DEBTS**

(a) Sharon and Michael agree to keep their debts and liabilities separate and each shall be responsible only for those debts and liabilities which are incurred in his or her name and shall indemnify the other in relation thereto;

(b) In the event the parties voluntarily enter into a debt or liability jointly, then Sharon and Michael agree that although the person or entity to which the debt is owed may hold them jointly and severally liable, that as between Sharon and Michael, they each agree to be responsible for only one-half of the debt and they each shall indemnify the other in relation thereto.

[63] The parties had the following matrimonial debts:

- Mortgage with Scotia Mortgage Corporation on Centreville property. I do not have evidence before me as to the balance owing on the mortgage at the time it was paid out. If counsel are unable to agree on the balance owing on the mortgage, I will hear them concerning the issue.
- Bank of Nova Scotia line of credit in connection with the purchase of the land at Big Island, which had a balance at the date of separation of \$45,308.22.
- Royal Bank line of credit which had a balance at the date of separation of \$9,632.16.

[64] Debts solely in the name of one of the spouses are not matrimonial debts, but are the responsibility of that spouse. Consequently, the following are not matrimonial debts:

- Bank of Nova Scotia line of credit in the name of Sharon Andrist, which had a balance of \$890.78 as of April 27, 2009.
- MBNA Mastercard credit card in the name of Michael D. Andrist, which had a balance as of October 18, 2007 of \$9,245.18. Ms. Andrist paid \$100.00 per month on the MBNA Mastercard account in Mr. Andrist's name. The Mastercard was not a matrimonial debt and, therefore, Mr. Andrist is to reimburse Ms. Andrist the amount she paid on the credit card.
- The two Royal Bank Visa cards in the sole name of Sharon Andrist, one with a balance of \$4,053.50 as of May 7, 2009 when it was paid by Ms. Andrist, and the other with a balance of \$10,946.50 as of May 7, 2009 when it was paid by Ms. Andrist.

[65] Mr. Andrist withdrew \$18,500.00 on May 8, 2009 from the parties' joint account by way of a bank draft. The \$18,500.00 is to be paid to Ms. Andrist in the division of matrimonial assets and debts between the parties.



[66] I accept Ms. Andrist's evidence that she gave \$7,000.00 to Mr. Andrist in August, 2008 and it is to be paid to Ms. Andrist in the division of the matrimonial debts and assets.

[67] Having found the separation agreement does not govern the division of matrimonial assets, I must decide upon the appropriate division.

[68] The parties cohabited since May, 1997, were married July 24, 1999 and separated in October, 2007. Having considered the factors set out in s. 13 of the *Matrimonial Property Act* and the evidence, I find there is no reason to have other than an equal division of matrimonial assets.

[69] If the parties are unable to agree upon the valuation issues still outstanding as previously mentioned and the division of matrimonial assets, I will hear counsel concerning those issues.

[70] Ms. Andrist is not seeking spousal maintenance, nor is she pursuing her claim for arrears of spousal maintenance. Consequently, I make no order concerning spousal support or arrears of spousal support.

[71] If the parties are unable to agree on the issue of costs, I will hear counsel on that issue.

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Coughlan, J.