

SUPREME COURT OF NOVA SCOTIA

Citation: Saunders v. Saunders, 2010 NSSC 304

Date: 20100729

Docket: 1202-001776

Amh No. 061426

Registry: Amherst

Between:

Jan Susan Saunders

Petitioner

v.

David Stephen Saunders

Respondent

Judge: The Honourable Justice Arthur W.D. Pickup

Heard: May 27 and 28, 2010, in Amherst, Nova Scotia

Written Decision: July 29, 2010

Counsel: Gordon Kelly and Angela Swantee, for the Petitioner
Lloyd Berliner, for the Respondent

By the Court:

[1] This is a divorce proceeding. The parties were married on May 4, 1974 in Oakville, Ontario. They were married for 33 years. At the time of separation Ms. Saunders was 53 years of age and Dr. Saunders 54. They ceased cohabitation on December 28, 2007. Ms. Saunders petitioned for divorce on November 6, 2008.

[2] I am satisfied that all jurisdictional requirements of the *Divorce Act* have been met and there is no possibility of reconciliation. I am further satisfied that there has been a permanent break-down of this marriage by reason of the parties having lived separate and apart, and that they continue to live separate and apart from one another. A divorce judgment will be issued with the effective date May 27, 2010 which is the date I gave an oral decision informing the parties the divorced was granted.

[3] Prior to and, to some extent, during the trial, the parties agreed on the valuation and division of their assets and debts. The parties provided a joint “statement of matters of agreed” on June 3, 2010 which will be incorporated into the corollary relief judgment. The remaining issues to be determined are as follows:

- a) What is the appropriate division of CanAm LLC?
- b) While the parties agree on entitlement to spousal support, the following are issues to be determined:
 - i. determination of Dr. Saunders’ income;
 - ii. determination of Ms. Saunders’ income; and
 - iii. quantum of support to be paid.

Background Facts:

[4] David Stephen Saunders is a medical doctor and Ms. Saunders is a registered nurse. Throughout their marriage Ms. Saunders primarily worked for Dr. Saunders in his medical practice, both in Canada and the United States. Dr. Saunders is a surgeon.

[5] When the parties met Ms. Saunders was 17 and Dr. Saunders was 19. They both graduated high school in Amherst. They dated. Ms. Saunders moved to Toronto in 1973 to live with her parents and then moved to Newfoundland to be with Dr. Saunders, where he was attending medical school at Memorial University. They married on May 4, 1974. At the time of marriage Dr. Saunders had completed his first year of medical school. Ms. Saunders worked in Newfoundland as a bank teller for a year and took evening courses at Memorial University. She attended a hospital school of nursing in St. John's from 1975 to September 1978 at which time she graduated with her nursing diploma.

[6] After graduation from medical school Dr. Saunders moved to Halifax to do a surgical residency in the summer of 1978. Ms. Saunders remained in Newfoundland until September of 1978 to complete her R.N. diploma, then moved to Halifax. Their eldest child, Neil, was born on January 31, 1979. They lived in Halifax except for short rotations that Dr. Saunders did in Saint John, New Brunswick. Ms. Saunders moved with him during these rotations. Their second child, Paul, was born in 1982.

[7] In Halifax, Ms. Saunders worked on a casual basis as an R.N. at the Victoria General Hospital. They remained in Halifax until May 1982 where the family moved to Amherst and Dr. Saunders began his medical practice there.

[8] Before moving to Amherst, in Halifax during his four year residency, Dr. Saunders worked long hours. During this time Ms. Saunders looked after their son Neil and took care of household chores, such as cleaning, laundry and shopping. She picked up shifts as an R.N. when she could.

[9] During the ten years in Amherst Ms. Saunders worked in Dr. Saunders' medical practice which Ms. Saunders set up. For a portion of the time the parties hired a full-time employee to work in the office so that Ms. Saunders could spend the majority of her time looking after their two young children. They were in Amherst from 1982 until 1992. During this time, Ms. Saunders, while caring for the children, helped with the medical practice, looking after the financial side of the business. For this she was paid a salary and later dividends through Dr. Saunders' medical corporation. These funds were pooled for family expenses. Ms. Saunders ran the household, doing general housekeeping, laundry and shopping.

[10] Dr. and Ms. Saunders decided to move to Tennessee in 1992. Dr. Saunders was tired, testifying that he had been on call most days while he practised in Amherst. When they moved to Tennessee Ms. Saunders set up Dr. Saunders' medical practice and worked for him as an R.N. and office manager. They hired an employee to help with the billing. In Tennessee, many procedures were performed in Dr. Saunders' office and, therefore, Ms. Saunders worked more on the nursing side than as office manager. Ms. Saunders worked full-time Monday to Friday and worked from home in the evening looking after the financial side of the practice. Ms. Saunders was paid by monies being attributed to her out of the practice. She and Dr. Saunders received advice on how to treat the practice income stream and how it should be distributed between them. The money allocated went into one pot for family purposes. Ms. Saunders described their Tennessee lifestyle as nice, with a gross income of \$400,000 - \$500,000 per year. They had a nice house, a car, boat and airplane.

[11] After being in Tennessee for ten years, the parties moved to Gainesville, Florida in 2002. Dr. Saunders set up a practice and Ms. Saunders organized the office set-up and worked in the office as the office manager and R.N. After five years in Florida they moved back to Amherst in May 2007. Ms. Saunders set up the practice for Dr. Saunders and continued to work as his office manager and R.N. Although the parties separated at the end of December 2007 Ms. Saunders continued to work in the medical practice at Dr. Saunders' request until the end of 2008.

[12] During the marriage, Ms. Saunders was responsible for the financial side of the parties' lives and the monies relied upon came from Dr. Saunders' medical practice. They also used money from their limited liability corporation, CanAm LLC, which was used for the purposes of asset protection. They both hold a 48% share in the company. Money was withdrawn from CanAm LLC to augment Dr. Saunders' medical income and used for family purposes.

[13] Dr. Saunders closed his Amherst medical practice at the end of May 2008 and became unemployed. When the office closed Ms. Saunders lost her job. From May 2008 until September 2008 Ms. Saunders did not work. In September 2008 she began teaching a course at the Nova Scotia Community College, which ran until December 2008. The course ran two evenings per week for three hours each evening.

[14] When Dr. Saunders closed out his practice in Amherst, I have no doubt that she was emotionally distraught at the time. Her marriage was falling apart and it took time for her to get back into the workforce. The purpose of Ms. Saunders working was to augment the spousal support payment of \$8,000 per month which commenced November 1, 2008. The spousal support amount was paid by \$6,000 cash payment and \$2,000 from CanAm LLC.

[15] In January 2009 Dr. Saunders stopped Ms. Saunders access to CanAm LLC. In January 2009 she secured a line of credit. In February 2009 Ms. Saunders obtained employment as an R.N. on a casual basis working two or three shifts in a two week period.

[16] On March 26, 2010 Ms. Saunders secured a non-nursing half-time contract position as an access manager for the Provincial Government and she deals with concerns regarding patient wait time at hospitals.

What is appropriate division of CanAm LLC?

[17] The first issue to be determined is the division of the monies presently in CanAm LLC.

[18] In September 2004 the parties, along with their two children, entered into a limited liability company operating agreement commonly referred to as the CanAm Agreement.

[19] The parties are equal shareholders owning 48% of the shares each, with each of the children owning 2% of the shares. CanAm LLC was used for asset protection while the parties were living in Florida. Ms. Saunders has used this company since the separation to support herself. Monies were deposited into this account from Dr. Saunders' practice through Holloway Financial and withdrawn by Dr. and Ms. Saunders throughout the years for family purposes.

[20] The parties agree on the value of this company at \$52,454.43 US based on a statement dated April 30, 2010. They also agree that the bill for preparation of the 2009 tax returns from CanAm LLC (\$750 US) is a matrimonial debt.

[21] Between July 2008 and the present time, Ms. Saunders has withdrawn \$71,000 US from the CanAm account. Dr. Saunders maintains that this is contrary to the terms of the agreement. To treat CanAm LLC as a matrimonial asset would result in half the amount withdrawn by Ms. Saunders being paid to Dr. Saunders. This would result in Ms. Saunders paying Dr. Saunders \$35,500. Ms. Saunders says that in order to do this, Dr. Saunders would need to pay her the \$38,000 he owed to her in relation to the \$2,000 per month of the spousal support payment that was to be paid through CanAm LLC from November 28, 2008 to May 1st, 2010, a total of 19 months. This would result in a net payment from Dr. Saunders to Ms. Saunders of \$2,500 Canadian.

[22] At the end of April 2010 Dr. Saunders had paid \$107,542.37 in spousal support. Based on a payment of \$6,000 per month for that 18 month period, he should have paid \$108,000. As a result, Ms. Saunders seeks the shortfall of spousal support in the amount of \$457.63 out of the CanAm LLC funds.

[23] The position of Ms. Saunders is that the remaining balance in the CanAm LLC account, approximately \$52,000, less \$750 for the accountant, should be divided equally between the parties. However, she suggests that an amount of \$277.24 for an outstanding propane bill should be deducted first. She also seeks payment of the \$2,500 shortfall, for the net balance owing on past spousal support amount to be paid out of CanAm LLC. She also seeks payment of the net balance of \$1,500 for an outstanding costs award owing to her, and the payment of \$457.63 to deal with a shortfall in the \$6,000 spousal support payments.

[24] In summary, Ms. Saunders suggests that the approximate balance of \$52,000 be divided subject to the \$4,457.63 Canadian adjustment she seeks as outlined above. This would, in Ms. Saunders' view, deal with the division of CanAm LLC, pay the previous cost award, pay two matrimonial debts (invoices) and spousal support of \$8,000 per month from November 1, 2008 to May 2010. I am prepared to order that the approximate balance of \$52,000 be divided equally, subject to a \$4,180.39 adjustment in Ms. Saunders' favor. I am not prepared to deduct the amount of \$277.24 for an outstanding propane bill as requested by Ms. Saunders as it is not related to this account.

[25] I agree with counsel for Ms. Saunders that the \$2,000 per month withdrawn from CanAm LLC as part of the spousal support order, was a way for Dr. Saunders to finance a portion of his spousal support obligation. In other words, it was a cash

flow issue for Dr. Saunders and CanAm LLC was designated to pay this amount. Similarly throughout the parties' lifetime together CanAm LLC was used for cash flow for various family purposes. Despite the terms of the agreement now being relied upon by Dr. Saunders to suggest that any withdrawal by Ms. Saunders required an equal amount be paid to him, I am satisfied that this is the appropriate way to deal with the balance of these CanAm LLC funds. To do otherwise would be unfair. The payment of \$2,000 from CanAm LLC to pay a part of Dr. Saunders' support obligation was consented to by way of consent order issued out of this court, and to now take the position that he is entitled to an equal amount of funds out of CanAm LLC, based on technical requirements of the CanAm LLC Agreement, is unfair. The balance remaining in trust after payment of \$4,180.39 to Ms. Saunders is to be divided between the parties.

Spousal Support:

[26] The following issues are outstanding:

- i) Determination of Dr. Saunders' income.
- ii) Determination of Ms. Saunders' income.
- iii) Quantum of support to be paid.

i. Determination of Dr. Saunders' Income

[27] Dr. Saunders is employed with the Blue Ridge Physician Group Inc. under a physician employment agreement entered into on February 24, 2009. A copy of the employment contract is in evidence.

[28] Dr. Saunders is provided with a base compensation of \$265,000 US per year (approximately \$302,500 Canadian). In addition he has the ability to earn income in excess of base compensation for RVU compensation, which relates to the total number of physician work - related value units. Dr. Saunders indicated the RVU is made up of the total number of procedures he performs in a year. Each procedure is assigned a procedure code by the centre for Medicare and Medicate Services with a corresponding value. Dr. Saunders is only provided RVU compensation if his RVU exceeded the maximum annual compensation.

[29] Dr. Saunders is also provided with additional call coverage compensation in the event that he provides additional call coverage over and above the required one to four ratio. Dr. Saunders can earn a performance bonus up to a maximum of \$2,500 per year.

[30] In 2009 Dr. Saunders commenced employment on March 15th. His employment income provided him with approximately \$210,000 during the weeks he worked in 2009 with the remaining income being accounted for by a signing bonus.

[31] In evidence (Exhibit 20) is Dr. Saunders' updated statement of income and expenses with his W2 form, which is the American equivalent of a Canadian T4. His total income from all sources in 2009 was \$245,519.90.

[32] In 2010 Dr. Saunders testified that he believes his annual income will be \$265,000, which is the base compensation set forth in the agreement.

[33] Dr. Saunders testified that the signing bonus he received in 2009 is not available in 2010. He further advised that RVU compensation will not provide him with any additional income in 2010 because his workload has been reduced. The reason, according to Dr. Saunders, is that a fourth surgeon was added to the rotation of doctors at the hospital immediately after he commenced employment. As a result, Dr. Saunders' workload has been reduced from what he had originally expected. Further, Dr. Saunders testified that this doctor also came from a neighbouring area, bringing her patients with her that might otherwise be available to Dr. Saunders. The effect is that he is not as busy as he would otherwise like to be and, therefore, it is his testimony that his ability to earn income over the base compensation is unlikely.

[34] It is also his evidence that because of the extra doctor he is not able to earn additional call coverage. Therefore, Dr. Saunders submits that his income for purposes of determining support is his base salary of \$265,000 US per year or \$302,500 Canadian per year.

[35] I am satisfied, based on the evidence before me, that Dr. Saunders' income for 2010 in Canadian dollars will be approximately \$302,500.

ii: Determination of Ms. Saunders's Income

[36] Ms. Saunders' evidence is that her income, based on working two to three shifts as an RN for a two week period, would be \$33,096.96 annually. On March 26, 2010 she secured a non-nursing half-time contract position as access manager with an annualized income of \$33,700 per year.

[37] In 2009 her employment income was mainly from her work as an RN. In 2009 she made \$48,601.91 (Exhibit 10). The access manager position is a half-time position effective March 24, 2010 and will run until July 31, 2010 unless extended. Since obtaining the half-time position Ms. Saunders has elected not to take additional shifts as an RN.

[38] Dr. Saunders' position is that Ms. Saunders is not working to her maximum capacity and if she were to do so she could have an income in excess of \$50,000 and closer to \$80,000 per year with overtime.

[39] Ms. Saunders agreed in cross-examination that she has no physical or mental issues that would prevent her from working on full-time basis. Moreover, she had worked full-time for the previous 25 years with her husband as his office manager and RN. At times, after performing her duties during the day at her husband's practice, she would look after the practice's financial matters in the evening.

[40] Ms. Saunders has indicated that she only works day shifts and works on a part-time casual basis so that she can control when she works. She admitted she is aware that more work is available and was asked by the health region to do full-time work on a permanent basis, but she declined. In evidence Ms. Saunders says she wants to work casual so that she can have flexibility in order to see her children, presumably when they are available. She also wants vacation time. Ms. Saunders does not wish to work more than two to three shifts per week when employed as an RN.

[41] Dr. Saunders' position is that he works full-time and there is no reason why Ms. Saunders should not be working full-time. Dr. Saunders argues that if Ms. Saunders chooses to work part-time, as she has to date - post separation, then her income should be imputed to that of a full-time nurse which he states would be in the range of \$80,000 per annum which would be her wages plus overtime.

[42] In respect of Ms. Saunders' income, I determine it to be in the \$50,000 per year range. This is close to what she made in 2009. It does not reflect full-time work, but two to three shifts in a two week period with, presumably, some overtime. If she were to accept a full-time position it would be in excess of \$50,000 per year.

iii: Quantum of Support to be Paid

[43] The issue in relation to spousal support is the quantum of support Dr. Saunders should be required to pay. The objectives to consider when examining a request for spousal support pursuant to the *Divorce Act* are found in s. 15.2(6):

Objectives of spousal support order

15.2(6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should

- (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
- (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
- (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
- (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[44] The *Divorce Act* also requires a court to consider the following:

Factors

15.2(4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including

- (a) the length of time the spouses cohabited;

- (b) the functions performed by each spouse during cohabitation;
- (c) any order, agreement or arrangement relating to support of either spouse.

[45] All four objectives set out in s. 15.2(6) are to be considered in every case and no one objective has paramountcy. If any one objective is relevant upon the facts, a spouse is entitled to receive support. (See *Moge v. Moge* (1992), 43 R.F.L. 345 (S.C.C.) and in *Bracklow v. Bracklow* [1999] 1 S.C.R. 420). McLachlin, J. (as she then was) in *Bracklow, supra*, also said the basis for spousal support entitlement can affect the form, duration and amount of any support awarded. In *Bracklow, supra*, the Supreme Court analysed the statutory objectives and held that they create three rationales for spousal support:

- a) Compensatory support to address the economic advantages and disadvantages to the spouses flowing from the marriage or from the roles adopted in marriage.
- b) Non-compensatory dependency-based support, to address disparity between the parties, needs and means upon marriage breakdown.
- c) Contractual support, to reflect an expressed or implied agreement between the parties concerning the parties' financial obligations to each other.

[46] The position of Ms. Saunders is that based on the length of the parties' marriage (33 years) the fact that she supported Dr. Saunders in his career by assisting him in his practice and remaining at home to care for the children during the first ten years of his career, and taking into account the income differential and differential in earning capacity between the parties, she is entitled to spousal support on an indefinite basis and that it should be awarded at the top range suggested by the spousal support advisory guidelines. Ms. Saunders' position is that for over 25 years of their marriage, she and Dr. Saunders functioned, not only as partners in the marriage but also partners in the medical practice. She submits that she was an equal contributor for the hard work needed to fund their lifestyle which included very large comfortable homes, private planes and having income to do as they pleased. Ms. Saunders submits the fact that she was an equal contributor to the hard work needed to fund such a lifestyle should entitle her to continue to enjoy a comfortable lifestyle despite the break-up of their marriage.

[47] Ms. Saunders seeks monthly spousal support based on the top range suggested by the Spousal Support Advisory Guidelines. At tab 5 of the submission by Ms. Saunders' counsel, the range of monthly spousal support that would be payable is from \$9,967 to \$13,250. This is based on 33 years of marriage with an income of \$33,000 attributable to Ms. Saunders and \$352,000 attributable to Dr. Saunders.

[48] Dr. Saunders submits that while the range provided by the advisory guidelines is a useful measuring stick or bench mark, it cannot replace a factual and legal analysis of the facts of the case within the framework of the *Divorce Act* and his spousal support obligations.

[49] In *Phillips-Curwin v. Curwin*, 2008 NSSC 198, Justice Dellapinna did a traditional analysis of the parties' relationship, circumstances and budgets, with little reference to the spousal support advisory guidelines, other than to refer to the ranges provided therein. Justice Dellapinna wrote at para. 47:

47 Whatever method one might use to determine the appropriate level of spousal support, from a practical point of view the figure chosen should be a reflection of the recipient's reasonable needs and should not exceed the payor's means. This is not an exercise in maximizing the spousal support simply because the payor may have the ability to pay it. Rather, the Court must look at all of the factors listed in the Act in light of the stipulated objectives of support and exercise its discretion in a manner that equitably alleviates the adverse consequences of the marriage breakdown between the parties (see *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420 at paragraph 36). That requires a support order that is fair to both parties.

[50] While these guidelines are a useful benchmark, I am satisfied that they cannot replace a factual and legal analysis of the evidence in the framework of the *Divorce Act*, *supra*, to determine a support order that is fair to both parties.

[51] The range as set out in the Spousal Support Advisory Guidelines, provided by Ms. Saunders' counsel, are based on Dr. Saunders' income being \$352,000. I have determined his income to be more in the range of \$302,500. The calculation is also dependent upon Ms. Saunders' income being approximately \$33,000. I have determined it should be closer to \$50,000. Inputting these revised incomes,

the Spousal Support Advisory Guidelines would suggest spousal support of \$7,891 at the low end, \$9,206 at the mid range and \$10,521 at the high range.

[52] Further, Dr. Saunders submits Ms. Saunders should not be entitled to rely on spousal support as her primary source of income. The evidence was that in addition to her living expenses she wished to take at least four major vacations a year and support her independent adult son.

[53] It is the submission of Dr. Saunders that this level of expenditure claimed by Ms. Saunders, in the amount of \$11,000 per month is unreasonable and, again, should be considered by this court in determining what a reasonable amount of spousal support should be.

[54] Dr. Saunders suggests that Ms. Saunders has inflated her monthly expenses and that these expenses are unrealistic. I have reviewed Ms. Saunders' expenses.

[55] Ms. Saunders pays her adult son's rent of \$1,350 per month and has included it in her expenses. Dr. Saunders suggests that this is not a reasonable cost that should be considered. I agree. He says the banking fees claimed and exchange fees will be reduced, if not, eliminated once the Florida home has been sold. I agree.

[56] The expenses associated with fees in Canada, including legal fees, according to Dr. Saunders should not be expenses that a court should consider in relation to a determination of expenses and support, and provides authority in *Durocher v. Durocher*, [1991] N.S.J. 391. Dr. Saunders questions the expenses associated with household repairs and maintenance, given that the home has undergone extensive renovations in excess of \$100,000.

[57] On cross-examination it would appear that the actual budget for heating would be more in the range of \$128 per month, resulting in a reduction of \$215 per month. Postage at \$56.14 appears high. Ms. Saunders claims \$1,031.16 per month for household repairs, maintenance, appliance and furniture repairs and replacement. This is over \$12,000 per year and is unrealistic as the house has just undergone a major renovation. Ms Saunders claims clothing at \$500 per month which is \$6,000 per year. This amount is high. Ms. Saunders appears to have a relatively new vehicle and \$260.90 per month for car maintenance and repair is high. She claims \$553.50 per month for Christmas, birthdays, events and gifts,

which works out to \$6,640 per year. This, in my view, is likely overstated. Ms. Saunders claims \$1,718.14 per month for fees in Canada and the US, including legal fees. There is no breakdown of what portion of these fees are legal fees. If they are legal fees I am satisfied they should not be included in the budget. Ms. Saunders claims \$425.28 per month for “exchange fees”. Presumably once this matter is completed, this amount should be eliminated. In summary, I am satisfied that expenses, as submitted by Ms. Saunders, are overstated and do not reflect a realistic monthly expense amount.

[58] In *Bracklow v. Bracklow* (1999), [1999] 1 S.C.R. 420, 44 R.F.L. (4th) 1, The Supreme Court of Canada analysed the respective obligations of husbands and wives and stated at pps. 439 - 440 (S.C.R.):

... a matter of applying the relevant factors and striking the balance that best achieves justice in the particular case before the court.

...

There is no hard and fast rule. The judge must look at all the factors in light of the stipulated objectives of support, and exercise his or her discretion in a manner that equitably alleviates the adverse consequences of the marriage breakdown.

[59] Dr. Saunders suggests that it is reasonable in these circumstances for him to pay spousal support in an amount less than suggested by the advisory guidelines based on his income of approximately \$302,500 Canadian per year, and based on an income of \$80,000 per year for Ms. Saunders. Mr. Saunders suggests that this court should also consider Ms. Saunders’ financial circumstances, her past employment and current employability. He suggests that the court should also consider his increased employment expenses now that he is a contract employee, and his inability to claim the tax benefits of being a payee as he is in the US and paying support to a Canadian recipient. All of these factors, according to Dr. Saunders, should be taken into consideration in determining the quantum of support payable.

[60] I have considered Dr. Saunders’ reasonable needs and his ability to pay spousal support to Ms. Saunders. I have considered Ms. Saunders’s income and her reasonable needs. I have considered the material supplied by Ms. Saunders’

counsel and his reference to the Spousal Support Advisory Guidelines. Even at the lower income that I attributed to Dr. Saunders and the higher income to Ms. Saunders, the range of \$7,891 to \$10,521 is questionable. It appears the Spousal Support Advisory Guidelines use Canadian Income Tax rates and deductions in their calculations. Dr. Saunders is paid in US funds as a resident of the US and receives deductions based on US and state rates. As a result, the use of these guidelines is questionable in these circumstances. I have considered that Ms. Saunders has chosen to work half-time, and I have also considered that there is no reason why she could not work full-time as does Dr. Saunders. I have also considered her comments that she finds it difficult to work longer hours, despite having worked long hours during her married years. There is no doubt from the evidence that Dr. Saunders and Ms. Saunders worked hard throughout their marriage. They worked as a team. Dr. Saunders continues to work full-time. Ms. Saunders has chosen to work part-time.

[61] Considering all of the foregoing, I order continuing ongoing spousal support in the amount of \$9,100 per month for an indefinite period for Ms. Saunders.

[62] Ms. Saunders was an equal contributor to Dr. Saunders' career, working side-by-side with him throughout the marriage. She is entitled to continue to enjoy a comfortable lifestyle as she experienced in her marriage with Dr. Saunders, even though there has been a breakdown of the marriage. I am satisfied that this amount will allow her to do so, while striking a balance that achieves a fair result for both parties.

[63] I am not prepared to order retroactive spousal support. The determination that I have made respecting the remainder funds to be dispersed out of CanAm LLC has the effect of Ms. Saunders having been paid \$8,000 per month in spousal support pursuant to the previous court order. This was a consent order and both parties agreed as to the amounts.

Life Insurance

[64] Ms. Saunders submits that Dr. Saunders should be required to acquire life insurance in the amount of \$500,000, naming her as the beneficiary, while he is paying spousal support. According to Dr. Saunders' financial statement (Exhibit 20) he does not presently have life insurance. I am not prepared to make such an order.

[65] There was no evidence led as to the life expectancy of either party or evidence as to what the premiums would be. There is no evidence whether or not Dr. Saunders would be able to obtain this insurance. Because there is no evidence as to the amount of the premium, it is difficult, if not impossible, to determine whether the premium would be reasonable or excessive or whether it should be available at all.

[66] I will hear the parties as to costs should they not be able to agree.

Pickup, J.