

**IN THE SUPREME COURT OF NOVA SCOTIA**  
**(FAMILY DIVISION)**

**Citation:** Davis v. Munroe, 2011 NSSC 14

**Date:** 20110117

**Docket:** SFHMCA-67212

**Registry:** Halifax

**Between:**

Brian Davis

Applicant

v.

Nancy Munroe

Respondent

**Judge:** The Honourable Associate Chief Justice Robert Ferguson

**Heard:** July 27, 2010

**Post Trial Submissions:** July 30 and August 16, 2010

**Written Decision:** January 17, 2011

**Counsel:** Andrew Pavey, for the applicant  
Steven Zatzman, for the respondent

## **By the Court:**

[1] Brian Davis (56) and Nancy Munroe (58) began a common law relationship in October of 1995 or August of 1996 which ended on December 2, 2007. They continue to reside in the same residence. In November of 2009 – almost a year after the relationship ended – Mr. Davis sought the right to occupy the home to the exclusion of Ms. Munroe. A month later, Ms. Munroe requested she retain exclusive possession of the property. She further sought the home be sold and its net value, together with the parties' other assets, including Mr. Davis' pension, be divided between the parties. In addition, she requested spousal support.

## **BACKGROUND**

[2] November 6, 2009: Mr. Davis applies, pursuant to the *Maintenance and Custody Act*, seeking exclusive possession of the couple's home.

[3] December 18, 2009: Ms. Munroe files a Response to Mr. Davis' application seeking exclusive possession of their home. She further, by way of the provisions of the *Partition Act*, seeks the sale of the residence. By virtue of constructive and/or resulting trust and a claim of unjust enrichment, she seeks an interest in the assets of Mr. Davis, including his pension. In addition, pursuant to the *Maintenance and Custody Act*, she seeks spousal support.

[4] January 7, 2010: A pre-trial conference is held with both parties appearing with counsel. A settlement conference is scheduled for April 18, 2010.

[5] April 18, 2010: A settlement conference is held without reaching agreement.

## **ISSUES**

[6] The issues are:

1. The length of the common law relationship;
2. The division of assets and debts related to this common law relationship, including the request the couple's home be divided by using the provisions of the *Partition Act*; and

3. Ms. Munroe's request for ongoing spousal support.

## **SUBMISSIONS**

### **Length of Common Law Relationship**

[7] The parties agree their relationship ended on December 2, 2008. At issue is when it began.

[8] In October of 1995, Ms. Munroe and Mr. Davis were seeing one another and began spending time together. This time included spending overnights in the same bedroom at the home of Ms. Munroe's parents. Mr. Davis acknowledges that the couple spent weekends together at Ms. Munroe's parents' home but insists, during that time, he was maintaining a residence at another location. Ms. Munroe submits that these times together extended beyond weekends and, in fact, their common law relationship began at that time and extended for a period of approximately thirteen years and one month.

[9] The couple moved together into an apartment on August 1, 1996. Mr. Davis, while acknowledging the couple were dating earlier, submits it was at this time the common law relationship began creating a relationship of approximately twelve years and three months.

### **Division of Assets and Debt**

[10] The parties' main asset is the home they jointly own at 49 Stoklin Drive. Mr. Davis has been the owner of this property since 1978. The couple moved into this residence in June of 2000. In March of 2001, by way of deed, Ms. Munroe became a joint owner of this property. Around the same time, if not in conjunction with her acquiring ownership, the property was mortgaged and she became a mortgagee. In May of 2008 – some seven years later – the existing mortgage was replaced by a RBC Home Line Plan. The plan provided a line of credit up to an amount of \$210,000.00. Mr. Davis and Ms. Munroe would appear to be jointly liable for any indebtedness related to this Home Line Plan.

[11] From the documentation made available to the court, it would appear three separate numbered accounts evolved from this plan:

- A line of credit that was never used;
- A line of credit that provided \$25,000.00 made available to Ms. Munroe. Ms. Munroe has assumed responsibility for this account and continues to make monthly payments in this regard;
- A third account apparently encompassing the remainder of the indebtedness related to this Home Line Plan for which Mr. Davis continues to assume responsibility.

[12] Mr. Davis acknowledges Ms. Munroe has an initial entitlement to fifty percent of the net equity in the home. However, he submits, given the particular circumstances of this relationship, an equal division would amount to an unjust enrichment of Ms. Munroe. He submits, as the owner of the home for a considerable period of time, he created a significant financial interest in this property prior to providing Ms. Munroe with ownership. He suggests he should retain sixty percent of the net equity in the home.

[13] Mr. Davis further suggests: a) the indebtedness to the RBC Home Line Plan account currently being assumed by Ms. Munroe be considered her debt solely while the remaining debt to the plan, for which he has assumed responsibility, be deducted when establishing the net worth of the property; b) as he has spent \$16,700.00 on household improvements since the parties began to live in the home, one half of this amount should be deducted from any entitlement of Ms. Munroe; and c) that, since the parties separated and remain in the home, he has incurred basically all the costs associated with the home. He believes one half of these costs (\$12,922.00) should also be deducted from any entitlement Ms. Munroe has in the net equity of this property.

[14] Ms. Munroe, as a joint owner, requests one half of the net equity in their home. Further, that the indebtedness she has maintained responsibility for since the establishment of the RBC Home Line Plan be considered in a similar fashion to the responsibility assumed by Mr. Davis (i.e. a debt against the property). Ms. Munroe acknowledges Mr. Davis spent funds on improving the home during their relationship. She notes that, at that time, they were both employed – he with considerably more income; that she performed most of the household duties, spent over \$25,000.00 in establishing their apartment and home; that she provided an

automobile for the majority of the relationship; that she has continued to maintain her monthly financial responsibilities to the Home Line Plan.

[15] As to Mr. Davis' post-separation costs, Ms. Munroe notes she has continued with her monthly payment and has purchased her own food.

### **Mr. Davis' Pension**

[16] Mr. Davis acknowledges Ms. Munroe's entitlement to a portion of this pension. The only disagreement on this issue is the establishment of the length of the relationship which was required in determining Ms. Munroe's entitlement.

### **RRSP in the Name of Ms. Munroe**

[17] It is acknowledged there is an RRSP currently owned by, or at least in the name of, Ms. Munroe.

### **Other Assets**

[18] Both parties filed Statements of Property listing other assets including automobiles and a boat.

### **SPOUSAL SUPPORT**

[19] Ms. Munroe seeks spousal support believing the length of their relationship and her contribution to the relationship establishes her entitlement to such support. She further suggests her current financial situation establishes she is and will remain in need of such assistance when the couple go their separate ways. Mr. Davis believes Ms. Munroe is unable to establish a legal entitlement to spousal support.

[20] There remains a further issue – that of establishing the value of the home.

[21] The couple has provided information from outside sources giving a different view as to the value of this property. Neither of the individuals who provided such opinions were called as witnesses. Neither party questioned the acceptance of this information in the manner it was presented.

[22] Ms. Munroe suggests the evaluations are not relevant if the property, as she requests, is sold pursuant to the *Partition Act*. However, Mr. Davis has maintained from the outset that he should be allowed to retain this property and such transfer could be accomplished without detriment to Ms. Munroe.

## **RELEVANT LEGISLATION**

[23] The *Maintenance and Custody Act*, particularly paragraphs 3 and 4 which provide authority to order, in this instance, a common law partner to provide maintenance to the other common law partner and notes the factors to be considered when determining if such an order should issue and, if so, the amount to be so ordered.

[24] The *Partition Act*, particularly paragraphs 5 and 24 which provide that a land owner may seek partition of a property and the court the opportunity to provide relief other than an order for partition.

## **CONCLUSION**

### **Length of Relationship**

[25] As previously mentioned, it is agreed the relationship ended on December 2, 2008. There are two options as to when the relationship began: October 1, 1995, when the couple began sharing the same bedroom in Ms. Munroe's parents' home for weekends or extended weekends or August 1, 1996, when the couple moved together on their own into an apartment.

[26] Both Mr. Davis and Ms. Munroe, while testifying, gave evidence to support their claim on this point. Marie Naugle, mother of Ms. Munroe, testified as to the couple, in October of 1995, beginning sharing a bedroom in her home, ultimately spending from Wednesday to Monday of each week at that location. Bonny Lynn Jeffrey, former spouse of Mr. Davis, gave evidence indicating that, although she and Mr. Davis ended their relationship in September of 1995, he remained living in their family home, except for weekends, until August of 1996.

[27] I conclude it has not been established a common law relationship began until the couple moved into, on a full-time basis, their own apartment in August of 1996.

This would establish a common law relationship of approximately twelve years and three months.

### **Division of Parties' Assets and Debt**

#### ***Home - Stoklin Drive***

[28] As previously noted, Mr. Davis acknowledged that Ms. Munroe would normally be entitled to fifty percent of the net equity in this home but goes on to suggest this should not be the case in this instance.

[29] Mr. Davis raises two points. First, an unequal division (he suggests sixty/forty percent) based primarily on the manner in which the home became equally owned. Second, on making the unequal division there should be further deductions from Ms. Munroe's share based on improvements he made to the home since the relationship began and the post-separation costs he has incurred in relation to the home since the relationship ended and the parties remained in that home.

[30] As to the unequal division, Mr. Davis states in his written submission

“Mr. Davis further submits that the particular circumstances of his case provide the basis for an unequal division. The house was his to begin with and he brought into the joint ownership arrangement a sizeable equity value, while Ms. Munroe contributed nothing directly.”

[31] The couple had a relationship that lasted in excess of twelve years most of which occurred while living in the home. In a relationship of this duration, even if one of the parties had been a “stay-at-home” spouse, in most instances their assets would presumably be divided equally. In this instance, both parties were mature individuals without children and employed. Further, Mr. Davis had considerable more income than Ms. Munroe.

[32] The evidence supports a conclusion Ms. Munroe came to the relationship with \$25,000.00 and an automobile. Ms. Munroe contends she spent the \$25,000.00 primarily for the benefit of the relationship; that she provided substantially for the outfitting of, initially, their apartment and then their home; that her automobile became the family automobile used extensively by Mr. Davis.

Ms. Munroe further contends that she, on a consistent basis, provided food for the household and did the cooking, cleaning and most of the upkeep; that, in providing for this relationship, not only did she deplete her \$25,000.00 but when they became parties to the RBC Home Line Plan she was personally in debt for an additional \$25,000.00; that, since that time, she has contributed either \$268.00 or \$229.00 bi-weekly towards the Home Line Plan charge on their home. (Ms. Munroe's affidavit of December 2009 gives the amount as \$268.00 while her pre-trial submission suggests \$229.00)

[33] It is true the couple, throughout the relationship, maintained their finances separately. If in maintaining this arrangement Ms. Munroe had amassed considerable wealth while Mr. Davis solely carried the couple's financial burden, there would be reason to consider the unequal division requested by Mr. Davis.

[34] It has been established Ms. Munroe brought \$25,000.00 to the relationship and, further, had a debt of \$25,000.00 when the RBC Home Line Plan became a reality. There is no suggestion that Ms. Munroe has amassed substantial assets in the form of savings or any other manner. There is no evidence to support a conclusion she spent \$50,000.00 lavishly for personal gain or satisfaction.

[35] Mr. Davis correctly acknowledges Ms. Munroe's initial entitlement to fifty percent of the net equity in their home. I conclude her maintaining that interest would not amount to her unjust enrichment or a windfall in her favour.

[36] Mr. Davis, over the period of their common law relationship, indicates he has spent \$16,700.00 on improving or maintaining the property. He seeks to have Ms. Munroe responsible for one half of these expenditures. Mr. Davis currently has an income of approximately \$71,250.00 a year while Ms. Munroe earns approximately \$34,400.00. It would appear they have maintained this disparity in their incomes over the course of their relationship. Given what I have previously noted as to Ms. Munroe's contribution over the course of their relationship, I do not find it appropriate that her entitlement be reduced as a result of these expenditures by Mr. Davis.

[37] Mr. Davis has provided a detailed list of property-related expenses he has incurred since the relationship ceased with the couple remaining in the home. The list indicates expenditures of \$25,843.55. He seeks reimbursement of one half of this amount. Included in this list of expenses are payments he made under the



heading of “mortgage” beginning in December of 2008. I find that, during that period of time, Ms. Munroe has continued her contribution towards the RBC Home Line Plan indebtedness. As to the other expenses which are listed under the headings of “water,” “heating oil,” “power,” “phone/internet,” “satellite TV,” and “taxes” which amount to \$11,389.00. I conclude it would have been appropriate, under the circumstances, for Ms. Munroe to make a contribution towards this amount. I find that such expenses should be shared by the parties in accordance with their incomes and that Ms. Munroe should bear one third of this amount or \$3,796.00 which should be deducted from her equity in the home.

[38] Mr. Davis seeks an opportunity to retain ownership in the Stoklin Drive property. He has maintained an interest in this property well beyond the twelve-year relationship with Ms. Munroe. I find, in this instance, he should be allowed to retain ownership while providing Ms. Munroe with her appropriate entitlement to the property.

[39] Having come to this conclusion, it becomes necessary to place a value on this property.

[40] Mr. Davis suggests the property be valued at \$195,000.00. In support of this submission he has provided an appraisal from Mari-Tech Appraisals stating the market value as \$195,000.00. The document also states, “This estimate is subject to certain conditions ...”

[41] Ms. Munroe submits the property be valued at \$219,800.00. In support of this submission she has provided a document which settles on this figure based on “information and analysis by the direct comparison approach.” This document also mentions a range of between \$203,000.00 and \$242,000.00.

[42] Based on the information provided, I find the value of the property to be \$210,000.00.

[43] I find the following to be disposition costs:

Real estate commission (5%):	\$10,500.00
Legal fees and disbursements:	\$1,000.00

[44] I conclude the RBC Home Line Plan indebtedness to be a charge against the property and that that amount includes the two accounts currently being maintained by Mr. Davis and Ms. Munroe in the amounts of \$71,063.00 and \$15,108.00 for a total of \$86,171.00.

[45] I find the “net value” of the home to be \$112,329.00.

### **RRSP**

[46] Ms. Munroe appears to have an asset in the form of an RRSP with a value of approximately \$10,000.00. I conclude this asset should be equally shared by the parties. Accordingly, one half of the value of this asset is to be deducted from any funds she receives from Mr. Davis on his assuming ownership and responsibility of the property on Stoklin Drive and she maintaining ownership of the RRSP.

### **Pension**

[47] It is agreed Ms. Munroe has an entitlement to Ms. Davis’ pension. This entitlement is determined by the length of their common law relationship. I have previously determined the relationship began in August of 1996 and ended on December 2, 2008.

### **Other Assets**

[48] Both parties filed Statements of Property, including items not previously dealt with in this decision. There was no indicated agreement as to the acceptance of these items as assets or their value. In Mr. Davis’ written pre-trial submission, under the heading “Division of household property,” he states:

Mr. Davis is requesting the Court’s assistance in facilitating the return of number of personal items that Mrs. Munroe has taken, as follows:

Digital Sony camera (gift from Nancy)

New monogrammed wallet (gift from Nancy)

Acrylic snowman

Crystal vase (from his 87-year-old aunt)

Royal Albert 5-piece set: plate, sugar, creamer, two mugs (gift 32 years ago from his father)

Christmas sock (hand-made 54 years ago by his mother)

Angel Among Us 3-piece figurine set

Winter Retreat picture purchased by Mr. Davis at Wheatons in 2006

Other Christmas decorations if Mrs. Munroe could more fairly divide them up. All Christmas items have been removed from the home. Both parties spent a lot of money on these pieces.

[49] In Ms. Munroe's written pre-trial submission, under the heading "Personal Property," she states:

In dealing with personal property, the Courts have consistently been receptive to finding a constructive trust existed and divided all property including that of a personal nature on the basis of a Trust Law (**Pettkus v. Becker (1980) 19 R.F.L. (2d) 165 (S.C.C.)**).

Ms. Munroe's position with regard to the division of the contents of the home is as noted in her Affidavit.

Mr. Davis is left with significantly greater assets including the sail boat and his extensive and valuable tool collection.

[50] No tangible evidence was introduced to suggest how the court relate to these items or their value. No oral submissions were made on this subject.

[51] I am unable to conclude if the parties are in agreement with how such matters have been distributed or believe they can deal with these other items on their own. In any event, they will not be taken into account in this decision. I will remain available in the event it is felt necessary to re-visit these assets or items. Given the cost of litigation, I hope these items do not require further court attention.

## **SPOUSAL SUPPORT**

## Entitlement

[52] The Supreme Court of Canada in *Bracklow v. Bracklow*, [1990] 1 S.C.R. 420, stated at para. 15:

“The lower courts implicitly assumed that, absent a contractual agreement for post-marital assistance, entitlement to support could only be founded on compensatory principles, i.e., reimbursement of the spouse for opportunities foregone or hardships accrued as a result of the marriage. I conclude, however, that the law recognizes three conceptual grounds or entitlement to spousal support: (1) compensatory; (2) contractual; and (3) non-compensatory. These three bases of support flow from the controlling statutory provisions and the relevant case law, and are more broadly animated by differing philosophies and theories of marriage and marital breakdown.”

[53] The *Annual Review of Family Law, 2002*, McLeod and Mamo, in reference to this decision stated at p. 193:

“In *Bracklow v. Bracklow*, the Supreme Court of Canada held that there were three types of support:

1. compensatory support, (both specific calculable and unspecific) to address the economic advantages and disadvantages to the spouses flowing from the marriage (or the roles adopted in marriage);
2. non-compensatory dependency based support, to address the disparity between the parties’ needs and means upon marriage breakdown; and
3. contractual support, to reflect an express or implied agreement between the parties concerning the parties’ financial obligations to each other.”

[54] In this instance, there is no submission as to contractual entitlement.

[55] As previously mentioned, the *Maintenance and Custody Act* provides Ms. Munroe with an opportunity to seek reasonable maintenance and further enunciates the factors to be considered when considering entitlement to such maintenance.

[56] Mr. Davis and Ms. Munroe were common law partners for in excess of twelve years. They own a house together. They share an indebtedness as to that home. During the course of the relationship, they both were employed. They maintained their own bank accounts and, to a degree, their own financial structure. Both contributed financially and otherwise to their relationship. Mr. Davis who had the higher income contributed more financially to the relationship. The parties will leave the relationship with incomes relative to the ones they had when the relationship existed.

[57] Both parties filed Statements of Expenses which portrayed the parties with a deficit. Mr. Davis' deficit is minimal while Ms. Munroe's is in the vicinity of \$1,500.00. It should be acknowledged that these calculations are to, a degree, estimates given the necessity to redistribute their current assets and debt.

[58] Mr. Davis submits that Ms. Munroe's entitlement to support has not been established. This belief is based primarily on Mr. Davis' larger financial contribution to the relationship and the separation of the couple's financial circumstances. He further questions her establishing a current need for support.

[59] I find Ms. Munroe has established an entitlement to spousal support on both a compensatory and non-compensatory basis.

[60] As to the non-compensatory basis, Ms. Munroe has a need for financial support and Mr. Davis has an ability to contribute towards that need. As to the compensatory basis, I find Ms. Munroe contributed, in proportion to her financial ability, toward their common law relationship to a greater extent than suggested by Mr. Davis. Further, she is and will be economically disadvantaged by the dissolution of the relationship.

### **Duration and Amount**

[61] The *Annual Review of Family Law, 2002*, McLeod and Mamo, under the heading of "Duration of Support" at p. 221, states:

The duration of support should reflect the support objective that the support order is intended to address: *Bracklow v. Bracklow, supra*. Usually, support is awarded because a dependant is not self-sufficient as a result of the roles adopted in marriage. A court should not assume that a dependant will be able to achieve self-

sufficiency. There is no deemed self-sufficiency and a support order should continue until a dependant has overcome the effect of the roles adopted in marriage: *Moge v. Moge, supra.* [Emphasis added]

[62] Ms. Munroe, on this point, in her pre-trial submission, stated, in part:

The position of the Applicant that the Respondent should not receive spousal support is without legal foundation. His claim to seek occupational rent for the period since the parties separated is also without foundation. The Respondent has been contributing \$229.00 biweekly and is and would have been entitled to spousal support since of the date of separation. Retroactive support is not sought as the parties have lived in the matrimonial home which would offset any such claim.

I am attaching hereto the **Spousal Support Advisory Guidelines** which show, based on the parties' incomes and respective ages, spousal support ranging from **\$599.00 to \$798.00** per month for an indefinite duration subject to variation and possible review. Based on her budget, she has a need for spousal support in the higher range for an indefinite period.

[63] I have considered Ms. Munroe's entitlement to a share of the relationship's assets, including the family home, as well as her entitlement to her share in Mr. Davis' pension.

[64] I find an order requiring Mr. Davis to provide spousal support in the amount of \$500.00 a month for a period of twelve months will adequately provide for Ms. Munroe's compensatory and non-compensatory entitlement. This payment will begin on March 1, 2011.

[65] To recap, Ms. Munroe will transfer her ownership in the property located on Stoklin Drive to Mr. Davis. Mr. Davis will provide her with a payment of:

One half of \$112,329.00	\$56,164.00
Less one half of the RRSP	\$5,000.00
Sub Total	\$51,164.00
Less a contribution to post-separation expenses	\$3,796.00
<b>Final Figure</b>	<b>\$47,368.00</b>

[66] Mr. Davis will sign any documents, if required, to ensure the RRSP is owned by Ms. Munroe and Mr. Davis will arrange to have Ms. Munroe removed from any responsibility with regard to RBC Home Line Plan.

[67] Mr. Davis will provide spousal support to Ms. Munroe in the amount of \$500.00 a month for a period of twelve months beginning March 1, 2011.

[68] I ask counsel for the applicant to prepare the orders.

J.