

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Foster-Jacques v. Jacques, 2011 NSSF 43

Date: 20110202

Docket: HFD1201-64463

Registry: Halifax

Between:

Sharon J. Foster-Jacques

Petitioner

v.

Hector J. Jacques

Respondent

LIBRARY HEADING

Judge: The Honourable Justice Beryl MacDonald

Heard: January 31, 2011, in Halifax, Nova Scotia

Written Decision: February 2, 2011

Subject: Family Law; Divorce Act; Interim Hearing; Spousal Support; Evidence of marital misconduct.

Summary: The Husband brought a motion to strike portions of the Wife's affidavit to be heard in an interim proceeding. Those portions described the Husband's infidelity and the effect upon the wife. The Husband relied upon section 15.2 (5) of the Divorce Act and also argued that, on interim spousal support motions, only the "need and ability" to pay issues are relevant.

Issue: Do the principles of *Leskun v Leskun*, [2006] 1 S.C.R. 920 apply to an interim application and so permit affidavit evidence

outlining marital misconduct and its effect on a spouse? Are need and ability to pay the only considerations to be reviewed during an interim spousal support motion?

Result: The principles of *Leskun v Leskun*, [2006] 1 S.C.R. 920 apply to an interim application.

Need and ability to pay do not exhaust the list of relevant considerations on a motion for interim spousal support. Sections 15.2(4) and (6) of the *Divorce Act* clearly specify the factors and objectives a court must take into account when considering such an application. A court must consider all, not some, of the statutory factors and objectives.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.
QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.***