

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

**Citation:** Soubliere v. MacDonald, 2011 NSSC 98

**Date:** 20110314

**Docket:** SFHPA-068566

**Registry:** Halifax

**Between:**

Nicole Marie Soubliere

Petitioner

v.

Douglas Gordon MacDonald

Respondent

**Judge:**

The Honourable Justice Elizabeth Jollimore

**Heard:**

January 4, 2011

**Counsel:**

Dorianne Mullin on behalf of Nicole Soubliere

David F. Morrison on behalf of Douglas MacDonald

**By the Court:**

**Introduction:**

[1] Nicole Soubliere has applied pursuant to section 5 of the *Partition Act*, R.S.N.S. 1989, c. 333 for the sale of 58 Stewart Harris Drive and the equal division of the proceeds of that sale. She's also applied for occupation rent for that property for the period from February 2006 to the present date because Doug MacDonald has had exclusive possession of property during this time and for a share of the rent he received from tenants to whom he rented rooms in the house.

**Background**

[2] In March 2003, Nicole Soubliere moved in with Doug MacDonald, her boyfriend, to share his apartment. Ms. Soubliere worked full-time as a nanny and Mr. MacDonald worked full-time as a chef at a hotel.

[3] The couple was interested in purchasing a house and they were pre-approved for a mortgage. In September 2004, one of Ms. Soubliere's friends told her about a house that was being sold at a foreclosure. The house was in a neighbourhood that interested Ms. Soubliere and Mr. MacDonald, so they investigated it. According to Ms. Soubliere, the house had been well maintained and it was in very good or excellent condition.

[4] The couple purchased the house at the sheriff's sale. Mr. MacDonald paid the down payment that was required at the sheriff's sale. He says the down payment was \$13,000.00. Ms. Soubliere says that the actual down payment was \$4,625.00. Ms. MacDonald also paid the home's owners approximately \$2,000.00 to buy the appliances in the house.

[5] One day before the purchase closed, Ms. Soubliere and Mr. MacDonald went to her lawyer's office to sign a cohabitation agreement. Mr. MacDonald said that he carefully considered the agreement he was being asked to sign because he was investing his life's savings in the purchase. This careful consideration of the agreement didn't involve obtaining independent legal advice about it.

[6] The cohabitation agreement acknowledged that Ms. Soubliere and Mr. MacDonald were buying the house as joint tenants. If they separated, the agreement provided that the house would be sold to Mr. MacDonald at its then-appraised value and Ms. Soubliere would receive one-half of the equity in the house after Mr. MacDonald received credit for his \$13,000.00 down payment. Interest was not to be credited on the down payment.

[7] According to paragraph 9(b) of the agreement, while the two cohabited they were to operate a joint account for the payment of mutual debts and expenses. Paragraph 12 of the agreement said that they agreed "to continue to divide expenses equally on a monthly basis." However, when the parties signed the agreement and during their cohabitation, they didn't

operate a joint account and they weren't equally dividing expenses. There was no explanation why these paragraphs didn't reflect the parties' actual circumstances.

[8] When they began to live together in the house, Ms. Soubliere was paying for her car and she couldn't afford to divide expenses equally. She says that she and Mr. MacDonald agreed she would pay only \$350.00 each month toward the expenses. Her bank records and the calendar where she noted her payments to Mr. MacDonald didn't reflect monthly payments of \$350.00. Ms. Soubliere explained that when she paid for groceries by debit she would get cash back and she would give cash to Mr. MacDonald to make up the \$350.00 payment, so the \$350.00 payment wouldn't show on her bank records. If she did this, she didn't note her cash payments on the calendar where she recorded her payments to Mr. MacDonald. Mr. MacDonald didn't provide receipts to Ms. Soubliere for her payments.

[9] Mr. MacDonald provided copies of his bank statements which show that household expenses for heat, cable, water and power were paid from an account in his sole name, just as Ms. Soubliere said. His account did not show regular deposits of any sums other than his salary into his account. So, if he was paid cash by Ms. Soubliere, he pocketed this money.

[10] Ms. Soubliere says she wanted to use the joint account to transfer money to Mr. MacDonald, but that he told her it would be easier to use his account to pay the bills, so she gave him cash. Mr. MacDonald denies that Ms. Soubliere gave him cash. Ms. Soubliere's friend, Chantal Jodouin, testified that she witnessed Ms. Soubliere give money to Mr. MacDonald. Ms. Soubliere says that, on occasion, she arranged for someone to witness her payments to Mr. MacDonald but after she made a point of paying Mr. MacDonald with a witness present, she says he told her to pay him privately.

[11] Ms. Soubliere described the house when it was purchased as having new carpeting upstairs which was pieced together, a new kitchen floor, a new porcelain sink and countertop. She said there was a hardwood floor in the dining room and a "fairly new" furnace which she said it was three or four years old. She said the wiring had been brought up to code and the upstairs was newly painted. Her descriptions were based on information provided to her by the home's owner. In different regards, she was mistaken: the furnace was older and the sink wasn't porcelain, for example.

[12] Mr. MacDonald described the work that he did on the home. Much of the work was cosmetic: replacing window coverings, installing new door and floor trim, painting and rebuilding a fireplace mantel. He repaired the top of the backyard fence, taped and insulated the heating apparatus, built a workshop and spread tar on the driveway. Mr. MacDonald said he wasn't able to estimate the time he spent on these tasks or what it would cost to have them done by a third party. At the trial, he attempted to introduce evidence of a quote for the cost of hiring someone to do this work. Ms. Soubliere objected to the introduction of this document: it had not been previously disclosed to her and Mr. MacDonald was not offering the author of the quote as a witness. The quote was not admitted.

[13] Ms. Soubliere confessed that she isn't handy with a hammer and she helped with painting and removing a wallpaper border, along with doing all manner of housework. She cleaned up after Mr. MacDonald's painting. Ms. Soubliere also paid for items to decorate the home.

[14] The couple separated in January 2006. Ms. Soubliere moved from the house. Mr. MacDonald changed the locks and she never lived in the house again.

[15] From January 2006 to the present, Mr. MacDonald estimates there have been six people who rented rooms in the house from him. He kept no records of the rent they paid him. He didn't provide his tenants with receipts. Ms. Soubliere provided copies of the advertisements Mr. MacDonald placed looking for boarders. The ads listed rooms for rent at a cost of \$380.00 to \$400.00 per month.

### **The claims**

[16] Soon after separating, Ms. Soubliere made Mr. MacDonald aware that she would be making a claim. She had the property appraised by Boutilier & Associates. The appraisal said the property was worth \$177,000.00 as of January 13, 2006. Ms. Soubliere's claim was not resolved between the parties and she filed an application in the Supreme Court in 2007. Her claim was for the sale of the property pursuant to the *Partition Act* and a division of the net sale proceeds on an unequal basis, so that Mr. MacDonald would receive the first \$4,425.00 of the net proceeds with the remaining proceeds being divided equally. She also sought costs. Mr. MacDonald filed a defence to Ms. Soubliere's statement of claim. In his defence, Mr. MacDonald stated that the parties' cohabitation agreement had been fundamentally breached by Ms. Soubliere and he asked to have her claim dismissed with costs on a solicitor and client basis.

[17] In the fall of 2009, Ms. Soubliere applied to transfer her action to the Family Division. Mr. MacDonald opposed this application. On October 29, 2010, Justice McDougall ordered the matter be transferred to the Family Division. He directed that costs of the motion to transfer (which was made by correspondence) be costs in the cause, but this element of his decision was not reflected in the order prepared by counsel.

[18] When the action was transferred to the Family Division, Ms. Soubliere filed an application and intake form which outlined the relief she sought: she made claims under the *Partition Act*, for occupation rent and for costs. Mr. MacDonald filed no response.

[19] Mr. MacDonald argues that Ms. Soubliere is not entitled to rely on the agreement as a basis for seeking half the net equity in the home because she breached the terms of the cohabitation agreement. Ms. Soubliere's claim against the value of the house doesn't have its basis in the cohabitation agreement. Her claim is pleaded on the *Partition Act* and the common law relating to joint ownership.

### ***Partition Act claim***

[20] As an owner of a property in joint tenancy with Mr. MacDonald, Ms. Soubliere is entitled to bring her application for partition by virtue of section 5 of the *Partition Act*. Section 5 provides that any person holding land as a joint tenant may bring an action "for a partition of the [land], or for a sale thereof, and a distribution of the proceeds". The parties agree that the property is incapable of partition and if Ms. Soubliere's application is granted, then Mr. MacDonald should have the opportunity to pay Ms. Soubliere for her interest in the property.

### **The presumption of equal sharing or equal division**

[21] The jurisprudence which has developed under the *Partition Act* states that when parties hold title in joint names, there is a presumption that the net proceeds of the property's sale shall be divided equally. In *Anderson v. Wilson* (1986), 73 N.S.R. (2d) 1 (T.D.), after reviewing a number of decisions under the *Partition Act*, Justice Grant acknowledged that no two cases are ever identical and commented, at paragraph 24 " . . . the common thread in these cases is that there is an equal division of the net proceeds of the sale subject to certain equities." His Lordship had earlier described the presumption at paragraph 12 as "a strong presumption". Justice Legere-Sers of this court reiterated the presumption of equal division in *Primeau v. Richards*, 2004 NSSF 86 where she wrote, at paragraph 31, "There is a presumption in a situation of joint ownership of equal sharing subject to certain equities" and in *MacDonald v. Jollymore*, 2006 NSSC 152 at paragraph 33.

[22] Mr. MacDonald bears the burden of rebutting the presumption of equal division and he argues that the presumption is rebutted because the "home was purchased solely with monies" from him. He offers no authority for this argument and I've been unable to locate any case where the presumption has been rebutted on this basis. To the contrary, in *Davis v. Munroe*, 2011 NSSC 14, Mr. Davis owned a house for approximately seventeen years before beginning his relationship with Ms. Munroe. After living together for four years, Mr. Davis and Ms. Munroe moved into this house and, in the following year, Mr. Davis made Ms. Munroe a joint owner of the property. When the couple separated and a *Partition Act* application was litigated, Justice Ferguson said at paragraph 35, "Mr. Davis **correctly** acknowledges Ms. Munroe's initial entitlement to fifty percent of the net equity in their home." The emphasis is mine. Justice Ferguson's comment recognizes that when parties take title jointly this creates the presumption of equal interest.

[23] Mr. MacDonald argues that "It is perhaps logical to presume equal sharing in a joint tenancy situation where both parties have substantially contributed to the purchase of the asset, or its improvement." I disagree. The presumption of equal sharing arises from the fact that the parties elected to take title to the property as joint tenants. The presumption does not arise from how the purchase was financed or how improvements to the property were made.

[24] Mr. MacDonald has not rebutted the presumption that Ms. Soubliere is entitled to an equal sharing of the property's value. I begin there. Ms. Soubliere's entitlement is "subject to certain equities", as Justice Legere-Sers noted in *Primeau v. Richards*, 2004 NSSF 86 at paragraph 31.

### **Before the couple separated**

[25] Mr. MacDonald seeks credit for a number of expenditures or contributions made prior to the parties' separation and his exclusive use of the home. He asks that I credit him for the down payment, the payments he made on the mortgage and taxes prior to the couple's separation and for the work he did on the home while the couple lived together.

[26] Mr. MacDonald offers no authority for the claim that pre-separation payments and contributions should be considered in the context of determining the equities of an equal division. I've been unable to locate any case where such a claim is allowed. The jurisprudence under the *Partition Act* considers these matters in determining whether the presumption of equal sharing has been rebutted. It does not consider them in the context of the equities of the division. If I am wrong and they are appropriately considered in the context of division, I find that they have no impact.

[27] For example, Ms. MacDonald wants credit for paying the down payment when the house was purchased. In *Davis v. Munroe*, 2011 NSSC 14, the net value of the home was divided equally, despite Mr. Davis' argument that he was sole owner of the home for a considerable period of time and he created a significant financial interest in this property prior to providing Ms. Munro with ownership. Following *Davis v. Munroe*, 2011 NSSC 14, I give no credit to Mr. MacDonald for the down payment.

[28] Mr. MacDonald seeks credit for the work he did on the home while the couple lived together in the house. He lists his work in his affidavit: building a fireplace mantel; installing crown moulding; decorative pillars and tiling; painting interior and exterior aspects of the home; spreading tar on the driveway; boxing in oil pipes; installing baseboards, trim, door jambs and doors, blinds and curtains; repairing the backyard fence; installing lights, a clothesline and post; building and outfitting a workshop; and taping and insulating the furnace and vents. He provided some of the receipts for the materials he bought to do this work. The receipts provided are from The Home Depot, Kent, Happy Harry's, Canadian Tire and Color Your World. All of the receipts pre-date the separation.

[29] Ms. Soubliere helped with painting and removing a wallpaper border, along with doing all manner of housework. She cleaned up after Mr. MacDonald's painting. She says her performance of the housework enabled Mr. MacDonald to do the work on the house that he did. Ms. Soubliere, too, provided receipts for house-related purchases she made prior to the separation.

[30] In *Anderson v. Wilson* (1986), 73 N.S.R. (2d) 1 (T.D.), the parties built their own home, contracting out the electrical, plumbing and drywall work. At paragraph 10, Justice Grant described the situation as one where "A great deal of work was done by [Mr. Wilson] and [Ms. Anderson] did interior painting, the ceramic tiling, helped put in insulation, made curtains and generally contributed as much as she could." Justice Grant did "not consider it to be a situation

where one measures the contribution of one against the other in such a relationship" according to paragraph 13. He also said that "[a]s is frequently the case in a marital relationship, one may be directing his or her energy in one direction and the other directly an equal amount of energy and time in another aspect of their relationship." As in this case, in *Anderson v. Wilson* (1986), 73 N.S.R. (2d) 1 (T.D.), one party took care of the household, enabling the other to work on the house. Following Justice Grant's example, I decline to weigh each party's contribution. Each contributed as he or she was able.

[31] As well, in *Davis v. Munroe*, 2011 NSSC 14, Mr. Davis argued that he had spent \$16,700.00 on improving or maintaining the property during his relationship with Ms. Munroe. Justice Ferguson noted the disparity in the parties' incomes and that Ms. Munroe had contributed to the couple's financial needs as her income allowed. At paragraph 36 of his reasons, His Lordship did "not find it appropriate that her entitlement be reduced as a result of these expenditures by Mr. Davis." Mr. Davis' post-separation expenses were considered.

#### **After the couple separated**

[32] A review of the jurisprudence reveals that mortgage and property tax payments made by one party following a separation while there is exclusive possession are routinely considered in dividing the value of the jointly-held property. This was done in *Davis v. Cipryk* (1977), 21 N.S.R. (2d) 266 (T.D.) by Justice Jones, in *Taylor* (1984), 65 N.S.R. (2d) 294 (T.D.) by Justice Richard, in *Anderson v. Wilson* (1986), 73 N.S.R. (2d) 1 (T.D.) by Justice Grant and in *Primeau v. Richards*, 2004 NSSF 86 by Justice Legere-Sers. As well, notional sales costs have been considered in cases such as *Primeau v. Richards*, 2004 NSSF 86, *MacDonald v. Jollymore*, 2006 NSSC 152 and *Davis v. Munroe*, 2011 NSSC 14.

[33] Ms. Soubliere and Mr. MacDonald have agreed that the property has a value of \$177,000.00 for the purpose of division. In her submissions, Ms. Soubliere calculated real estate commission of five percent plus HST of fifteen percent. Mr. MacDonald did not offer any suggestion of the appropriate notional real estate commission. Five percent is the commission rate typically used in submissions made to this court, and I adopt it. Real estate commission of five percent and the applicable HST on a sale price of \$177,000.00 equates to \$10,177.50.

[34] It is also appropriate to consider the legal fees and HST that would be incurred if the home was sold. Ms. Soubliere asserts these would be approximately \$1,000.00. The house was purchased in 2004. When the house was purchased, the account for its purchase was \$714.06. On this basis, I determine that \$750.00 is an appropriate amount to reflect the legal fees and HST that would be paid when the house is sold.

[35] The jurisprudence reflects crediting someone in Mr. MacDonald's position with one-half of the mortgage and property tax payments made since separation. Annual mortgage statements from ScotiaBank were provided for the years of 2006 to and including 2009. Mr. MacDonald was able to provide the very recently available mortgage and property tax payment printout in his affidavit. I accept this information as showing he paid ScotiaBank \$10,185.00 in 2010. The

total mortgage and tax payments Mr. MacDonald made after separation were \$43,025.80. My calculations are shown below.

<b>Year</b>	<b>Payment information</b>	<b>Total paid in year</b>
2006	8,427.08 (year's payments) divided by twelve (702.25) multiplied by eleven	7,724.82
2007	Amount shown on statement	9,063.16
2008	Amount shown on statement	8,655.04
2009	Amount shown on statement	7,397.78
2010	Average monthly payment of \$848.75 x twelve months	10,185.00
<b>Total mortgage and property taxes paid post separation</b>		<b>43,025.80</b>

[36] The parties' contributions to the maintenance and improvement of property following their separation are relevant to determining the equities of an equal division. In this regard, Mr. MacDonald says that he devoted between fifteen and twenty hours of work to repairing a leak in the house's foundation. This involved removing siding and a rotten wooden structure, building a form for concrete, pouring concrete into the form, building a wooden structure, insulating and tarring it and re-applying siding. He says he purchased all materials required to do this work, but has provided no receipts or estimates of what his purchases cost and he has not provided any indication of the value of his labour or what this repair work would cost if done by someone else.

[37] It isn't possible for me to estimate Mr. MacDonald's cost for materials for this work by working backward from his estimate that his total expenditure for materials from the time the house was purchased until the present is between \$7,000.00 and \$8,000.00 and deducting the expenses he has otherwise proven. Mr. MacDonald provided me with various receipts for purchases. They total approximately \$3,850.00. However, over \$750.00 of these expenses are ones which weren't paid by Mr. MacDonald, but which were financed from the joint account. Many receipts didn't detail the items purchased, so it wasn't possible to know whether the purchases were for household improvements. In some cases, the purchase is far less than what I would consider a contribution to the home's maintenance or improvement: a purchase of garbage bags comes to mind. Ultimately, I agree with Mr. MacDonald's statement that he cannot estimate the expenses he incurred in repairing the foundation leak. I cannot do so either.

[38] I recognize that Mr. MacDonald performed this labour and purchased materials to do so. I regret not being able to credit him with the value or cost of this effort. However, in the absence of any evidence on these points, any amount I could attach would be baseless speculation on my part.



### Calculation of "the equal division subject to certain equities"

[39] The parties have agreed the house has a value of \$177,000.00. This amount is reduced by the outstanding mortgage. The mortgage balance provided by ScotiaBank and indicated in Mr. MacDonald's affidavit was \$108,449.45. The notional sales costs (sales commission, legal fees and the HST payable on both) are also to be deducted to determine the equity available for division. This calculation is shown below.

	<b>Amount</b>
Appraised value	177,000.00
Outstanding mortgage	(108,449.45)
Real estate commission and HST	(10,177.50)
Legal fees and HST	(750.00)
<b>Net equity</b>	<b>57,623.05</b>

[40] Accordingly, the net equity available for division is \$57,623.05. Ms. Soubliere is entitled to one-half of this amount (\$28,811.52). Since the separation, Mr. MacDonald has paid \$43,025.80 in mortgage and property taxes. Ms. Soubliere is obliged to Mr. MacDonald for one-half of this amount (\$21,512.90). Mr. MacDonald owes Ms. Soubliere \$7,298.62.

### Occupation rent

[41] Ms. Soubliere left the couple's home in January 2006. When she did, Mr. MacDonald changed the locks, denying her entry to the home. He has lived in the home, to her exclusion, since January 2006. Ms. Soubliere claims occupation rent from Mr. MacDonald, asking me to award her occupation rent for the five years she has been out of the house. She asks that occupation rent be awarded in the amount of \$400.00 each month, the highest rent that Mr. MacDonald advertised. She quantifies her occupation rent claim at \$24,000.00.

[42] In Anger and Honsberger's *Law of Real Property*, 3rd ed. (Aurora: Canada Law Book Inc., 2010), at §14:20.140, the authors note that "Joint owners of property are inherently entitled to possession of the property they own and neither is entitled to exclude another. If one owner excludes the other, the owner in possession may be charged with occupation rent." A similar statement of the law was adopted by Justice Jones in *Davis v. Cipryk* (1977), 21 N.S.R. (2d) 266 (T.D.) at paragraph 8 where he quoted from the authors' *Canadian Law of Real Property* (Toronto: Canada Law Book Company Ltd., 1959).

[43] In *Davis v. Cipryk* (1977), 21 N.S.R. (2d) 266 (T.D.), Justice Junes ordered Mr. Davis to pay monthly occupation rent of \$150.00 for the twenty-two months when he solely occupied the home.

[44] Mr. MacDonald says that he typically received a monthly rent of between \$380.00 and \$400.00.

[45] In some cases, occupation rent is claimed where children are sheltered in the home and no support is otherwise provided for the children. In such cases (*MacLeod* (1994), 135 N.S.R. (2d) 49 (S.C.)) the claim for occupation rent isn't successful. Similarly, claims for occupation rent are unsuccessful where the occupant has paid the mortgage and property taxes in cases such as *Dodeman* (1991), 107 N.S.R. (2d) 113 (T.D.) and has not been compensated for this. Notably, these are cases which do not include claims under the *Partition Act* where there is recognition for payment of the mortgage and property taxes.

[46] Mr. MacDonald opposes the claim for occupation rent on the basis that he provided the money for the purchase of the home, he made all the mortgage payments, he paid all the utilities, he did a great deal of work on the home and paid for building supplies. He complains that Ms. Soubliere "has not assisted in maintaining the home since leaving" and she "provided little by way of assistance while living in the home". These facts have been addressed in resolving Ms. Soubliere's claim under the *Partition Act* and Mr. MacDonald has been compensated for these contributions and payments to the extent appropriate and supported by the evidence. A claim for occupation rent has its foundation in a joint owner's inherent entitlement to occupy the property and Mr. MacDonald's exclusion of her from the property.

[47] This is an appropriate case to award Ms. Soubliere occupation rent. As a joint owner, she is entitled to occupation rent. Fixing the rent at \$390.00 each month, Ms. Soubliere's equal share of the occupation rent to the date of trial is \$11,700.00.

### **Division of rent from tenants**

[48] Ms. Soubliere claims a share of the rents that Mr. MacDonald received from the tenants to whom he rented rooms in the house.

[49] At different times, Mr. MacDonald has had roommates who have paid rent to him. Mr. MacDonald is unsure exactly how many roommates he had or what they paid him. He believes he had six roommates and they paid a monthly rent between \$380.00 and \$400.00. He was unable to say how long the tenants stayed.

[50] Ms. Soubliere provided me with copies of the ads that Mr. MacDonald placed, looking for roommates. According to these ads, the rents he advertised were in the range of \$300.00 to \$400.00 each month. Ms. Soubliere provided me with ads from August 11, 2006, September 14, 2006, February 23, 2007, March 1, 2007, April 1, 2007, May 7, 2007, June 1, 2007, April 14, 2009, May 22, 2009, January 2, 2010, and June 28, 2010.

[51] Mr. MacDonald said he would advertise for a tenant whenever he needed money. Based on the dates of his advertisements, he needed money toward the end of the summer of 2006, through the late winter to early summer of 2007, in the spring of 2009 and in the winter and summer of 2010.

[52] In *Davis v. Cipryk* (1977), 21 N.S.R. (2d) 266 (T.D.), Justice Junes ordered Mr. Davis to share the money he received for renting the property, relying on Anger and Honsberger's *Canadian Law of Real Property* (Toronto: Canada Law Book Company Ltd., 1959), at page 174.

[53] While I know Mr. MacDonald believes he had six tenants, I do not know exactly how long those tenants rented from Mr. MacDonald. Mr. MacDonald provided some evidence about this. In his Response to Interrogatories, Mr. MacDonald said that the dates people lived with him "would have ranged from approximately September 2006 to June 2009". This is a period of thirty-four months. During this period, Mr. MacDonald advertised for tenants in seven different months. I conclude that during these seven months, he had no tenant. Mr. MacDonald's evidence was that one of his tenants, Rodney Smith, who lived with him for "just a couple of months", did not pay any rent. Accordingly, I determine that he had tenants during some portion of the remaining twenty-five months during this period. The five tenants other than Mr. Smith "lived here [with Mr. MacDonald] for only a short period of time". On this admittedly scant basis I determine that Mr. MacDonald likely had tenants living with him for approximately fifteen months: I am attributing three months of residence with Mr. MacDonald for each of the five tenants. With monthly rent in the range of \$380.00 to \$400.00, I determine that Mr. MacDonald received an average monthly rent of \$390.00 for each of these fifteen months, for a total rental income of \$5,850.00 and I order Mr. MacDonald to pay Ms. Soubliere one-half of this amount.

## **Conclusion**

[54] To summarize, I grant Ms. Soubliere's application pursuant to the *Partition Act* and award her \$7,298.62. Mr. MacDonald shall also pay her \$11,700.00 as occupation rent for his exclusive occupation of the home and he shall pay her \$2,925.00 for those rents he received while he lived in the home. In total, Mr. MacDonald shall pay \$21,923.62 to Ms. Soubliere.

[55] Ms. Soubliere asked to be heard on the issue of costs if she succeeded in her application. If the parties cannot agree on costs, Ms. Soubliere's submissions, including any required affidavit and proof of her expenses, shall be filed within three weeks of the date of this decision and Mr. MacDonald's submissions, including any required affidavit, shall be filed within four weeks of the date of this decision.

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Elizabeth Jollimore, J.S.C. (F.D.)

Halifax, Nova Scotia