

IN THE SUPREME COURT OF NOVA SCOTIA  
[Cite as: C.A.R.C. v. C.F. C., 2002 NSSC 219]

BETWEEN:

C. A. R. C.

PETITIONER

- and -

C. F. C.

RESPONDENT

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D E C I S I O N

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**Editorial Notice**

Identifying information has been removed from this electronic version of the judgment.

HEARD: At Kentville, Nova Scotia on May 27, 2002.

BEFORE: The Honourable Justice Allan P. Boudreau.

DECISION: September 30, 2002

COUNSEL: Michael King, Esq.,  
Counsel on behalf of the petitioner.

Marguerite MacNeil,  
Counsel on behalf of the respondent.

Boudreau, J.

INTRODUCTION:

[1] C. F. and C. A. R. C. were married in 1982 and in 1985 Mr. C. was involved in a car accident which left him with a permanent brain injury. Mr. C. is in receipt of a significant monthly structured settlement income. In 2000 Mrs. C. left Mr. C., retired from her life long employment as a nurse in Nova Scotia and moved to Ontario to pursue a new relationship.

[2] The significant issue in this divorce is whether Mrs. C. is entitled to any spousal support from Mr. C..

FACTS:

[3] As stated, Mr. And Mrs. C. were married in 1982. Prior to and for the first few years of the marriage, Mr. C. had been employed primarily in the finance field. Mrs. C. had been a Registered Nurse since 1965 and she had obtained her Bachelor of Nursing in 1976. She was a career nurse throughout the marriage. The parties have no children from this marriage.

[4] In 1985 Mr. C. was employed at Canada Trust. On October 15, 1985, he was involved in a motor vehicle accident which has left him with a permanent brain injury. He has suffered a complete loss of smell and a loss of memory, both long and short term. He not only has difficulty with short term memory but he also has difficulty in solving problems and looking after his affairs, although he does look after paying his bills. Mrs. C. testified that “Mr. C. has improved a lot”. He has learned to drive with her assistance and he passed his driver’s test. She also testified that he

seems to have no long or short term memory. He has gotten lost just going to the bathroom when they traveled. Mrs. C. stated that Mr. C. can be left alone, but not for extended periods of time, and that he needs periodic assistance.

[5] It is apparent that Mrs. C. spent a good deal of caring time with Mr. C. during the 15 years after his accident. She helped him learn and improve and she was very supportive of him. She said it was difficult because he underwent a personality change after the accident. He did not like to associate with people or like company at the house. This made her feel isolated and limited in her social life.

[6] Mrs. C. continued to work full time as a nurse throughout the years after the accident and she testified that she had no additional expenses because of Mr. C.'s injury.

[7] In 1997 Mrs. C. took a one year paid sabbatical and in 1999 she went on stress leave for approximately one and a half years. During these latter years, Mrs. C. arranged somewhat lavish trips for the two of them. For example, they traveled to Mexico, Japan and France, took cruises, etc. She testified that while Mr. C. appeared to enjoy these trips, he seems to have little or no recollection of them. Substantial debts by way of credit cards, lines of credit, etc., were incurred, primarily because of these trips. Mr. C. states he does not understand how these debts could have accumulated because he says he made the money available to pay these debts and he thought they should have been paid. He questions that these are matrimonial debts which should be included in the division of property.

[8] After Mr. And Mrs. C. returned from a trip to Mexico in early 2000, Mrs. C. received a letter from \*. inquiring about her. She had known \* some 35 years earlier. There were numerous telephone calls between the two during February and March of 2000 and Mrs. C. went to Ontario twice for visits with \* . Mrs. C. left Mr. C. on April 11, 2000 and moved to Ontario to be near \*.. She testified they have discussed plans to marry and that they are planning a new life together, although there was no evidence they were living together at the time of the hearing.

[9] In order to make the move to Ontario, Mrs. C. retired from her employment in Nova Scotia rather than return to work at the end of her stress leave. As a result of her decision to retire her income has gone from approximately \$58,000.00 per year while employed to approximately \$36,000.00. She did however testify that she has enrolled in nursing courses in Ontario in order to qualify for work in that Province and she is hopeful of getting employment there. She stated she wanted to go back to work.

[10] Mrs. C. has now advanced a claim for periodic spousal support because of her drop in income and because Mr. C. has a higher income than she does. Mr. C. opposes this claim.

ISSUES:

- [11] (1) Are all debts claimed by Mrs. C. on her proposed division of property “matrimonial debts”?
- (2) Is Mrs. C. entitled to periodic spousal support, and if so, in what amount?

ANALYSIS:

DEBTS:

[12] I will deal with the issue of matrimonial debts first. It became clear at the hearing that the Employment Insurance overpayment of \$6,195.00 had been accounted for twice. Mrs. C. testified that she had paid that from the parties Scotia Line which is already listed as a matrimonial debt on her proposed division. It was agreed that an adjustment should be made for this amount.

[13] With regard to the remainder of the debt, it is contended that a significant portion of those debts, which total \$ 41,818.69, should not be considered as matrimonial debt because it was largely incurred for what I have described as somewhat lavish trips for the parties and that these were arranged solely by and at the discretion of Mrs. C. during the last years of the marriage. There is no question that both parties participated more or less equally in these trips, although Mr. C. appears to have little or no memory of them. Also included in those debts is the amount of \$6,195.00 representing an E.I. overpayment to Mrs. C.. This overpayment was apparently received and spent during the marriage.

[14] It is trite to say that debts incurred for the benefit of the family and for ordinary household expenses are indeed matrimonial debts. (See **Grant v. Grant** (2001), 192 N.S.R.(2d) 302 and **Larue v. Larue** (2001), 195 N.S.R.(2d) 336). There is no question that the trips taken by this couple are not ordinary household expenses, but I am satisfied that they were taken for the benefit of both Mr. and Mrs. C.. The parties had a good income to support such trips although they may have overspent during those periods of time. I find that the expenses incurred for trips and the

resulting debts are matrimonial debts. The same applies to the \$6,195.00 E.I. overpayment, subject of course to the adjustment for the double accounting error.

[15] It was also established during the hearing that Mrs. C. incurred expenses of some \$1,500.00 for trips and telephone calls to Ontario to further her relationship with \*.. In **Larue, supra**, Justice Campbell stated: “I would add the obvious comment that debts which are incurred for the purpose of acquiring a non-matrimonial asset or for non-family purposes would not be matrimonial in nature.” [Emphasis added]. I find that the expenses relating to contact with \* are not matrimonial expenses and the debts shall be reduced by the sum of \$1,500.00.

[16] Therefore the debts as submitted by Mrs. C. in her proposed division of property shall be reduced by a total of \$7,695.00. All other amounts on the accounting have been agreed between the parties.

[17] It appears that Mrs. C. received a Public Service Award of some \$17,000.00 upon her retirement. She testified she used this as income to her and she applied most of this on the debts listed on her property accounting. This matter was not raised except at the end of the hearing in summation by Mr. C.’s counsel. Counsel for Mrs. C. argued that the \$17,000.00 had always not been counted in the division of property because Mr. C. retained most of the household contents worth approximately \$22,000.00 and that Mrs. C. took very little of those contents. Neither of these amounts are mentioned in the parties’ briefs or proposed property division. In the circumstances I find that it has not been proven that an adjustment is warranted on either account. Therefore the

adjustment to Mrs. C.'s proposed property division (Exhibit 3) shall be a reduction of \$7,695.00 in debts assumed by her. This will leave Mr. C. with net total assets of \$392,053.83 and Mrs. C. with net total assets of \$256,723.61 for a net difference of \$135,330.22. Mr. C. shall therefore pay to Mrs. C. an equalization payment of \$67,665.11.

SPOUSAL SUPPORT:

[18] Mrs. C.'s claim for periodic spousal support is based primarily on two factors. The first being that her income has been reduced due to her retirement and the second being that, because of this reduction in income, she now has a need for support. She also contends that she should get support because of the help and care she provided Mr. C. after the accident and because he now has substantially more monthly income than she.

[19] Mrs. C. presently has a gross monthly retirement and Canada Pension Plan income of \$3,002.75 or approximately \$36,000.00 per year. Her revised proposed budget (Exhibit 7), shows a projected deficit of some \$670.00 per month. In this amount are included increased expenses of \$500.00 per month for housing and \$250.00 per month for house repairs, although at the time of the hearing she qualified for and was residing in Senior Citizens Housing at a cost of \$500.00 per month. She also shows other increased monthly expenses totaling \$400.00 per month for telephone, school supplies, tuition and books and events and holidays. The extra expenses in these categories total in excess of \$1,000.00 per month from her previous budget filed in November of 2001.

[20] Mr. C.'s monthly income totals approximately \$6,700.00 made up of pension income of some \$1,200.00 and a structured Settlement monthly payment of some \$5,500.00. His budget shows a monthly deficit but that depends largely on the cost of a monthly personal care worker. Mr. C. testified that, at present, he is paying \$1,000.00 per month for personal care to his live in partner plus all her monthly expenses and that she is not employed outside the home. As long as the current circumstances persist Mr. C. would have a monthly surplus of approximately \$1,000.00 after reducing his expenses for house repairs, gasoline, events, etc., by a total of \$500.00 and his personal care direct payment remaining at \$1,000.00 per month. Mrs. C. requests spousal support of \$1,500.00 per month.

[21] The **Divorce Act** provides the statutory framework for spousal support and section 15.2 states:

15.2(1) a court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse.

...

(3) the court may make an order under subsection (1) or an interim order under subsection (2) for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order as it thinks fit and just.

(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; and
- (c) any order, agreement or arrangement relating to support of either spouse.

...



(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;

(d) insofar as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[22] The Courts have considered those provisions of the **Divorce Act** on many occasions but the passage recently cited in almost all cases is the following passage from the judgment of McLachlin, J., in the case of **Bracklow v. Bracklow** [1999] 1 S.C.R. 420 at page 49:

“In summary, the statutes and the case law suggest three conceptual bases for entitlement to spousal support: (1) compensatory, (2) contractual, and (3) non-compensatory. Marriage, as this court held in **Moge** (at page 870) is a “joint endeavour”, a socio-economic partnership. That is the starting position. Support agreements are important (although not necessarily decisive), and so is the idea that spouses should be compensated at marriage breakdown for losses and hardships caused by the marriage. Indeed, a review of cases suggests that in most circumstances compensation now serves as the main reason for support. However, contract and compensation are not the only sources of a support obligation. The obligation may alternatively arise out of the marriage relationship itself. Where a spouse achieves economic self-sufficiency on the basis of his or her own efforts, or on an award of compensatory support, the obligation founded on the marriage relationship itself lies dormant. But where need is established that is not met on a compensatory or contractual basis, the fundamental marital obligation may play a vital role. Absent negating factors, it is available, in appropriate circumstances to provide just support.” [Emphasis added].

[23] When one considers the factors to be considered which are outlined in section 15.2(6) of the **Divorce Act** one would be hard pressed to find that Mrs. C. has suffered any economic disadvantages arising from the marriage or its breakdown. When one looks at the net assets which she is receiving on the division of property, there are approximately \$150,000.00 in cash and mutual funds not including her pension valued at \$216,000.00. It appears she has received a noteworthy advantage from the marriage and its breakdown. She also pursued and advanced her career throughout the marriage.

[24] In considering subsection (6) of section 15.2, the Court must also keep in mind the factors outlined in subsection (4) quoted above. In this case neither the length of the marriage nor the functions performed by Mrs. C. would be significant in assessing whether Mrs. C. is entitled to spousal support. Mrs. C. has contended that the time she spent being caring and supportive of her husband should entitle her to spousal support. But as I stated earlier, she was able to fully pursue and advance her career and she incurred no expenses in the process. She did find it stressful at times but she also was able to take advantage of a significant number of trips and vacations around the world. In this line of reasoning Mrs. C. appears to be contending that this Court should apply the “compensatory” model of support. Justice Campbell in **Grant supra** had this to say about the “compensatory” model at paragraph 49:

49 This rationale is founded on the theory that the role assumed in the marriage by the claimant spouse caused that spouse to incur an economic disadvantage which should be remedied by compensation in the form of support. I would reject this basis for support in this case. The marriage was childless. The wife was not required to give up a career or job prospects to support the husband’s career moves geographically or otherwise.

And at paragraph 50:

... There was nothing about Ms. Larue's role in the marriage or its affect (sic) on her personal economic prospects that would give rise to a claim for compensation in this short to medium term marriage.

[25] In the present case, my conclusions are the same as reached by Justice Campbell in **Larue**. There was nothing in Mrs. C.'s role in the marriage or its effect on her personal economic prospects that would give rise to a claim under the "compensatory" model of support.

[26] Mrs. C. has conceded that there is no basis in this case to consider the "contractual" model of support and I concur.

[27] There remains to be assessed whether the "non-compensatory" model of support entitles Mrs. C. to periodic spousal support. As I understand Mrs. C.'s position, her request for support is based primarily on the non-compensatory model. She claims she has a need and that Mr. C. has an ability to pay. It was not contested that Mr. C. has at least a limited ability to pay and I have found that he presently has a surplus of approximately \$1,000.00 in his monthly budget. However, I am not satisfied that Mrs. C. has established a real and reasonable need for support. I find, for the reasons I have already mentioned in reviewing Mrs. C.'s budget, that her need is more contrived than real.

[28] Even if I were in error in finding that Mrs. C. has not proven a need for support, should the Court order support simply because Mr. C. has a higher monthly income than Mrs. C.. It should be

kept in mind that Mrs. C.'s reduction in income was totally a matter of choice for her and not in any way occasioned by the marriage or its breakdown.

[29] After the breakdown of the marriage, she could have continued her career as a nurse in Nova Scotia and this was available to her. Instead, she decided not to do so for no reason except to pursue a new relationship in Ontario. Is that a circumstance for which Mr. C. should be required to pay spousal support. I find that it is not; and here I would quote again the last sentence of McLachlin, J., in paragraph 49 of **Bracklow** supra, when she was referring to the "non-compensatory" model:

But where need is established that is not met on a compensatory or contractual basis, the fundamental marital obligation may play a vital role. Absent negating factors it is available, in appropriate circumstances, to provide just support. [Emphasis Added]

[30] I find that, in the present circumstances, it would not be appropriate or just to provide periodic spousal support for Mrs. C..

#### CONCLUSION:

[31] In summary then, Mr. C. shall pay Mrs. C. an equalization payment of \$67,665.11. Mrs. C.'s claim for spousal support is dismissed.

[32] If the parties can agree on the question of costs, I will grant an order accordingly, prepared by counsel for the petitioner and consented as to form by counsel for both parties. Otherwise, I will entertain written submissions on costs to be received from the parties on or before October 25, 2002.

Boudreau, J.