

SUPREME COURT OF NOVA SCOTIA
Citation: *Carrigan v. Carrigan*, 2016 NSSC 231

Date: 2016-09-01

Docket: *SFSNMCA* No. 77494

Registry: Halifax

Between:

Colette Carrigan

Applicant

v.

Michael Carrigan

Respondent

Judge: The Honourable Justice Lee Anne MacLeod-Archer

Heard: September 4, 2015; October 2, 2015 and May 30, 2016, in
Sydney, Nova Scotia

**Corrected
Decision:** The text of the original decision has been corrected according
to the attached erratum dated August 23, 2018.

**Written
Submissions:** June 13 and June 21, 2016

Counsel: Coline Morrow, for the Applicant
Darlene MacRury, for the Respondent

By the Court:

INTRODUCTION

[1] The parties were married for twenty three years, raised two children together, shared a comfortable lifestyle, and acquired assets together. Then they separated. Mr. Carrigan feels he should receive an unequal division of the matrimonial home's value because he says he paid more and worked harder to acquire, maintain and improve the asset. Ms. Carrigan does not agree. Mr. Carrigan also feels he's overpaid child support since separation. Ms. Carrigan does not agree, and in fact says he may have underpaid. The parties reached agreement on some issues but left these for the court to decide.

BACKGROUND

[2] The parties were married on November 14, 1998 and separated on August 23, 2011. They have two children ages, 16 and 14. Both girls reside with Ms. Carrigan. Mr. Carrigan is disabled from a workplace accident and collects Workers Compensation Benefits and Canada Pension Disability Benefits. He also draws on some R.R.S.P investments to supplement his income. Ms. Carrigan is disabled and in receipt of Canada Pension Disability Benefits. Because the children reside with her, she also receives the Child Tax Credit. The children also receive a supplement from Canada Pension as a result of their parents' disability.

[3] Before the parties separated, they lived in a six bedroom home they built together. To supplement their incomes, they rented rooms to international students attending the local university. When the parties separated as a result of a domestic violence incident, Ms. Carrigan and the children moved out and lived with Ms. Carrigan's family. After a short time, they secured alternative housing.

[4] Since separation, Mr. Carrigan has lived in the matrimonial home and paid the expenses to maintain the home. He also makes the mortgage payments.

[5] At the time of separation, the parties also owned several pieces of land. Two were held jointly and the other was in Mr. Carrigan's name only. There was a substantial mortgage on the matrimonial home, and the parties had some credit card debt, though nothing significant.

[6] Mr. Carrigan was ordered to pay child support effective November 1, 2011. An Interim Order granted on October 6, 2011 required him to pay \$638.00 per month, based on an imputed annual income of \$44,400.00. Payments under the order are current.

DIVORCE

[7] *Removed, see Erratum.*

AGREEMENTS

[8] The parties agree that Ms. Carrigan will have sole care and custody of the children, and that Mr. Carrigan will have reasonable access at reasonable times, in accordance with the wishes of the children. He will also be permitted communication with the children by email, text and other electronic means. Ms. Carrigan will keep Mr. Carrigan informed on matters of education, health and the children's activities.

[9] The parties agree that any monies invested in registered education funds for their children will remain invested, and will be used for their daughters' post-secondary education costs. Ms. Carrigan will control the fund, but advise Mr. Carrigan of any amounts withdrawn.

ISSUES

[10] The outstanding issues are as follows:

1. Assets and debt;
 - (a) Unequal division of matrimonial home;
 - (b) Division of matrimonial assets and debt;
2. Child support;
 - (a) Retroactive adjustment;
 - (b) Prospective obligations.

Issue 1 Assets and debt (a): Unequal Division of Matrimonial Home

[11] The parties agree that the home where they lived immediately prior to separation constitutes a matrimonial home, which is subject to division. Ms. Carrigan seeks an equal division. Mr. Carrigan seeks an unequal division. He argues that he is entitled to a larger share of the home's value because:

- (1) he owned several properties prior to his relationship to Ms. Carrigan;
- (2) he used the proceeds from the sale of those properties to acquire the land on which the matrimonial sits;
- (3) Ms. Carrigan made no contribution to the purchase of the properties he owned before they married; and
- (4) he used some proceeds from the estate of his late mother, as well as monies received from his late father's pension, to build the matrimonial home.

[12] In support of his position, Mr. Carrigan relies upon s. 13 of the *Matrimonial Property Act* and cases such as **Parke v. Vassallo** (2014) NSSC 68. In order to award an unequal division of the home's value, I must be satisfied that an equal division would be "unfair or unconscionable". The onus is on Mr. Carrigan to establish this.

[13] The factors under section 13 which are relevant to this case are:

13. Upon an application pursuant to Section 12, the court may make a division of matrimonial assets that is not equal or may make a division of property that is not a matrimonial asset, where the court is satisfied that the division of matrimonial assets in equal shares would be unfair or unconscionable taking into account the following factors:

- (a) the unreasonable impoverishment by either spouse of the matrimonial assets;
 - N/A
- (b) the amount of the debts and liabilities of each spouse and the circumstances in which they were incurred;

- The only real debt the parties incurred was for land acquisition. There was some credit card debt which Ms. Carrigan paid after separation. Neither brought significant debt into the relationship, or incurred significant debt during the marriage. The mortgage on the matrimonial home was incurred to pay family debts and acquire family assets.

(c) a marriage contract or separation agreement between the spouses;

- N/A

(d) the length of time that the spouses have cohabited with each other during their marriage;

- The parties were married for 23 years and cohabited for approximately 2 years prior to marriage. This is a long-term marriage.

(e) the date and manner of acquisition of the assets;

- The parties acquired several properties prior to the marriage. Early in the relationship they assumed a loan owed by Ms. Carrigan's mother on the Emerald Street property and took a deed to that property jointly.
- Mr. Carrigan also inherited his mother's home, which he sold after he was injured at work to help pay bills. Some of the money was used to build the matrimonial home.
- He used part of his father's inheritance to acquire the Waterford Lake Road property, which he sold to a good friend after separation for less than it was appraised. That property is exempt from division.
- He acquired the Queen Street property, which was subsequently subdivided, before the parties married. They lived together in a mobile home on one of the lots. The Queen Street properties were later sold, and the monies were put towards the matrimonial home.

- The vacant lot behind the matrimonial home was acquired shortly before the parties married. Title was taken jointly.
- (f) the effect of the assumption by one spouse of any housekeeping, child care or other domestic responsibilities for the family on the ability of the other spouse to acquire, manage, maintain, operate or improve a business asset;
- Ms. Carrigan was primarily responsible for child care and stayed at home with the children in the early years of the marriage. Mr. Carrigan worked outside of the home until he was injured at work. Thereafter, Ms. Carrigan worked off and on to help support the family, and to supplement Mr. Carrigan's Worker's Compensation benefits.
- (g) the contribution by one spouse to the education or career potential of the other spouse;
- N/A
- (h) the needs of a child who has not attained the age of majority;
- Both children are under the age of majority and reside with their mother.
- (i) the contribution made by each spouse to the marriage and to the welfare of the family, including any contribution made as a homemaker or parent;
- Both parties worked to support the family and actively participated in parenting. Ms. Carrigan was the primary caregiver and Mr. Carrigan was the primary income earner, at least until he was injured.
- (j) whether the value of the assets substantially appreciated during the marriage;

- Some of the land appreciated in value during the marriage. For example, the vacant lot behind the matrimonial home was purchased for \$8,500.00 and is now appraised at \$18,500.00.
- (k) the proceeds of an insurance policy, or an award of damages in tort, intended to represent compensation for physical injuries or the cost of future maintenance of the injured spouse;
- N/A
- (l) the value to either spouse of any pension or other benefit which, by reason of the termination of the marriage relationship, that party will lose the chance of acquiring;
- N/A
- (m) all taxation consequences of the division of matrimonial assets.
- No evidence was led on this issue, so it is a neutral factor.

[14] After considering all these factors, I find Mr. Carrigan has not met the onus of proving that an equal division of the matrimonial home would be “unfair or unconscionable”. Both parties worked to acquire the home, either in the labour market or at home supporting the family. Both assumed liability when mortgaging the property (twice), and both worked in the labour market to pay the mortgage and household debts.

[15] Further, section 21 of the *Matrimonial Property Act* contains a presumption respecting ownership between spouses. The fact that property is placed in the name of both spouses as joint tenants is *prima facie* proof that each spouse is intended to hold a one half beneficial interest in the property on severance. The presumption is rebuttable, but Mr. Carrigan did not successfully rebut the presumption.

Issue 1(b): Division of Matrimonial Assets and Debt

Matrimonial home

[16] Ms. Carrigan obtained an appraisal of the matrimonial home from Brian Aucoin which placed its value at \$194,000.00. Mr. Carrigan obtained an appraisal

from Stokes Property Appraisals in the amount of \$152,500.00. The latter appraisal was completed 8 months after separation, while Mr. Aucoin's appraisal was completed almost a year later.

[17] Both parties ask the court to accept their appraisal for purposes of valuing the matrimonial home. I prefer the Aucoin appraisal for the following reasons:

1. The comparables used in the Aucoin appraisal are located in River Ryan, where the matrimonial home is located. The comparables used in the Stokes appraisal are from Glace Bay and New Waterford, which are adjacent communities.
2. The Stokes appraisal did not provide comparables in the same community, even though one of the comparables in the Aucoin report pre-dates the Stokes report and was available for comparison purposes.
3. The Stokes report expressly states that the subject property is known to be under a current contract of sale. Mr. Stokes testified that there are different factors considered when preparing an appraisal for purposes of financing vs. litigation, and that he would have done more research had he been aware his report would be used for litigation purposes.
4. Using the cost approach, the Stokes report used a price of \$125.00 per square foot. Aucoin used a replacement cost of \$160.00 per square foot, which is more realistic.
5. The comparables used by Stokes involved smaller lots and older homes. The comparables used in the Aucoin report included two newer homes and home two years older. The comparables in the Aucoin report were more appropriate.
6. The Aucoin appraisal identified three upstairs bedrooms and three downstairs bedrooms, whereas Stokes only identified two bedrooms downstairs. The parties agree this is a six bedroom home.
7. Although Stokes referenced the average listing price of similar housing in the area in his report, he did not reference any of those listings as comparables.

[18] The matrimonial home was a mortgaged when it was built. That mortgage was subsequently repaid. The parties re-mortgaged to consolidate debt for the

purchase of a vehicle, and family trips and expenses. The balance owing on the mortgage in May, 2016 was \$100,832.00.

[19] Mr. Carrigan has been living in the home since separation and paying the mortgage. However, municipal taxes were not initially included in the mortgage payments, and the taxes fell into arrears. The home was listed for tax sale. After Ms. Carrigan filed documents with the court to safeguard the home, Mr. Carrigan made arrangements through the bank to include the taxes as part of his monthly payments.

[20] A complicating factor in the valuation of the matrimonial home is the fact that the garage burned, with the Honda Pilot inside, in May, 2016. There was insurance coverage. Repair and replacement values were presented in evidence. There is an estimate of \$19,000.00 to fix the garage and \$7,900.00 to replace the contents. The value of the matrimonial home has presumably been impacted as a result of the damage to the garage.

[21] In dividing matrimonial assets, the Court of Appeal in **Mayer v. Mayer** (2002) NSCA 110, confirmed that a trial Judge has substantial discretion in determining the date of division, in order to attain a fair division in all of the circumstances of a particular case.

[22] Ms. Carrigan wishes to sell the home. Mr. Carrigan wishes to purchase her interest and retain the home. I am prepared to allow him the opportunity to purchase Ms. Carrigan's interest for half the value of the equity as of May 1, 2016. I exercise my discretion in choosing that division date, because Mr. Carrigan had exclusive occupation of the home after separation, and paid no occupation rent to Ms. Carrigan. Half the value of the payments made by him to maintain the asset constitute compensation to Ms. Carrigan. She will benefit from a division of the higher equity in the home as of the date of division.

[23] This valuation date also reflects the fire damage to the garage which occurred in May, 2016. Although Mr. Carrigan will pay half the value of the home pre-fire, he will be entitled to receive the insurance proceeds or benefit from the repairs. This will compensate him for any loss he sustains as a result of my choice of valuation date.

[24] The order will require Mr. Carrigan to purchase Ms. Carrigan's interest within 60 days, or such further period as the parties may agree between them.

[25] The price will be half the appraised value of \$194,000 less notional disposition costs of 5% realty fees plus HST, and legal fees of \$1,500 plus HST. Mr. Carrigan will be responsible for all outstanding property taxes owing post-separation.

[26] Should Mr. Carrigan choose not to purchase Ms. Carrigan's interest or not be able to arrange financing, he shall notify Ms. Carrigan forthwith. In this event, the property will be listed through a licensed realtor on the MLS market with a list price to be determined in consultation with the realtor. Ms. Carrigan shall choose the realtor and be responsible to conduct and conclude the sale.

[27] In the event the matrimonial home is sold without repairs being effected to the garage, the purchase price will necessarily reflect the reduced value. As such, Mr. Carrigan will split equally with Ms. Carrigan any insurance monies paid as a result of the structural damage to the garage. This does not include contents, which are dealt with below. The insurance monies will be paid within fourteen days of receipt of a cheque, or within fourteen days of this decision, whichever is later.

27 Jenwood Drive

[28] This lot was appraised by Mr. Aucoin in 2013 at \$18,500.00. I direct that the lot be immediately listed for sale through a licensed realtor of Ms. Carrigan's choosing. The property shall be sold at the highest and best price available on the market. The net proceeds will be divided and paid to the parties equally.

Emerald Street

[29] This is the property formerly owned by Ms. Carrigan's mother. The trailer was removed and the land remediated after an oil spill. The parties took title to the land on August 24, 1995. Mr. Carrigan characterized the decision to acquire this property, and responsibility for payment of the loan, as his alone. However, title to this property was taken jointly. The deed was signed on the same date as the parties acquired the land on which their matrimonial home was built.

[30] Again, s. 21 of the *Matrimonial Property Act* presumes an intention to share the interest equally and there is insufficient evidence to rebut this presumption. The value of the property will be divided equally. Should Ms. Carrigan wish to acquire this land, she will have 30 days to confirm this in writing. The sale price

will be half the appraised value of \$8,500.00, less 5% sales commission and HST, as well as legal fees of \$500 inclusive of HST.

[31] Property taxes will be adjusted at closing, so that each party bears half the outstanding taxes post-separation. The closing will be held within sixty days. Otherwise, the property will be listed and sold in accordance with paragraph 32. The property shall be listed on MLS at a list price which reflects the realtor's opinion on land sales in today's market.

[32] For the above property sales directed by the Court, Ms. Carrigan shall be responsible to conduct and conclude the sale. Mr. Carrigan shall execute any documents necessary to list and sell the land, failing which the Sheriff shall be authorized as Trustee to execute any and all documents on Mr. Carrigan's behalf. He shall also cooperate fully with making the home available for viewings, for appraisals required by potential purchasers, and any other inspections required under any sales contract, as well as providing information on utility costs for purposes of any proposed purchase.

Livingston Road

[33] This property was acquired for \$8,000.00 in 2008, but was appraised at \$11,000.00 by Mr. Aucoin in 2013. Mr. Carrigan sold the land to a friend for \$3,000.00 after separation, without consulting Ms. Carrigan. She received none of the proceeds. Although title was held solely by Mr. Carrigan, the land was acquired during the marriage. Mr. Carrigan testified that he used his inheritance to buy the land. There is no evidence to contradict this, nor to show that the land was used for family purposes. The exclusion under s. 4(1)(a) of the *MPA* applies. There will be no division of the value of this lot.

Honda Pilot

[34] The parties both valued the 2008 Honda Pilot at \$35,000.00 in their sworn Statements of Property, but Mr. Carrigan had the Pilot appraised in April, 2012 at \$12,000.00. Mr. Carrigan retained the Pilot after separation, and in the fire which damaged the garage, the vehicle burned. The insurance replacement value in 2016 is \$17,507.60 inclusive of HST. Given the replacement value five years after separation, I am not prepared to accept the 2012 appraisal. I set a value of \$20,000.00 as of separation. Mr. Carrigan will keep the insurance proceeds for the Pilot.

Honda Civic

[35] Ms. Carrigan drove the Honda Civic after Mr. Carrigan demanded the return of the Pilot. The parties valued the Civic at between \$12,000.00 and \$15,000.00 in their Statements of Property. However, neither party obtained an appraisal. For purposes of a division of assets, I have chosen a value of \$13,500.00, being the mid-range between both of their estimates. The court is left with little option but to split the difference where no appraisal is available.

Household Contents

[36] When Ms. Carrigan left the home, she took only personal items for herself and her daughters. Mr. Carrigan valued the household contents in his sworn Statement of Property at \$22,000.00. Neither party presented an appraisal.

[37] For purposes of a division of assets, I place a value on the contents of \$22,000.00 in accordance with Mr. Carrigan's estimate, and keeping in mind that the garage contents alone were valued for replacement purposes in 2016 at almost \$8,000.00. Mr. Carrigan will retain the household and garage contents, and will be entitled to keep any insurance proceeds relating to their loss.

Air Miles

[38] The parties collected Air Miles before separation. Ms. Carrigan testified that there were approximately 17,000 Air Miles as of the date of separation. Mr. Carrigan says the figure was closer to 14,600. No evidence was tendered to confirm the amount, nor whether Air Miles can be transferred. Ms. Carrigan has asked in the alternative that Mr. Carrigan pay her a cash amount for the value of the Air Miles. Given that 95 miles equates to a \$10 discount at Sobeys, I have calculated the value of the miles at \$1,789.00 (based on 17,000 Air Miles) so Ms. Carrigan would be entitled to a cash payment of \$894.50 from Mr. Carrigan.

Bank Account

[39] The parties had a joint bank account from which Mr. Carrigan alleges Ms. Carrigan wrongfully withdrew money after separation. She denies this, and says that many of the withdrawals are his and not hers. Neither party was particularly forthcoming on this issue and the evidence is unclear. I therefore decline to make any further division of the bank account. The amounts each party withdrew after separation will remain theirs to keep.

Bank of Montreal Mastercard

[40] The Mastercard was used by Ms. Carrigan to pay household expenses. Mr. Carrigan denies he ever used the credit card, but that does not preclude its classification as a family debt. Ms. Carrigan paid off the Mastercard after separation. She estimated the amount owing at separation at \$1,600.00 while Mr. Carrigan used the figure of \$1,400.00. Neither provided a statement from the card issuer. I accept that the card was used to pay family expenses. I also accept Ms. Carrigan's figure and find she is entitled to reimbursement for half the balance owing at separation, being \$800.00.

R.R.S.P

[41] Mr. Carrigan testified that he used some money from his mother's estate to purchase an R.R.S.P, which was valued at separation at \$8,400.00. There was no documentary evidence to confirm the source of the funds used to acquire this R.R.S.P, and Ms. Carrigan therefore asserts that the R.R.S.P should be considered matrimonial property. However, I accept Mr. Carrigan's evidence on this point. The R.R.S.P is an exempt asset under s. 4(1)(a) of the *Matrimonial Property Act*.

Secured Debt

[42] The parties had a mortgage and line of credit at the time they separated. The mortgage will be paid when the home is sold. If title is assumed by Mr. Carrigan, he will have to refinance the mortgage and have Ms. Carrigan released from her obligations.

[43] The Scotiabank line of credit was secured against the home and will likewise be paid when the home is sold. Ms. Carrigan has paid the interest and insurance premiums on the account since separation, and is entitled to reimbursement. She was not living in the home and had her own living expenses. Mr. Carrigan will reimburse her the sum of \$5,700.00 (\$100 x 57).

[44] Both the mortgage and line of credit will be valued for purposes of division as of the date of sale.

Other Claims

[45] Mr. Carrigan paid the cost of the alarm system monitoring after separation, while he lived in the home. The alarm system creates a yearly credit with the

home insurance, which Mr. Carrigan also paid. He claims reimbursement of one half of these payments, because the payments preserved Ms. Carrigan's interest in the matrimonial home, as well as his.

[46] Having found that Mr. Carrigan had sole occupation of the home and exclusive possession since separation, it is not appropriate to order Ms. Carrigan to contribute to these costs. She had to secure her own accommodations and received no occupation rent from Mr. Carrigan. His payment towards the alarm and monitoring, fire insurance and property taxes are all part of his occupation expenses.

[47] The final asset and debt division is shown in the equalization chart attached as Schedule "A" to this decision. That chart shows Mr. Carrigan owing Ms. Carrigan the sum of \$45,585.00. From that sum will be deducted any monies owing by Ms. Carrigan for a child support overpayment. Added to it will be \$894.50 for the Air Miles, \$5,700.00 to reimburse Ms. Carrigan for payment on the line of credit, and \$1,000.00 for the children's C.P.P.

[48] In the event the parties opt to sell the matrimonial home on the open market, they will share the net proceeds equally. The only change to Schedule "A" would be the removal of the home's value in the calculations. Pending sale, Mr. Carrigan will be entitled to occupy the home and will be responsible to pay all occupation expenses.

Issue 2: Child Support

(a): Retroactive adjustment

[49] Under an Interim Order issued October 6, 2011 Mr. Carrigan was ordered to pay child support in the amount of \$638.00 per month. Payment did not start until December, 2011. The Order was based on an imputed income of \$44,400.00. Mr. Carrigan's line 150 income in 2010 was only \$23,165.00, but Ms. Carrigan filed an affidavit indicating that Mr. Carrigan received W.C.B and C.P.P disability benefits, plus rental income of \$1,400.00 per month. His estimated gross income based on her affidavit was \$3,700.00 per month, or \$44,400.00 per annum.

[50] Mr. Carrigan says his income is nowhere near the amount imputed to him in 2011. He says as a result he has overpaid, and he seeks retroactive adjustment of child support paid.

[51] Ms. Carrigan objects to any adjustment of child support retroactively. She argues that child support should be paid on **all** income Mr. Carrigan earned, and that the 2011 order correctly imputed income to him of \$44,400.00 per annum.

[52] Mr. Carrigan acknowledges that his W.C.B income should be grossed up for its tax free status. He uses a 25% tax rate in his calculations, which show an overpayment from October, 2011 to the date of trial in the amount of \$11,550.00. His calculations do not include any rental income.

[53] The 2011 order was based on imputed income because Mr. Carrigan failed to provide the appropriate income disclosure. In those circumstances, the court is entitled to impute income, which it did based on Ms. Carrigan's affidavit evidence. The 2011 order is assumed to be presumptively correct for a reasonable period of time. I consider the end of December, 2012 (a year after the first payment was made) a reasonable period after which Mr. Carrigan's income should be revisited.

[54] The *Child Support Guidelines* require that a payor's total income be considered when determining the amount payable. This is usually determined by looking at the amount of income reported on a person's income tax return. The fact that a person fails to report income does not mean the other income cannot be considered. The Court of Appeal in **White v. White**, 2015 NSCA 52 held that a court must determine a payor's "true income" for purposes of support.

[55] Mr. Carrigan acknowledges that in 2012 he had two students boarding with him at the rate of \$700.00 per month, which included meals and transportation. He testified that he found it inconvenient to provide the transportation and meals, so in 2013 he opted to simply rent rooms. That year he rented to three students at the rate of \$200.00 per month, for the eight month academic year. In 2014, he says he had two students paying \$200.00 per month; and in 2015 and 2016 he says he had only one student renting a room at \$200.00 per month. He testified that he plans to stop renting rooms in future.

[56] Mr. Carrigan argues that no rental income should be included in his income for purposes of child support. First, he says that any income received from these students is non-taxable, and secondly, the money he receives only covers the related expenses.

[57] It is hard to accept such an argument. All income is taxable (with certain exceptions which do not apply here) and the purpose of renting rooms is to generate income. The Carrigans took in boarders before separation to supplement

their income, and Mr. Carrigan continued the practice, presumably because there is a financial benefit.

[58] He testified that groceries cost \$1,600- \$1,700.00 per month when he was feeding three students, but he provided no receipts or records to support this. He offered no evidence to demonstrate the increased cost of utilities while students are present, nor did he produce any records to show what transportation costs he incurred in 2012 when he was providing transportation. I therefore reject his claim that rental expenses completely offset his rental income.

[59] Accepting that there is some cost associated with having the students in the home, and accepting that the amounts of rent charged and the number of students staying in the home are consistent with Mr. Carrigan’s testimony, I find he had additional income after expenses of \$100.00 per month, per student, since 2012. For purposes of the table amount of child support payable, I find Mr. Carrigan had more “real income” than reported for tax purposes, though not as much as was imputed.

[60] I am satisfied there was a material change in Mr. Carrigan’s income, due to reduced rental income, sufficient to justify retroactive adjustment of the child support obligations. His income and support obligations are as follows:

	Line 150 Income	Rental Income	Plus gross up W.C.B	Paid	Should have paid
2013	30,515	2,400	5,429	7,656	6,540
2014	28,563	1,600	5,462	7,656	6,144
2015	30,244	800	5,500	7,656	6,288
2016	30,244 *estimated	800	5,500 *estimated	5,104 (Jan – Aug)	\$4,192 (Jan – Aug)
TOTALS				\$28,072	\$23,164

[61] Ms. Carrigan owes Mr. Carrigan the amount of \$4,908.00 according to this calculation. That figure will be set off against sums owing to her as outlined above. In addition, Mr. Carrigan will reimburse Ms. Carrigan \$1000.00 for the children's monthly C.P.P allowance (\$250.00) that he collected for four months after separation.

(a) Prospective obligations -

[62] Mr. Carrigan will pay prospective child support effective September 1, 2016 in the amount of \$524.00 per month, based on his estimated 2016 income of \$30,244.00 from disability benefits, plus rental income of \$800.00 and a gross up of his W.C.B benefits at the rate of 25% (\$5,500.00) for a total of \$36,544.00.

[63] I have included a nominal amount for rental income because it's reasonable to expect Mr. Carrigan will continue to rent out at least one room this year. He is living alone in a six bedroom house and has rented for years to supplement his income. However, if the home is sold that may change. The order will include the usual clauses requiring income disclosure from each party annually, including their annual tax returns when filed, along with their notices of assessment, and confirmation of other sources of income, including rents. The annual deadline for disclosure is May 31, commencing in 2017.

[64] Mr. Carrigan will be required to maintain his Blue Cross (or equivalent) health coverage for both of the children for so long as they remain dependant. The parties will be required to equally share any uninsured amounts, including co-pays and deductible amounts exceeding \$100.00 per year per child. There will be no reimbursement for premiums paid to date. Those premiums form part of Mr. Carrigan's child support obligation to date.

[65] Mr. Carrigan will also pay Ms. Carrigan the sum of \$80.00 per month toward the orthodontics cost for the children, until such time as his 50% share of the uninsured cost is paid in full. The orthodontic costs shall include not only the braces, but related imaging, assessments, adjustments and related services. Payment will commence on receipt of written confirmation from the orthodontist that treatment has started.

[66] Mr. Carrigan will also maintain his life insurance coverage for the benefit of the children, naming them as irrevocable beneficiaries for so long as either is still a dependent child for whom support must be paid. The benefits will be payable to Ms. Carrigan "in trust" for the children.

Conclusion

[67] It appears success has been divided. Unless there was a formal offer and counsel request to be heard on costs, the order will require each party to bear their own costs. Counsel for the Petitioner is directed to draft and submit the order.

MacLeod-Archer, J.

Division of Assets					
Mr. Carrigan & Ms. Carrigan					
	O	Comments	Value		
Matrimonial Assets:					
Real Estate:					
1)		matrimonial home	194,000.00		
Less: Mortgage			100,832.00		
Other Debt		LOC	19,218.00		
Commission at 5% +hst		0.05	11,155.00		
Legal Fees			1,725.00		
Net Proceeds			61,070.00		
2)					
Less: Mortgage					
Other Debt					
Commission at 5% +hst		0.05	0.00		
Legal Fees					
Net Proceeds			0.00		
3)					
Less: Mortgage					
Other Debt					
Commission at 5% +hst		0.05	0.00		
Legal Fees					
Net Proceeds			0.00		
4)					
Less: Mortgage					
Other Debt					
Commission at 5% +hst		0.05	0.00		
Legal Fees					
Net Proceeds			0.00		
	O	Comments	Value	Mr. Carrigan	Ms. Carrigan
Net Proceeds of Real Estate:					
1)	0	matrimonial home	61,070.00	61,070.00	
2)	0	0	0.00		
3)	0	0	0.00		
4)	0	0	0.00		
Investments:					
1)					
2)					
3)					
Pensions:					
1)					
2)					
RRSP's:					
1)					
2)					
3)					
Life Insurance (CSV):					
1)					
2)					
Bank Accounts:					
1)					
2)					
Vehicles:					
1)		Honda Pilot	20,000.00	20,000.00	
2)		Honda Civic	13,500.00		13,500.00
Furniture, etc.:					
1)			22,000.00	22,000.00	
2)					
Other:					
1)					
2)					
Total Matrimonial Assets			116,570.00	103,070.00	13,500.00
Less: Matrimonial Debts:					
1)		Mastercard	1,600.00		1,600.00
2)					
3)					
4)					
5)					
6)					
7)					
NET MATRIMONIAL ASSETS:			114,970.00	103,070.00	11,900.00
Equalization Payment:				(45,585.00)	45,585.00
NET MATRIMONIAL ASSETS (AFTER DIVISION)				57,485.00	57,485.00

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Carrigan v. Carrigan*, 2016 NSSC 231

Date: 2016-09-01

Docket: SFSNMCA 77494

Registry: Sydney, N.S.

Between:

Colette Carrigan

Applicant

v.

Michael Carrigan

Respondent

Judge: The Honourable Justice Lee Anne MacLeod-Archer
Heard: September 4, 2015; October 2, 2015 and May 30, 2016, in
Written Sydney, Nova Scotia
Submissions: June 13 and June 21, 2016
Written Release: September 1, 2016
Erratum Date: August 23, 2018
Counsel:
Coline Morrow for the Applicant
Darlene MacRury for the Respondent

Erratum:

[1] Paragraph 7 is removed as the matter before the court was an application under the *Maintenance and Custody Act* and not the *Divorce Act*. A Petition had not been filed at the time of the decision and paragraph 7 was included in error.