

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

**Citation:** Rochon v. McCready, 2012 NSSC 9

**Date:** 20120112

**Docket:** 73316

**Registry:** Sydney, NS

**Between:**

**Sherri Rochon**

Applicant

v.

**Jason McCready**

Respondent

**Judge:** The Honourable Justice Theresa M. Forgeron

**Heard:** June 9 and October 13, 2011, in Sydney, Nova Scotia

**Written Decision:** January 12, 2012

**Counsel:** Elaine Gibney, for the applicant  
Jason McCready, respondent, self-represented

**By the Court:**

[1] **Introduction**

[2] After the conclusion of a very brief marriage, Sherri Rochon filed a motion for interim spousal support. Jason McCready disputes the claim, although he acknowledges an ability to pay. The interim hearing was held on June 9 and October 13, 2011. The parties presented various exhibits and were cross examined on their affidavits. The decision was adjourned to allow the court time to review the legal submissions and the evidence presented.

[3] **Issues**

[4] Should an interim spousal support order issue in favour of Sherri Rochon?

[5] **Analysis**

[6] **Position of Ms. Rochon**

[7] Ms. Rochon seeks interim spousal support pursuant to the provisions of the *Maintenance and Custody Act*. Ms. Rochon states that she is entitled to spousal support, notwithstanding the brevity of the marital relationship, for a number of reasons, including the following:

- a. Ms. Rochon quit her job to relocate from Ontario to Cape Breton because of the marriage. She moved to Whycomomagh where Mr. McCready's family and home were located.
- b. Before the marriage, the parties agreed that Ms. Rochon would attend a local university, CBU, to obtain a university degree. Because of the distance between CBU and Whycomomagh, this plan did not materialize. Instead, Ms. Rochon completed a training certificate in a program unrelated to her area of interest. This program did not provide Ms. Rochon with any employment opportunities.
- c. Although the marriage relationship was not lengthy, Ms. Rochon experienced a radical change in her lifestyle. Before the marriage, she

earned between \$50,000 and \$66,000 per annum. After the marriage, she was left unemployed.

- d. The parties were involved in a lengthy relationship for several years before the marriage, and also cohabited for a period of time, although not immediately preceding the marriage.
- e. Ms. Rochon assisted Mr. McCready in obtaining his red seal heavy equipment mechanic certificate before the marriage. This certificate enables Mr. McCready to earn the significant income that he is earning at present.
- f. Mr. McCready promised to support Ms. Rochon and acknowledged that the break down in the relationship was solely his responsibility.

[8] Ms. Rochon states that she is entitled to sufficient spousal support to allow her to continue her education, receive a degree, and obtain employment at an income comparable to what she had earned prior to moving to Cape Breton. She seeks an order of \$5,000 per month. \$5,000 per month would be a net expense of about \$3,000 to Mr. McCready, and would provide Ms. Rochon with about \$3,700 per month.

[9] *Position of Mr. McCready*

[10] Mr. McCready opposes the payment of spousal support. He states that Ms. Rochon is not entitled to spousal support, despite his ability to pay, for the following reasons:

- a. The parties had a brief marital relationship. They married on July 4, 2009. After the wedding, Ms. Rochon lived in Whycocomagh, while he lived in Alberta where he worked. Physical contact was limited. There was no physical contact after December 29, 2009. Sporadic e-mail contact continued until Ms. Rochon left the family residence on April 4, 2010.
- b. Ms. Rochon and he lived separate lives, both before and after the marriage. There were no joint bank accounts and each conducted

themselves in an independent fashion. At no time, did Ms. Rochon assist him in any way with his education or career.

- c. The parties had an on again/off again pre-marriage relationship, that involved no dependency. They only lived together for a brief time, and the cohabitation occurred several years before the marriage.
- d. Ms. Rochon received financial benefits as a result of the marriage. Mr. McCready and his employer paid for the majority of the cost of the METI program taken by Ms. Rochon. This has improved her employability. Further, she sold the \$20,000 engagement ring after the separation.
- e. At no time had a plan been developed for Ms. Rochon to attend university. The plan was always that she would complete the METI course and then move to Alberta to find work. Mr. McCready even rented an apartment for Ms. Rochon in the Sydney area so that she would not have to travel far to take the METI course.
- f. Ms. Rochon's decision to attend university is a personal decision which she made in conjunction with her new common law partner. It is not related to the marriage. Ms. Rochon is presently being supported by her partner.
- g. He did not promise or agree to support Ms. Rochon financially. To the contrary, he paid Ms. Rochon the money to have a separation agreement drafted confirming no spousal support and no division of property.

[11] Mr. McCready asks the court to reject the claim of Ms. Rochon.

[12] Review of the Legislation and Case Law

[13] Section 3(2) of the *Maintenance and Custody Act* provides the court with the jurisdiction to award interim spousal support. The factors which the court is to consider are set out in s. 4 of the *Act* as follows:

4 In determining whether to order a person to pay maintenance to that person's spouse or common-law partner and the amount of any maintenance to be paid, the court shall consider

- (a) the division of function in their relationship;
- (b) the express or tacit agreement of the spouses or common-law partners that one will maintain the other;
- (c) the terms of a marriage contract or separation agreement between the spouses or common-law partners;
- (d) custodial arrangements made with respect to the children of the relationship;
- (e) the obligations of each spouse or common-law partner towards any children;
- (f) the physical or mental disability of either spouse or common-law partner;
- (g) the inability of a spouse or common-law partner to obtain gainful employment;
- (h) the contribution of a spouse or common-law partner to the education or career potential of the other;
- (i) the reasonable needs of the spouse or common-law partner with a right to maintenance;
- (j) the reasonable needs of the spouse or common-law partner obliged to pay maintenance;
- (k) the separate property of each spouse or common-law partner;
- (l) the ability to pay of the spouse or common-law partner who is obliged to pay maintenance having regard to that spouse's or common-law partner's obligation to pay child maintenance in accordance with the Guidelines;
- (m) the ability of the spouse or common-law partner with the right to maintenance to contribute to his own maintenance. R.S., c. 160, s. 4; 1997 (2nd Sess.), c. 3, s. 3; 2000, c. 29, ss. 5, 8.

[14] The case law that has developed pursuant to the provisions of the *Divorce Act* is also applicable to the *Maintenance and Custody Act*. Most of the factors identified in the *Maintenance and Custody Act* are related to the factors and objectives outlined in the *Divorce Act*.

[15] In **Bracklow v. Bracklow** [1999] 1 SCR 420, the Supreme Court of Canada confirmed that entitlement to spousal support is grounded on the following three principles:

- a. Compensatory support to address economic advantages and disadvantages flowing from the marriage, or the roles adopted during the marriage.
- b. Non-compensatory support to address the disparity between the needs and means of the parties, and arising from the marriage break down.
- c. Support based upon a contractual obligation, either expressed or implied.

[16] I have reviewed the various cases submitted by the parties, as well as the decision of Farrar, J.A. in **Saunders v. Saunders** 2011 NSCA 81.

[17] The burden of proving entitlement rests upon Ms. Rochon. The burden is based on a balance of probabilities as supported by clear, convincing, and cogent evidence: **C.(R.) B. McDougall**, 2008 SCC 53. In making my decision, I have made credibility determinations in keeping with the principles set out in **Baker v. Dinault**, 2009 NSSC 59 at paras 17 to 21.

[18] Where there is a conflict in the evidence, I accept the evidence of Mr. McCready and reject the evidence of Ms. Rochon. Mr. McCready was credible, while Ms. Rochon was not. At times, Ms. Rochon was evasive, tactical, and strategic. Mr. McCready, on the other hand, testified in a straight forward fashion and provided balanced evidence. There was an internal consistency and logical flow in the evidence of Mr. McCready. For example, the suggestion that the original plan was for Ms. Rochon to attend CBU to obtain a degree is not logical. If this was the plan, it would have made more sense for Ms. Rochon to attend a university in Alberta to be closer to Mr. McCready as Ms. Rochon had no

connection to Cape Breton. In contrast, the plan for Ms. Rochon to take the METI course in Sydney and then move to Alberta to work makes logical sense given that the parties had just married and given that Mr. McCready's employer also contributed to the cost of the course.

[19] I have reviewed the legislation, case law, submissions, and the evidence. I find that Ms. Rochon has not established entitlement to interim spousal support based upon the *Maintenance and Custody Act*, and the evidence presented during the interim motion.

[20] There are no compensatory grounds for granting interim spousal support. I make this finding for the following reasons:

- a. This was a brief, non-traditional marriage which lasted less than one year. There were no children. There was no marriage based dependency created.
- b. The parties maintained their independence during their brief marriage. There were separate bank accounts. They did not consult with each other over the disposition of assets owned by the other. They lived in different provinces.
- c. The original plan was for Ms. Rochon to take the METI course in Cape Breton and then move to Alberta to find work in the field. Both Ms. Rochon and Mr. McCready would then be living in the same place and earning substantial salaries. After the marriage relationship ended, Ms. Rochon decided to remain in Cape Breton to attend university. Ms. Rochon has little connection to Cape Breton, other than her new partner who lives in CBRM. Ms. Rochon's decision to remain in Cape Breton is a personal one.
- d. Ms. Rochon has an ability to obtain gainful employment. Ms. Rochon's lack of employment is a personal choice. Ms. Rochon is a talented, educated, and experienced worker. Ms. Rochon provided little evidence of genuine job search efforts. There is no evidence that she attempted to return to Ontario, her home, to find work in the field in which she was previously employed. There is little evidence of attempts to find work in Alberta, or in other provinces, with the METI

training, or in the addictions field. Ms. Rochon is not employed because she has chosen to remain in Cape Breton, to attend university, and maintain her new relationship.

- e. I reject the suggestion that Ms. Rochon contributed in any way to the education or career potential of Mr. McCready. The parties were involved in an on again/off again relationship before the marriage. Their brief common law relationship ended several years before the marriage. All that Mr. McCready has obtained professionally is as a result of his own efforts.
- f. Ms. Rochon has received educational benefits as a result of the marriage. She successfully concluded the METI course that was funded, for the most part, by Mr. McCready and Mr. McCready's employer.

[21] There are no non-compensatory grounds for granting interim spousal support. I make this finding for the following reasons:

- a. Ms. Rochon has no income. Mr. McCready is earning more than \$200,000 per year, which includes overtime. This income disparity does not result in entitlement because Ms. Rochon has chosen not to work. Ms. Rochon would be employed if she looked for work, either in the addictions field, or with the METI course.
- b. Many of Ms. Rochon's needs are also being met by her new partner. She is presently living in a residence far superior to that enjoyed during the brief marriage.
- c. All of Ms. Rochon's reasonable needs could be met if she had made diligent efforts to return to the work force.
- d. After separation, Ms. Rochon kept and sold the \$20,000 engagement ring, at a price that she determined, without consulting Mr. McCready. Mr. McCready also supplied Ms. Rochon with money for the separation agreement that never materialized.



[22] Further, there is no contractual basis, expressed or implied, for the granting of interim spousal support. Mr. McCready's email is an attempt to salvage the marriage; it does not a contract make.

[23] In light of these findings, I am unable to conclude that Ms. Rochon has an entitlement to interim, spousal support under the *Maintenance and Custody Act*.

[24] It is interesting to note, however, that if entitlement had been found, the suggested amount of spousal support under the *Spousal Support Advisory Guidelines* is minimal in the circumstances. These *Guidelines*, based on an income of \$217,043 for Mr. McCready, and without even considering an income for Ms. Rochon, suggest a monthly spousal support range between \$203 and \$271 for a period that would last between 4.5 and 9 months.

[25] **Conclusion**

[26] The motion of Ms. Rochon for interim spousal support is dismissed. If Mr. McCready wishes to be heard on the issue of costs, he is to provide written submissions by February 10, 2012; Ms. Rochon's response must be filed by February 29, 2012.

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Forgeron, J.