

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Pelletier v. Pelletier, 2005NSSC178

Date: 20050628

Docket: 1204-003784

SDK-031950

Registry: Kentville

Between:

Denise Paulette Pelletier

Petitioner

v.

Camille Raymond Joseph Pelletier

Respondent

Judge:

The Honourable Justice Hilroy S. Nathanson

Heard:

in Halifax, Nova Scotia

Final Written

Submissions:

May 25, 2005

Counsel:

Deborah E. Gillis, Q.C., for the petitioner
Kim A. Johnson, Esq., for the respondent

By the Court:

[1] The petitioner wife claims: divorce; custody; division or property pursuant to the *Matrimonial Property Act*, the *Pensions Benefits Division Act*, the *Pension Benefits Act (NS)*, and the *Canadian Forces Superannuation Act*; spousal support; and child support. In his Answer, the respondent husband makes similar claims and, in addition, seeks access and exclusive possession of the matrimonial home. These claims reflect the issues to be decided by the Court in this action.

[2] This is another of those fact situations in which there was barely enough money to support the family and now, upon separation and divorce, it is doubtful that the total incomes of all concerned are sufficient to support two households. The husband acknowledges the need of his wife and older daughter, who reside together while the latter attends university, but submits that he does not have the ability to pay.

[3] The wife, who is a native of Alberta, and the husband, who was born in Quebec, commenced living in a common-law relationship on or about January 1, 1984, and were married in Calgary, Alberta, on December 28, 1985. There are two children of the marriage namely: Katrina Ada Mary, born September 27, 1986, and Sarah Dawn-Marie, born August 30, 1988. The family lived in Calgary from approximately 1983 until 1991, when the husband was transferred to Edmonton. The family remained there until 2001, when the husband was transferred to Greenwood/Kingston, Nova Scotia. The wife and the husband separated on October 31, 2003, although they both continued for several months to reside in the matrimonial home.

[4] The wife is now age 42; the husband is 45. The wife and Katrina live together in Edmonton where Katrina has just completed the first year of a nursing degree at the University of Alberta. The husband continued to reside in the matrimonial home after separation and since February, 2005, his girlfriend and her three children live there with him. Sarah resides with them.

[5] The husband has been employed with the Canadian Armed Forces throughout the marriage. He currently holds the rank of Corporal. His military career required him to be away from home for long periods of time and, as a result, the wife was primarily responsible for the children and the household.

[6] At the beginning of their relationship, the wife was employed in a secretarial capacity at Petro Canada in Calgary. She continued to be employed on either a full-time, part-time or contract basis with Petro Canada until approximately mid-1989 when she quit to care for the children. Katrina had health problems.

[7] After moving with the husband to Nova Scotia, she obtained casual and part-time employment with an adult residential home for mentally challenged adults in Bridgetown. She worked both in the food service and housekeeping departments. The number of hours was not guaranteed; she acquired no pension or other benefits in her own right.

[8] At separation, the wife was employed on a part-time casual basis in both food service and housekeeping capacities in an adult residential centre operated by the Annapolis County Municipal Housing Corporation. Her hours were not guaranteed.

[9] The husband testified that they lived from pay-day to pay-day.

[10] The husband was deployed to the United Arab Emirates in February, 2004. He testified that he took this posting so that he would be able to pay down family debt and save money for the parties' separation and divorce. During this deployment, he was paid an additional \$7,512 tax-free, which of course was not included in his 2004 income tax return. During the period of deployment, his personal living expenses were minimal. He continued to pay into a joint bank account which he had created to pay for the family's household and living expenses, but he reduced the amount he normally paid in by \$345 per month. He did not use any of the tax-free portion of his income to support his wife or his children.

[11] The parties separated after the wife learned that the husband had commenced an internet romance with a woman in Melford, Saskatchewan. The husband visited her there on four occasions prior to and during deployment.

[12] As a result, the wife wanted to sell the matrimonial home and relocate to Alberta as soon as Sarah would complete grade 10 in June, 2004.

[13] The wife moved to Edmonton on July 7, intending that she and her two daughters would reside together in a three-bedroom apartment which she rented. This would facilitate Katrina's attendance at university, and she registered Sarah for the Fall school term. Sarah had packed her personal belongings for transport to Alberta and they were in fact transported together with the personal effects of the wife and Katrina. But Sarah wanted to stay behind to spend some time with friends in Nova Scotia and, after the husband returned from his deployment and after the wife had moved to Alberta, Sarah decided not to relocate. The husband did not encourage Sarah to move to Alberta and he cancelled Sarah's airline ticket without consulting the wife. The cost of the ticket was lost.

[14] In Edmonton, the wife found part-time work as a receptionist at Singleton's Hair Care Limited. Her gross earnings from this employment from July to December, 2004, amounted to \$3,372. She also received E.I. benefits for the same period amounting to \$2,092, and Social Assistance in the total amount of \$14,003.

[15] The wife testified that the husband failed to support her and Katrina, and this resulted in hardship to both of them. The wife and Katrina were evicted from their residence in March, 2005, for non-payment of rent during the period when Katrina was preparing for final exams. The wife still owes rent arrears of \$949. The wife procured alternate accommodations for herself and Katrina at a lesser rent. She was served with another eviction notice in December, 2004, but managed to put together funds to pay the rent and stave off eviction. She testified that she has had to resort to food banks, hand-outs from other charitable organizations and social assistance from the Alberta government. She borrowed \$14,000 from CIBC to pay for her moving expenses and to supplement living expenses pending receipt from the husband of support which never materialized. She and Katrina pool their incomes.

[16] On January 14, 2005, the wife began training as a health care assistant at the Bredin Institute; she expects to complete the course in May. She maintained some part-time employment with Singleton's and also obtained part-time work in the kitchen of a local hospital, but was unable to work full-time and regularly while attending and studying for her course. She estimates her present monthly earnings to be \$375. Her E.I. school supplement of \$535 per month ended in May.

[17] The wife testified that her future employment prospects are uncertain. She hopes to find employment as a health care assistant upon completion of her course, but employment is not guaranteed. She says that, even if she does find employment, she expects that it will be casual and part-time in nature for some time. Although the minimum wage for this occupation is \$5.90 per hour, she hopes to earn approximately \$11 per hour and, thereby, initially earn approximately \$15,000 per year.

[18] Katrina had always been an honours student and wanted to attend university. Ever since the family moved to Nova Scotia, she intended to return to Edmonton. Prior to moving in May, 2004, she worked at McDonald's, earning \$4,245. She used this money for various purposes including some repairs to the family Jeep which was damaged in a single-vehicle accident while she was operating it, her flight to Alberta, clothes, entertainment etc. She had approximately \$300 in savings when she moved. In Alberta, she resided with a friend's family and found a job at Subway where she earned \$3,527. She used this money to pay room and board, living and transportation expenses. Her mother had shipped the family's Cavalier motor vehicle to Alberta prior to relocating to Alberta herself in July, 2004, so that Katrina would have use of

the vehicle to travel to and from work. She testified that it would have cost more for Katrina to drive the car from Nova Scotia to Alberta and, moreover, she did not feel it was safe for an inexperienced driver like Katrina to drive such a great distance alone in a car which was nine years old. After Katrina's work at Subway ended in late August, 2004, she began working 2 or 3 evenings each week at Wal-Mart where she earned a total of \$2,910.

[19] By February 4, 2004, Katrina had applied for the bachelor of nursing program. The husband had refused her request to use his Visa card to pay for the university application fee and, instead, suggested that she use her mother's Mastercard for that purpose. The husband also refused Katrina's request in October, 2004, for financial assistance for the purchase of school books. Katrina was forced to use her mother's CIBC Visa account in the amount of \$1,701 in order to purchase her first term books. The wife testified that this account remains outstanding. She estimates that a further \$800 was spent for second term books, for a total of \$2,500.

[20] The wife also testified that, although Katrina had been approved for a student loan for 2004-05 in the amount of \$10,124, as of the date of trial she had received only \$5,610 of this amount. Katrina's tuition, books and registration fees amount to \$10,362. The husband contributed nothing to Katrina's expenses and support.

[21] The husband was aware that Katrina would be commencing university in September, but he saved nothing for this anticipated expense. He did, however, buy gifts for his girlfriend: a \$1,000 ring, a \$500 camera, and \$100 running shoes. He testified that, upon his return from deployment, he had \$3,172 remaining of his "tour" money. None of these funds were saved or directed to Katrina's educational expenses or the family's overall debt. He decided not to apply for a low interest loan of up to \$16,000 per dependent available annually to Canadian Armed Forces member's dependents in order to assist Katrina with her university expenses, even after Katrina offered to be responsible for repayment of the loan. He testified that, when Katrina had asked him for financial help in the Fall of 2004, he did not refuse but it was impossible to comply because she wanted the money that very week.

[22] Katrina has been forced to continue to work at Wal-Mart while pursuing a full-time course of studies. The exertion of studying and working has adversely affected Katrina, both physically and emotionally, and this in turn has had a negative impact on her marks. The wife believes that Katrina cannot continue working and studying at her current pace. She feels that Katrina should not be working more than 16 hours

per week. There are times when Katrina stays up all night trying to complete school work. She is drained emotionally and physically. She is discouraged with her marks, which have been lower than she expected based on her previous academic performance.

[23] I now turn to a consideration of the issues in this case.

ISSUE # 1: DIVORCE

[24] The Court heard evidence establishing jurisdiction, the grounds alleged in the petition (i.e., living separate and apart), and all other matters required to be proven pursuant to the *Divorce Act (Canada)*. In addition, the Court is satisfied that there is no possibility of reconciliation. Therefore, a divorce decree will issue.

ISSUE #2: CUSTODY

[25] In light of the evidence, the Court considers it to be appropriate that, in the circumstances, the wife and the husband shall share joint custody of their daughter, Sarah. Since Sarah is residing with her father of her own volition, it is further appropriate that he shall have day-to-day control of her activities. However, Sarah is of an age at which her wishes with respect to custody will be considered and, if she decides to move to Edmonton, day-to-day control will become the responsibility of her mother.

ISSUE # 3: ACCESS

[26] While Sarah is under the day-to-day control of her father, the wife will have reasonable access to visit and communicate with her at all reasonable times upon reasonable notice to the husband. If at any time Sarah becomes subject to the day-to-day control of her mother, the husband will have exactly the same quality of access to Sarah as the mother had when Sarah was residing with him.

ISSUE # 4: DIVISION OF ASSETS AND DEBTS

[27] Section 13 of the *Matrimonial Property Act*, R.S.N.S. 1989, c. 275, authorizes the Court, where it is satisfied upon taking into account the factors prescribed therein that an equal division of matrimonial assets would be unfair or unconscionable, to divide the matrimonial assets unequally or to include non-matrimonial assets in the division. After considering the submissions of the parties in light of the prescribed

factors, I am unable to conclude that it would be unfair or unconscionable to divide the matrimonial assets equally.

[28] Following are the matrimonial assets disclosed in evidence:

- (1.) Matrimonial home
- (2.) Household goods
- (3.) Vehicles
- (4.) Pension

(1.) Matrimonial Home

[29] The property at 868 Old French Road, Kingston, is owned jointly by the parties. According to Ron Fleming, a local real estate broker, its current market value is \$135,000. He considered that figure to be realistic despite the residence requiring some repairs. I accept his expert opinion.

[30] The property is subject to a mortgage having a balance outstanding at the date of separation in the amount of \$76,177.

[31] The husband is of the opinion that he, and those dependent upon him, cannot live anywhere else more cheaply. He did not present any figures in support of his opinion. The wife believes that he may be able to arrange access to a PMQ on the base.

[32] I consider it necessary that the matrimonial home be sold. The need of both parties for access to the equity overrides the fact that the matrimonial home has heretofore been used as the place of residence of several children. The husband can then use his share of the equity to help purchase another property. Or he can rent less expensive permanent married quarters on the base or alternate accommodation in the Kingston area. Therefore, he shall forthwith list the matrimonial home for sale and take every step necessary in a timely manner to ensure that it is sold. Counsel for both parties shall, within 30 days from the date of this decision, agree upon the name of a real estate agent with whom the matrimonial home shall be listed for sale; if counsel are unable to agree within the time limited, either party may apply in a summary manner to the Prothonotary of the Supreme Court in and for the County of Kings who is authorized to name an appropriate real estate agent, and the nomination shall be

final and binding on both parties. Should it be necessary to the process of selling the matrimonial home, either party may apply summarily for any incidental directions.

[33] It is expected that sale of the matrimonial home will necessitate payment of a real estate commission of at least 5% plus HST, legal fees of approximately \$500 plus HST, and the cost of migration to the new land registry system in the amount of \$1,000. These items total approximately \$9,338. Therefore, it is estimated that the net equity will be: $\$135,000 - (\$76,177 + \$9,338) = \$49,485$.

[34] The net proceeds of sale shall be held by counsel for later equal division between the parties, subject to directions hereinafter set forth.

(2.) Household Goods

[35] The parties disagree as to the value of the contents of the home.

[36] The husband estimates their value at approximately \$10,000. He testified that while he was out of the country the wife clandestinely removed from the home items which he estimates were worth \$8,000, leaving behind many other items which were old, worn or broken having a value of approximately \$2,000. The wife estimates the total value of the contents of the home at a maximum of \$6,000. She says that some of the items which she removed were gifts to her and, therefore, are exempt from inclusion as a matrimonial asset or were items which were required to establish a home for herself and her two children who she expected at that time would accompany her to Edmonton. She estimates the value of the items which she removed at approximately \$2,500, excluding the gifts. The parties have submitted lists and photos of the furnishings left behind, but these are of limited help in comparing values of the items removed and the items left behind.

[37] In the absence of reliable valuations, I arbitrarily set the total valuation at \$8,000, and the value of items removed by the wife at \$5,000.

[38] Therefore, the wife is indebted to the husband in the amount of \$1,000.

(3.) Vehicles

[39] The parties had two motor vehicles: a 1995 Cavalier and a 1996 Jeep. The wife took the Cavalier to Edmonton; the husband accepts her estimate of value of \$2,500.

The Jeep, which was in a damaged condition, needed to be replaced; the husband negotiated a trade-in allowance of \$3,000 after separation.

[40] The husband also retained a motor cycle valued at \$500.

[41] Therefore, the husband is indebted to the wife for 50% of the difference, that is, \$500.

(4.) Pensions and Benefits

[42] The parties agree that the husband's employment pension, severance benefits and service awards earned during marriage will be divided at source. The parties also agree that a portion which is referable to a period of service prior to the marriage, and which was bought back prior to the date of separation, is also subject to division.

[43] There is disagreement as to the length of the period of co-habitation prior to marriage. The wife testified that co-habitation commenced in July, 1983, while the husband testified that it did not begin until January, 1984. It is submitted on behalf of the husband that the date of marriage is the clearest indication of the commencement of co-habitation for purposes of pension division in accordance with the *Pension Benefits Division Act*. I do not accept this submission and, instead accept the recollection of the wife as to the date of commencement of co-habitation. I set the beginning at July 1, 1983, that is, the date of commencement of their pre-marital common-law relationship, and the termination at August 31, 2003, that is, the date of separation. The parties agree that his pension, benefits and awards, including any portion of pension bought back prior to the date of separation, are subject to division and ought to be divided at source. The formula for such division is set at: 50% to each party of the amounts accrued with respect to 19/total years of service.

[44] Neither of the parties has provided the Court with reliable evidence as to the values or other particulars of the husband's pension, awards and benefits, although counsel for the husband stated in his pre-trial brief that he has been advised that a division of that portion of the pension earned prior to separation will result in a payout to the wife of \$109,366. The Court requires that the Corollary Relief Judgment which must be eventually taken out shall include all necessary particulars so that there will be no doubt as to the entitlement of each party.

[45] The net proceeds of sale of the matrimonial home shall be used to pay the parties' matrimonial debts. Following are the debts alleged in evidence:

- (1.) Wife's RRSP Loan
- (2.) Capital City Savings Loan
- (3.) Scotiabank Visa
- (4.) Wife's Mastercard
- (5.) Loan from the Wife's Mother
- (6.) Nova Scotia Power account

(1.) Wife's RRSP Loan

[46] The wife testified that she borrowed \$4,900 from her RRSP so that it could be used as a down payment on the matrimonial home. This debt attracts interest and, if not re-paid in a timely manner, there will be adverse income tax consequences for her. This is a matrimonial debt which should be paid as quickly as possible. The amount shall be paid before distribution from the net proceeds of the matrimonial home.

(2.) Capital City Savings Loan

[47] The parties agree that this was a joint loan having a balance of \$9,100 on the date of separation and is a matrimonial debt, subject to division. This amount shall be paid before distribution from the net proceeds of sale of the matrimonial home.

(3.) Scotiabank Visa

[48] The parties agree that the balance owing is \$9,276. They also agree that this is a joint account. However, the husband submits that only \$5,870 represents matrimonial debt; he takes sole responsibility for a cash advance taken by him in the amount of \$300, and he believes that the wife is solely responsible for cash advances taken by her totalling \$3,280. In cross-examination, the wife acknowledged that she took cash advances totalling \$260 and expended \$2,920 for her own moving expenses and rent.

[49] I accept the husband's submission that only \$5,870 of the total of this account is matrimonial debt. This amount shall be paid before distribution from the net proceeds of sale of the matrimonial home.

(4.) Wife's Mastercard

[50] The balance of this account as of May, 2004, was \$5,959. The parties disagree as to whether this amount reflects a matrimonial debt.

[51] The husband testified that he made repeated requests prior to trial in order to try to ascertain when this debt was incurred and for what purposes the debt was incurred, no such information was produced prior to or at trial. All that was produced is a statement dated May 24, 2004, months after the husband left the country, showing cash advances totalling \$4,877.89 and purchases, including a plane ticket, totalling \$1,303.83. There is no evidence as to when the remainder of the funds were advanced or what purchases were made. The husband submits that the burden of proof is on the wife to provide this information, and she has failed to carry that burden. Therefore, this item ought not be considered to be a matrimonial debt divisible between them. In cross-examination, the wife acknowledged that the total owing included \$1,100 which was used to pay legal fees, and cash advances totalling \$4,877. She said that some of this debt was used to pay household bills.

[52] In the absence of receipts or a detailed itemization, I find that the whole of this item is not a matrimonial debt and, therefore, is payable by the wife.

(5.) Loan from the Wife's Mother

[53] The wife claims that there was a loan from her mother, and that a balance of \$2,500 is still owing on this debt. The husband testified that he was never consulted about this matter, that he has no knowledge of it, and no documentation exists with respect to it.

[54] It is submitted on behalf of the husband that the burden of proving the existence of an indebtedness capable of legal enforcement is upon the wife as the person who has alleged its existence. Since there is no evidence that the wife's mother made such a loan, when it was allegedly made and the purpose for which the alleged debt was incurred, and that it was intended to be a legally enforceable debt, the wife has not carried the burden of proof.

[55] The alleged loan did not attract interest, and there was no written agreement to re-pay.

[56] I accept the husband's submission. This is not a matrimonial debt, and is payable by the wife.

(6.) Nova Scotia Power account

[57] The wife says that this account in the amount of \$809.05 remains outstanding from July, 2004. The husband says that he did not pay it, but the account has been closed. If the account is still owing, and has not been written off, it is a matrimonial debt, and shall be paid before distribution from the net proceeds of sale of the matrimonial home.

ISSUE # 5: INCOME AND EXPENSES

[58] The husband's total income was \$45,772 for 2002, and \$47,016 for 2003.

[59] The husband submitted a statement of financial information for 2004, updated to March 31, 2005, showing gross salary of \$3,959 per month or \$47,508 per year. He also received tax-free income of \$7,512, for a total annual income of \$54,816; I point out that the tax-free amount is the equivalent of taxable income of \$9,164 based upon the husband's apparent tax rate of 22%. Because of a pay raise in April, 2005, he expects this year's income to be approximately \$51,636. There was no evidence of tax-free income this year. In addition, he will continue to receive a child tax credit for Sarah totalling \$1,008 per year. It is noted that his statement does not include any income received by his girlfriend, Swana, who resides with him, and who has an income of about \$800 per month. I consider it appropriate that her income should be taken into consideration in establishing the quantum of his income.

[60] The husband's statement of financial information discloses expenses of \$3,348.21 per month, for a monthly deficit before tax of \$654.79. He acknowledged that there were no current expenditures being made for Sarah's extracurricular activities even though he claimed the amount of \$50 per month, and that his claim for \$45 per month for life insurance coverage was an accidental duplication of another claim of \$47 per month for a medical plan. It is noted that the husband's estimated amount of income tax of \$780 per month will be reduced in accordance with any amount of spousal support required to be paid by him, that his expenses of maintaining the matrimonial home will probably be reduced after it is sold, and that some debt servicing charges will be reduced after the matrimonial debts hereinbefore referred to have been paid. The wife attacked eight items totalling approximately

\$1,000 per month covering mortgage, utilities and the like, on the basis that Swana should contribute half of the amount payable with respect to these items.

[61] He testified that the fact that Swana and her four children have been residing with him in the matrimonial home since February, 2005 has had no impact on his budget in that his expenses are exactly the same. She does not pay rent, but she pays for her own food and personal expenses. She uses his vehicle and pays for some of the gas. Her expenses are not included in his statement. She is divorced and bankrupt. She is in good health, and has attempted to find employment without success. She plans to continue her schooling by taking correspondence courses, and should be in a position to contribute to the expenses of the household within a few years. I find it impossible to believe that her presence in the household does not contribute to its expenses. As a result of her presence, either his income should be adjusted upward or his expenses should be reduced. I prefer the former to better reveal the true state of his operating finances.

[62] I set the amount of his income at \$56,000 per year, and the amount of his expenditures at \$38,400 per year. He has an attributed surplus of \$17,600 per year.

[63] The wife's gross earnings in the preceding four years were:

2001 — \$14,092 (including E.I. benefits of \$3,632)
2002 — \$11,419 (including E.I. benefits of \$4,540)
2003 — \$15,685
2004 — \$16,153 (including E.I. benefits of \$2,092
and income support of \$1,403)

[64] The wife's statement of financial information dated April 11, 2005, discloses income of \$910 per month. She testified that she expects her income to increase after she finishes school at mid-year.

[65] After graduation, she expects to earn approximately \$15,000 per year. This expectation is based on testimony that the minimum wage for her occupation is \$5.90 per hour and, secondly, evidence that the average annual income of a personal care attendant in Alberta is just over \$25,000 per year. She hopes to earn \$11 per hour. Based upon her earnings from part-time jobs in the recent past, her testimony as to her future prospects in her new profession, and the likelihood that she will earn below the Alberta average for a period after graduation, I am inclined to believe that her estimate

is too conservative. I set her probable income in the first full years of professional work at \$19,000 per year.

[66] Some amount of Katrina's income should be taken into consideration in establishing the quantum of the wife's income. As best I can tell from the incomplete information provided, Katrina's annual income is approximately \$6,400 per year. I do not include student loans or borrowings, which must be repaid and which, in any event, are used to pay tuition and like expenses. The wife testified that she and Katrina pooled their earnings, but did not say all their earnings. I propose to include approximately 50% of that income or \$3,200 in the wife's annual income.

[67] The wife's statement of financial information discloses monthly expenses totalling \$3,161 per month, for a monthly deficit \$2,845. Some of the indicated expenses must, in the circumstances, be considered to be extravagant: Christmas, birthdays, events and gifts - \$120; holidays - \$150; entertainment - \$150; and savings - \$100. The omission of these four items alone would reduce the wife's expenses by \$520 per month. The wife's monthly expenses also include \$85 for Visa, \$125 for Mastercard, and \$345 for repayment of a loan regarding her moving expenses. These expenditures — totalling \$555 — will probably be eliminated after she receives her share of the net-net proceeds of sale of the matrimonial home. These will reduce her expenses by \$1,075 per month.

[68] I set the amount of the wife's probable income for 2005 at \$12,700, and the amount for the full year of 2006 at \$22,200. I set the amount of the wife's probable expenses at \$25,032 per year.

ISSUE # 5: CHILD SUPPORT

[69] The amounts set out in the Federal Child Support Guidelines are mandatory. Those guidelines mandate that, based upon the imputed income of the wife, a resident of Alberta, she is required to pay \$160 per month for the support of her daughter, Sarah.

[70] Those guidelines also mandate that, based upon the income of the husband, a resident of Nova Scotia, he is required to pay \$455 per month for the support of the daughter, Katrina.

[71] Offsetting one amount against the other, the difference of \$295 is the amount which the husband shall pay to the wife commencing on the last day of the month

following the date of this decision and continuing on the last day of each and every month thereafter unless or until varied by a Court of competent jurisdiction.

[72] Katrina is beyond the age of majority and is partially self-supporting. I find that she is still under the charge of her parents. It is now generally accepted in law that a child's participation in post-secondary education may create a continuing need for support. The obvious goal is to enable the child to achieve self-supporting status as an adult. This is surely true of Katrina who is exerting great efforts at study and work such that her mother is concerned about her future health. Monthly support from her father would enable her to reduce her hours of work to a more reasonable level.

[73] After considering the evidence, I have come to the conclusion that Katrina is still a child of the marriage and, therefore, both parents have a continuing legal obligation to support her. As the husband's share of that obligation, he shall pay to the wife for the benefit of Katrina the amount awarded, payable on the same dates as payments of periodic spousal support hereinafter set forth.

[74] Because she is already beyond the age of majority, there is a question as to how long her father ought to be required to continue payments. In my opinion, he should continue until Katrina receives a Bachelor of Nursing degree which, I believe, can be expected to occur after three years of study.

[75] Section 7 of the Guidelines allows the Court to order that an additional amount of child support be paid to cover all or a portion of special or extraordinary expenses for a child. In my opinion, it is appropriate in the circumstances — especially Katrina's need and the fact that the husband did not save, borrow or contribute for her university education — that the husband make an annual contribution of roughly one-quarter of Katrina's necessary expenditures for university fees, textbooks, and supplementary courses. I set the amount at \$2,000 per year. Since the duration of her university course is 3 years, I consider it appropriate that the husband pay, partly in advance, the sum of \$6,000 on or before September 1, 2005. The husband shall pay this lump sum from his share of the net proceeds of sale of the matrimonial home.

ISSUE # 7: SPOUSAL SUPPORT

[76] I find that the wife is in need of support. There can be no doubt that the wife has needed support during the past year, and it is apparent that she will continue to need periodic support at least until her income reaches the level of the provincial

average for her profession. I find that the husband can afford to pay his own living expenses, child support and spousal support. After considering the factors set out in s. 15.2(4) of the *Divorce Act (Canada)*, and with the objectives enumerated in ss. (6) in mind, this Court directs that the husband will pay to the wife the amount of \$300 per month. The amount of this award is generally in accord with the Draft Proposal for Spousal Support Advisory Guidelines which, although advisory, has been found to be helpful in confirming my own independent reasoning. Such monthly payments will commence on the last day of the month after the date of this Decision and will continue on the last day of each and every month thereafter for a period of 5 years unless or until varied.

[77] In accordance with s. 15.2(1) of the *Divorce Act (Canada)*, the husband shall pay a lump sum in lieu of past unpaid spousal support. It would probably be too great a burden upon him to pay an amount equal to the monthly amount ordered above multiplied by the number of months which have elapsed subsequent to separation. Therefore, I set the amount at \$2,500, which reduced figure takes into account that the husband's earnings may not include tax-free income from deployment and, in addition, that the husband will need to adjust his living expenses after sale of the matrimonial home, much as the wife was forced to do as a result of setting up a separate household in Edmonton. He, through counsel, shall pay the amount awarded before distribution from the husband's share of the net proceeds of the sale of the matrimonial home.

SUMMARY AND DISPOSITION

[78] The divorce is granted. A consequential Divorce Judgment and an appropriate Corollary Relief Judgment, incorporating the findings of the Court herein, shall issue.

[79] The wife and the husband shall share joint custody of their daughter, Sarah, with the husband having day-to-day control of her activities. The wife will have access to Sarah at all reasonable times upon reasonable notice to the husband.

[80] The Court orders an equal division of matrimonial assets. The matrimonial home shall be sold as directed, with the net proceeds being used to pay the matrimonial debts indicated. The division of household goods and vehicles by the parties is accepted. The husband's Canadian Armed Forces pension, benefits and awards shall be divided at source between the parties, each party to receive 50% of the amounts accrued with respect to 19/total years of service.

[81] The net proceeds of sale of the matrimonial home shall be used to pay the following matrimonial debts: wife's RRSP loan - \$4,900; Capital City Savings Loan - \$9,100; Scotiabank Visa - \$5,870; and Nova Scotia Power account - \$809.05. All other debts are the responsibility of the party who incurred them.

[82] After payment of these 4 items out of the net proceeds of sale of the matrimonial home, the residue shall be divided into 2 equal parts: one being the husband's share, and the second being the wife's share.

[83] The amount of \$1,000 will be deducted from the wife's share and added to the husband's share, with respect to household goods. The amount of \$500 will be deducted from the husband's share and added to the wife's share, with respect to their vehicles. The following amounts will also be deducted from the husband's share, and added to the wife's share, for the specific purposes indicated:

- (A) lump sum of \$6,000 — his contribution to Katrina's university expenses.
- (B) lump sum of \$2,500 — lump sum arrears of spousal support.

[84] The net amounts of each share shall then be distributed.

[85] The husband shall pay to the wife, for the support of their daughter Katrina, the amount of \$290 per month at the times and for the period as directed herein.

[86] The husband shall pay to the wife periodic spousal support in the amount of \$300 per month at the times and for the period as directed herein.

[87] The husband will at all times ensure that Katrina and Sarah are included in his medical/dental coverage as well as in any life insurance coverage that he may have in force from time to time.

[88] Each party shall bear his or her own costs of the action.