

S.H. No. 1201-53990 (SFHD-1999-000589)

**IN THE SUPREME COURT OF NOVA
SCOTIA (FAMILY DIVISION)**
Citation: *Peters v. Peters*, 2002 NSSF 40

BETWEEN:

RONALD PETERS

PETITIONER

- and -

BEVERLY ANN PETERS

RESPONDENT

DECISION

CITE AS: 2002 NSSF 040

HEARD: Before the Honourable Associate Chief Justice Robert F. Ferguson, at Halifax, Nova Scotia on February 13, 14 & 15, 2001

POST-TRIAL REPRESENTATIONS: March 6, 2001; July 11, 2001 & June 19, 2002

DECISION: September 23, 2002

COUNSEL: **Brian F. Bailey, counsel for the Petitioner**
 Kay L. Rhodenizer, counsel for the Respondent

FERGUSON, A.C.J.

The parties to these proceedings are seeking a divorce after a marriage of 24 years. The issues are child support, spousal support and a determination and division of matrimonial assets and debt.

Ronald Peters (the Petitioner) and Beverly Ann Peters (the Respondent) married on April 15, 1978 and separated on June 17, 1999.

An interim order dealing with the Petition dated September 20, 2000, stated, in part:

“AND UPON IT APPEARING that the income of the Respondent is Six Hundred Fifty-Seven Dollars and Twenty-Six Cents (\$657.26) per month, which is an annual income of Eight Thousand One Hundred Twenty-Seven Dollars and Twelve Cents (\$8,127.12) per year;

AND UPON IT APPEARING that the Petitioner’s annual income is One Hundred Twenty-Six Thousand Dollars (\$126,000.00);

IT IS ORDERED:

Interim Spousal Support

1. Effective August 15, 2000 and on the 15th of each month thereafter until a trial of this matter, the Petitioner shall pay the Respondent Three Hundred Fifty Dollars (\$350.00) per month as spousal support;

2. If the matrimonial home at Wellington, Nova Scotia, is sold before the trial of this matter, then spousal support shall increase to One Thousand Five Hundred Dollars (\$1,500.00) per month, payable on the 1st day of the month after the house is sold and payable on the 1st day of each month thereafter, until a trial of this matter;
3. Until the trial of this matter or the sale of the house, whichever first occurs, the Petitioner shall pay the following expenses for the family home - mortgage, heating/oil costs, power and house insurance;
4. Until the trial of this matter, the Petitioner shall pay the bank loan, life insurance premiums, car insurance for the Respondent, Sears account and Visa account;
5. Until the trial of this matter, the Petitioner agrees to keep the Respondent as beneficiary of his life insurance policy.

Child Support

6. Commencing August 15, 2000 and on the 15th of each month thereafter, the Petitioner shall pay child support for the two children of the marriage (Geoffrey, born [...], 1978 and Morgan, born [...], 1981), on the following terms:
 - (a) He shall pay a total sum of One Thousand Five Hundred Twenty-Six Dollars (\$1,526.00) monthly, pursuant to the Child Support Guideline tables, for support based on an income of One Thousand Twenty-Six Dollars (\$126,000.00) Canadian;
 - (b) He shall pay Geoffrey's tuition and book expenses totaling Seven Thousand Five Hundred Forty-Nine Dollars (\$7,549.00);
 - (c) He shall pay Morgan's tutor expenses totaling Two Thousand Three Hundred Sixty Dollars (\$2,360.00);
 - (d) The Petitioner may pay the children directly, with the distribution of the support to be in the Petitioner's discretion.

Assets

7. Until trial, neither party will sell or collapse matrimonial assets or assets claimed to be matrimonial assets without the consent of the other, with the exception that each party may collapse, in their own discretion, up to Ten Thousand Dollars (\$10,000.00) in personal RRSPs.”

Mr. Peters is currently a resident of the United Kingdom and employed. Ms. Peters remains a resident of Nova Scotia and is in receipt of Canada Pension benefits. There is evidence to establish the grounds for the divorce and it is granted.

CHILD SUPPORT

At the date of the interim order, Geoffrey and Morgan were over the age of majority, residing separately and apart from their parents. They were pursuing an education and their parents acknowledged them as “children of the marriage” as defined by the *Divorce Act*. Their positions remain unchanged. I find they continue to be children of the marriage and entitled to seek support from their parents. It is noted that the interim order allows Mr. Peters to pay such child support directly to the children.

Ms. Peters qualified for Canada Pension disability pension in March of 2000. As a result, Geoffrey and Morgan are each receiving \$175.00 per month.

Section 15.1 of the *Divorce Act* is legislation that is applicable to the determination of child support in this instance.

Section 3(2) of the Federal Child Support Guidelines states:

“Child the age of majority or over

- (2) Unless otherwise provided under these Guidelines, where a child to whom a child maintenance order relates is the age of majority or over, the amount of the child maintenance order is
- (a) the amount determined by applying these Guidelines as if the child were under the age of majority; or
 - (b) if the court considers that approach to be inappropriate, the amount that it considers appropriate, having regard to the condition, means, needs and other circumstances of the child and the financial ability of each parent to contribute to the maintenance of the child.”

Mr. Peters is paid in British pounds. The parties have agreed on a conversion rate. Applying this rate to the financial information made available to the Court, I find Mr. Peters’ annual income, for the purpose of paying child support, to be \$126,497.00. I find Ms. Peters’ annual income, being her disability pension, to be \$8,894.00.

A strict application of the Guidelines would require a child support payment by Mr. Peters of \$1,530.00 per month and by Ms. Peters of \$70.00 per month. However, as previously indicated, both children are students over the age of majority and are not residing with either parent. Further, they have a regular source of income (\$175.00 per month). They also have a history of being employed during the school year and during

the school vacation period. In this instance, I conclude it would be inappropriate to determine the amount of support by applying the Guidelines “as if the children were under the age of majority” and choose to determine the amount by using the approach indicated in Section 3(2)(b) of the Guidelines.

Geoffrey testified indicating his monetary expenses were around \$825.00 per month or \$9,900.00 per year; that his tuition and books would cost approximately \$5,900.00 per year for a total yearly expense of \$15,800.00. I conclude Geoffrey will live in Halifax apart from his parents and continue his studies. In so doing, his monthly expenses will be approximately \$1,315.00 per month. The evidence establishes that his past employment and future expectations should earn him around \$5,600.00 per year or \$465.00 per month. He will also continue to receive \$175.00 per month. This would leave him with a monthly deficit of approximately \$675.00.

Morgan did not testify. From the evidence presented, I conclude his income and expenses would be similar to those of his brother, Geoffrey, while he is living and studying in Halifax. Morgan, for a time, resided with his father in Scotland with the intention of entering a post-high school program of study. He was informed that to be eligible for such program he would require two additional years of high school study. He ascertained he could complete his eligibility in one year if he returned to school in Nova Scotia. He has returned to Nova Scotia and is, according to his father, successfully completing his year of study. I conclude Morgan’s income and expenses

are similar to those of his brother, Geoffrey. I further conclude Morgan will soon return to Scotland, reside with his father and enter into his chosen field of study. Mr. Peters indicated this program would provide Morgan with employment opportunities while engaged in his studies. I find it appropriate to conclude Morgan requires financial assistance in the amount of \$600.00 per month.

I order child support paid to Geoffrey in the amount of \$675.00 per month and to Morgan in the amount of \$600.00 per month for a total of \$1,275.00 per month. This amount is to be paid by Mr. Peters to the children beginning October 15, 2002, and payable on the 15th of each month thereafter. This amount may be paid directly to the children.

I am not ordering Ms. Peters to contribute financially to the support of her children at this time. This conclusion is based on financial inability to provide such support as well as an acknowledgment that her eligibility for a disability pension is currently providing the children with \$175.00 per month. This conclusion will be further discussed when dealing with the issue of spousal support.

SPOUSAL SUPPORT

Section 15.2 of the *Divorce Act* is the legislation that is relevant to this issue. Particularly relevant in this instance is Section 15.3(1), (2) and (3) which state:

“Priority to child support

15.3(1) Where a court is considering an application for a child support order and an application for a spousal support order, the court shall give priority to child support in determining the applications.

Reasons

(2) Where, as a result of giving priority to child support, the court is unable to make a spousal support order or the court makes a spousal support order in an amount that is less than it otherwise would have been, the court shall record its reasons for having done so.

Consequences of reduction or termination of child support order

(3) Where, as a result of giving priority to child support, a spousal support order was not made, or the amount of a spousal support order is less than it otherwise would have been, any subsequent reduction or termination of that child support constitutes a change of circumstances for the purposes of applying for a spousal support order, or a variation order in respect of the spousal support order, as the case may be.”

Mr. Peters is currently required to pay Ms. Peters \$350.00 per month spousal support, to be increased to \$1,500.00 per month “if the matrimonial home is sold before trial.” Representation to this Court in the form of a letter from Ms. Peters’ counsel dated June 4, 2002, states that the home has been sold.

Ms. Peters is disabled and entitled to seek continuing spousal support. She suggests an appropriate application of Section 15.(2) of the *Divorce Act*, especially considering her financial need and Mr. Peters’ income, would result in her receiving support in the vicinity of \$2,500.00 per month.

Mr. Peters submits his financial circumstances, particularly acknowledging his ongoing obligation to his children, leaves him in a “significant deficit position.” Further, that he is currently providing spousal support beyond his financial capabilities.

As is normally the case, Ms. Peters, being a resident of Canada, will be required to include any support payments as part of her income and will have it subject to income tax. Mr. Peters is a resident of the United Kingdom and, as is not normally the case, is unable to deduct any support payments from his income tax obligation in the United Kingdom.

Ms. Peters' financial statement includes expenses that would require a contribution by Mr. Peters in the approximate amount of \$2,500.00 per month to meet all of her current expenses. Mr. Peters' financial statement indicates he currently has a deficit of \$2,112.00 per month. Contributing to this deficit is an approximate \$1,535.00 expense relative to the maintenance of the matrimonial home that has been sold. He also indicates a monthly child support payment of \$1,526.00 which has been reduced by this decision to \$1,275.00. I conclude Ms. Peters has established a need of spousal support in the amount of \$2,500.00 per month. The issue remains of Mr. Peters' ability to provide such support in that amount, given his income and, specifically, his current obligation to continue paying child support. This is a situation where Section 15.3 of the *Divorce Act* has relevance and the priority of the child support payments requires the Court to make an order for spousal support "less than it otherwise would have been."

It is ordered that Mr. Peters shall pay to Ms. Peters spousal support in the amount of \$1,500.00 per month beginning October 15, 2002, and payable on the 15th of each month thereafter. Such payments shall be made through the Maintenance Enforcement Program. It is noted, in coming to this conclusion as to the amount of support, that Ms. Peters has not been required to contribute to the support of the children.

A decrease or termination of Mr. Peters' current obligation to pay child support will, obviously, provide Ms. Peters with an opportunity to revisit the amount of spousal support.

MATRIMONIAL ASSETS

Pension:

I am unable to conclude that Mr. Peters was involved in a pension plan prior to the parties separation.

Severance Pay or Retirement Package:

On this point, counsel for Ms. Peters stated in her pre-trial memorandum at paragraph 22:

"The Husband has a future entitlement to severance pay and/or retirement package through his employment. She seeks a fifty percent share of the after tax value of the part of the severance/package that relates to their cohabitation period, on an 'if received, when received'

basis. This means no cash adjustment now and is consistent with the approach in **Chaytor v. Chaytor** (1994), 133 N.S.R. (2d) 43 (N.S.T.D.).”

I agree with the submission and do so order.

Matrimonial Property and Debt:

These issues have been the subject of considerable post-trial representation by counsel for Mr. and Ms. Peters. Concerns were expressed as to the representations made to the Court concerning the division of RRSP's and unregistered funds. Further, the Court was informed that, as Mr. Peters was a resident of the United Kingdom, the sale of the matrimonial home might attract a payment of a portion of the proceeds of the sale of that home to Revenue Canada. Still, further, there were discussions as to the disposition of household furnishings and sundry items in the home.

As to the RRSP's and unregistered funds, Ms. Peters, in her pre-trial memorandum, stated at paragraph 27:

The Wife proposes to equally divide all RRSP's and an unregistered Sunlife Investment. It is anticipated the Husband will argue that the RRSP's and other investments in his hands should be valued as of the separation date. This would be unfair to the Wife because the Husband has had control of more of the interest-earning assets than she has since separation. She seeks an equal share of the interest, up to the date of division: **Clarke v. Clarke**, [1986] N.S.J. No. 184, pp. 4-5 (N.S.A.D.). If there have been losses to the RRSP's due to market losses, the Wife acknowledges she should share in those losses. The same logic should apply to the RRSP's in the Wife's name.”

In a post-trial conference, Mr. Peters' counsel agreed with this submission. During the same conference, it was agreed that Ms. Peters would act as a trustee for both parties with authority to sell miscellaneous items belonging to the couple, including the matrimonial furnishings, to keep a record of such transaction and that the proceeds would be equally divided.

The Court was informed by letter on June 14, 2002, that Revenue Canada would not seek any payment from the sale of the matrimonial home. Further, that the home was sold, each party had agreed to and received \$20,000.00 and \$81,297.58 remained for distribution. Both parties, although not agreeing as to what were matrimonial assets or their values, submitted that the matrimonial assets should be divided equally between the parties. I agree and so order with the following three noted exceptions:

1. Jaegar Le Coutre Atmospheric Clock and Bronze IFE Heads (two)

These items are currently in the possession of Ms. Peters. Mr. and Ms. Peters have previously agreed that Ms. Peters would deliver those to Mr. Peters and that, on such delivery, he would pay her an amount of \$8,000.00. I order that such transaction take place.

2. Matrimonial Debt:

I find the matrimonial debt should also be divided equally. I find the parties had the following matrimonial debt on separation:

Loan	\$30,000.00	Assumed by Mr. Peters
Visa	\$1,545.00	Assumed by Mr. Peters
Sears	\$1,128.00	Assumed by Mr. Peters
Bank Overdraft	\$996.00	Assumed by Mr. Peters
Personal Line of Credit	\$4,200.00	Assumed by Ms. Peters
TOTAL DEBT	\$37,869.00	
1/2 TOTAL DEBT	\$18,934.00	
Debt Assumed by Ms. Peters	\$4,200.00	

The division of the matrimonial assets on an equal basis will require that \$14,734.00 be deducted from Ms. Peters' portion to equalize the debt responsibility.

3. Retroactive CPP Payment to Ms. Peters:

Ms. Peters received a Canada Pension retroactive payment of \$9,911.50. Although the evidence is not entirely clear on this point, it is safe to assume that most of this amount would be attributed to a time prior to separation. Ms. Peters notes the interim order did not provide for retroactive support. Further, Ms. Peters, by being in the area, remained responsible for a considerable period of time for the physical upkeep and maintenance of the home and the eventual sale of other assorted matrimonial assets.

Section 13 of the *Matrimonial Property Act* provides factors for consideration when deciding if an equal division would be unfair or unequal. I conclude, considering such factors, particularly Section 13(f), that it would be unfair to include this retroactive payment as a matrimonial asset for equal division.

Matrimonial Assets:

I find the following to be matrimonial assets of the parties at the time of their separation and order them divided equally:

1. Household Items:

As previously noted, Ms. Peters was authorized to act as trustee for the parties in selling such items and providing a record of such sales. I conclude such calculation include the boat, trailer and motorcycle that Ms. Peters acknowledges selling after the separation;

2. Matrimonial Home:

As previously noted, the remains to be divided is \$81,297.58. In this proceeding, Ms. Peters had noted items of cost to her related to the upkeep of the home. I assume such debts have been paid out of the proceeds of the sale of the home;

3. Bank Account - Toronto Dominion Bank:

Both parties noted in documents filed that, at separation, there was an account in Mr. Peters' possession containing the amount of \$2,300.00;

4. Income Tax Refund - Ms. Peters:

I find this income tax refund received by Ms. Peters in the amount of \$17,681.00 to be matrimonial property;

5. Income Tax Refund - Mr. Peters:

Mr. Peters acknowledges an income tax refund in the amount of \$10,026.88. Ms. Peters' submissions indicate the amount is \$12,296.00. I leave it to the parties to confer further on this point as they will be doing with regard to the home, furniture and other investments. In any event, I find Mr. Peters to be in possession of this item valued at a minimum of \$10,026.88;

6. Investments:

As previously noted, it is agreed the parties will value these items on the delivery of this decision. Mr. Peters, at separation, was in possession of a profit sharing plan and three RRSP's shown in Mr. Peters' trial brief to have a value of \$163,198.00. Ms. Peters is in possession of an RRSP she showed in a statement of property as having a value of \$27,763.00 "on various dates in 2000." As previously indicated, the

parties have agreed to establish the value of these investments as of the date of this decision. Further, it is noted that, in the interim order that Justice Williams provided for each party to “collapse, in their own discretion, up to Ten Thousand Dollars (\$10,000.00) in persons RRSPs.” In the event either of these parties have collapsed a portion of their investment subsequent to their separation date, such amount will be considered as an asset in their possession.

I would ask counsel for the Petitioner to prepare the order.

J.