

IN THE SUPREME COURT OF NOVA SCOTIA  
(FAMILY DIVISION)

**BETWEEN:**

**FAYE MARIE COOK**

**- APPLICANT**

**- and -**

**ANDREW HEDLEY CRABBE**

**- RESPONDENT**

[Cite as: Faye Cook v. Andrew Crabbe 2002 NSSF 46]

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**D E C I S I O N**

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**Heard Before The Honourable Justice Moira C. Legere-Sers on the 27<sup>th</sup> day of  
September, 2002 at Halifax, Nova Scotia**

**DECISION:** November 1, 2002

**COUNSEL:** Jean Beeler - for the Applicant  
Respondent unrepresented and did not appear

LEGERE-SERS, J.

By Application dated April 8, 2002 Ms. Cook seeks a division of property pursuant to the common law principles of resulting trusts, constructive trusts and unjust enrichment. She seeks, by way of recovery, a division of the Respondent's pension under the **Pension Benefits Act of Canada**.

I am satisfied that the Respondent has been served with Notice of this proceeding. He has failed to file an Answer, provide evidence or respond to this Application.

The parties began living together on July 17, 1981. They continued to live together until November 6, 1993. Ms. Cook was born in 1954 and was 27 years of age at the time they commenced this relationship. She is currently 48 years old and has a Grade 12 equivalent education.

Ms. Cook has two children from a previous relationship. She and her first partner purchased and jointly financed a home which was conveyed to her on their separation.

Ms. Cook and the Respondent, Mr. Crabbe, had two children (twins born [...] 1986)

Ms. Cook testified that she and Mr. Crabbe lived in this home with their children.

Ms. Cook advises that when she and Mr. Crabbe commenced living together it was approximately four months after they began dating. Mr. Crabbe brought into the relationship many debts. He turned over his financing to Ms. Cook and she advises she paid off his debt and managed the finances after that.

Ms. Cook further advises that she was the sole heir to her father's estate and she received approximately \$65,000.00 as beneficiary. She paid off the mortgage to their home (she estimates that was approximately \$35,000.00) and financed a vacation trip for the family, investing her total inheritance in the relationship and household.

Ms. Cook also advises that she was the caretaker of the children and the home while Mr. Crabbe was employed with the Canadian Navy and away for periods of time during the relationship. What income she earned came from babysitting she did in her home.

In 1993 they purchased a home in the Valley. She invested a lump sum of money (\$35,000.00) in the property. They made plans to marry. The property in the

Valley was put in Mr. Crabbe's name only. Approximately four months later Ms. Cook became ill, such that on [.,.] 1993 when the twins were seven years old, she was hospitalized, suffering from manic depression. She was released from hospital a year later in early January 1995.

Between 1994 and 1995 Mr. Crabbe gained custody of the twins. He moved to New Brunswick with the children. Contrary to her wishes, Ms. Cook lost contact with the twins and Mr. Crabbe.

She continues to live in the home she retained in Forest Hills and the home in the Valley was sold with no allocation to her of the proceeds. Her investment of her inheritance in the relationship is lost to her. She currently exists on disability benefits totalling \$6340.00 per annum. She receives a disability pension as a result of the division of Mr. Crabbe's Canada Pension.

Mr. Crabbe was represented by counsel initially and his Financial Statement and unsworn Statement of Property is filed. His employment income is said to be \$43,502.00. In addition he receives a Military Pension of \$15,519.04. He receives from a disabled contributor a child tax benefit in the amount of \$35.60 per month. In addition, he receives \$90.17 per month as a child tax benefit. This yields a monthly income of \$5043.00 and an annual salary of \$60,521.00.

For the year 2000 he filed a tax return showing total income of \$55,723.00 and for 1998 a tax return of \$62,785.00. Those are the only returns available in evidence.

There was never a division of property other than the de facto situation such that she remained in the Dartmouth home and he took the proceeds of the Valley home they purchased. That house was sold without her consent. Mr. Crabbe took early retirement and what severance pay he received he did not share with Ms. Cook.

She seeks an equal division of his Military Pension in lieu of any further division of property.

Ms. Cook provided a letter from National Defence dated July 13, 2001. They have advised that under Section 13(2) of the **Pension Benefits Division Act** the amount that would be paid to her as a result of the division under the **Canadian Forces Superannuation Act** for the cohabitation period starting July 17, 1981 and ending November 6, 1993 is approximately \$80,304.63. Ms. Cook qualifies as a spouse pursuant to Sec. 2(b) under the definition of "spouse". She requires a court order to complete the application for division.

The jurisdiction of the court arises from sections 12 and 13 of the **Matrimonial Property Act**, R.S.N.S. 1989, c. 275. A Judge of the Supreme Court does not exercise jurisdiction pursuant to the **Pension Benefits Division Act** (**Croitor v. Croitor** (2001))

N.S.J. No. 67, N.S., N.S.C.A.). The **Pension Benefits Division Act** provides a mechanism that enables the Minister to divide a member's pension if an order is made in relation to proceedings of divorce, annulment or separation.

Here there is no formal marriage ceremony nor is there any written agreement between the parties.

The relief sought must arise out of the rights and obligations of the parties in their common-law situation. The **Matrimonial Property Act** does not apply.

Her right to division must, if at all, arise from the circumstance of the cohabitation and currently may fall under the scope of a claim for unjust enrichment, a cause of action in itself.

The three criteria to be satisfied to base a claim in unjust enrichment are an enrichment of the party, a corresponding deprivation and an absence of juristic reason for the enrichment.

The Applicant bears the burden of proof on the balance of probability (**Keddy v. McGill** (1992) 1106 N.S.R. (2d) 306; **Sorochan v. Sorochan** (1986) 69 N.R. 81; 74 A.R. 67; 2 R.F.L. (3d) 225; 29 D.L.R. (4<sup>th</sup>) 1 S.C.C.). The remedy, if unjust enrichment is found to exist, may lie in damages or a constructive trust.

The additional criteria necessary to formulate a remedy by way of constructive trust requires a finding that there is a casual connection between the contribution and the property; that the Applicant has a reasonable expectation of receiving an interest in the property and the Respondent knew or ought to have known of this expectation. The contribution must be sufficiently substantial and direct to establish an entitlement.

In Family cases, equity has been held to be the guide in determining contributions between unmarried couples. (**MacInnis v. MacMillan** (1990) 94 N.S.R. (2d) 271) - a decision of Hallett, J.; (**Martin v. Dares** (2000) 185 N.S.R. (2d) 174).

The bulk of evidence before me is the affidavit and viva voce evidence of the Applicant. Her testimony is clear that she was the money manager in the family and from the outset was trusted by Mr. Crabbe to get him out of financial difficulty and manage the family's finances. In this role she would be familiar with the figures respecting their individual contribution to the assets. In addition to that role, she invested her inheritance of \$65,000.00 in two of the properties, the home in which she resides and the home they purchased in the Valley.

It would have been preferable to have certified copies of the deeds or mortgage contracts and estate documents to support her testimony, specifically with respect to establishing the amount of unjust enrichment. It would have been helpful to know

exactly how much money was invested in the Dartmouth home and the Valley home. It would have made an award of damages a stronger option. By her own admission she has been medicated for some period of time and that this medication makes her tired. It may affect her memory on the exact amount of her contribution. The absence of this evidence restricts me from being specific as to her exact monetary contribution. In the absence of contest and cross-examination I must exercise caution when attempting to quantify her contribution to arrive at the most appropriate remedy, either by way of damages and/or resulting in constructive trust.

Specifically I would have preferred to have the value of the homes and the contributions of both parties to get a broader picture of the extent of inequity. Did Mr. Crabbe, for example, assume when he sold the house without her input, that it was equitable to allow her to keep the Dartmouth home and he to take the proceeds of the Valley home? Did he use the proceeds of sale to support the children in lieu of any financial ability to contribute by Ms. Cook? The absence of a specific financial picture causes me to be cautious about drawing conclusions on how inequitable this situation is.

This claim has been outstanding for more than a year and Mr. Crabbe was initially represented by counsel. Counsel could not obtain instructions to proceed. I know, therefore, that he has the opportunity to counter these claims, the opportunity to consult counsel and to contest the application which could result in a significant



infringement on his pension. He chose not to provide any further information or response. I must, therefore, rely on the evidence I have.

I do know that the relationship lasted 12 years and two children were born of this union. The Applicant fulfilled the role known as a traditional spouse, caring for the home and the children almost exclusively and supplementing the family income by providing child care to others out of the family home. While she was well enough she was the primary caretaker of the children, at least for seven years. Her income, her pre-relationship assets were used to support the family. They lived in her prior-acquired home as a family unit. Her entire inheritance of \$65,000.00 was invested in the properties and family. She cleared his debts, managed his money and enabled him to work and invest in his pension. His work away placed on her the additional burden of child care as a single parent for some periods.

There is sufficient evidence of an enrichment, a reasonable expectation of a sharing or return and no juristic reason for the enrichment other than that they were a family and both were expected to contribute to the family. Her contribution was sizeable and there was more than a casual connection between her contribution and the relationship. One fostered the other. It would be unreasonable in these circumstances to conclude that there was not a common intention.

The couple, at separation, had two homes, a pension, a vehicle, and furniture,

which was made possible, without significant debt, due in no small part to her inheritance. If the parties were married, on this evidence she would have had at least an equal division of property. They chose not to formally marry yet there is evidence they certainly had the intention at one point almost immediately prior to her illness.

It appears on the evidence and in the absence of evidence from Mr. Crabbe, that Ms. Cook may well have contributed more than half to the acquisition of property, given Mr. Crabbe's financial circumstances prior to the relationship.

He has been unjustly enriched. The pension division that she would be entitled to as a result of her common-law relationship is approximately \$80,000.00 with added interest. I award her in damages an amount equal to one-half of the pension with the Canadian Navy, calculated in accordance with the dates of their common-law relationship in accordance to the formula provided with the necessary adjustments by way of interest calculations to date.

In the event a damage award in the amount of one-half of his Armed Forces pension for the common-law period is deemed administratively unenforceable by the Minister, I reserve the right to direct that he hold his pension income in trust for her and ensure that calculations are effected to compensate her for the one-half share referred to above together with interest as noted in the letter dated July 13, 2001 from National Defence Headquarters.

Counsel asks for an award of costs. This matter could have been settled without litigation. It appears that the Respondent simply put the Applicant to the proof of her claim. In the absence of reasonable excuse this caused the Applicant to hire counsel and to incur disbursement costs of \$647.36. I order the Respondent to pay costs of \$500.00 plus disbursements of \$647.00 for a total award of \$1147.00.

Counsel for the Applicant will kindly draft the order.

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Moira C. Legere-Sers, J.