IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: *Selbstaedt v. Selbstaedt*, 2004 NSSF 110

Date: 20041206
Docket: 1201-057767
Registry: Halifax

Between:

Norbert Selbstaedt

Petitioner

v.

Gail Selbstaedt

Respondent

Judge: The Honourable Justice Leslie J. Dellapinna

Heard: November 1st , 2nd and 15th , 2004, in Halifax, Nova Scotia

Counsel: Julia Cornish, for the Petitioner Patrick Atherton, for the Respondent

By the Court:

[1] Norbert Selbstaedt has petitioned Gail Selbstaedt for divorce and seeks relief pursuant to the *Divorce Act*, R.S.C. 1985, c.3, the *Matrimonial Property Act*, R.S.N.S. 1989, c.275 and the *Pension Benefits Act*, R.S.N.S. 1989, c.340.

[2] Ms. Selbstaedt responded with an Answer and Counter Petition for Divorce claiming similar relief under the same legislation.

BACKGROUND

[3] Mr. and Mrs. Selbstaedt were married in Halifax on May 1, 1993. Ms. Selbstaedt was previously married and divorced.

[4] There are two children of the marriage namely, Nolan Andreas Selbstaedt, born […], 1994 and Natasha Anne Selbstaedt, born […], 1996.

[5] The parties separated on February 4, 2003. They experienced marital difficulties for years prior to their ultimate separation and separated briefly in late 1998.

[6] Mr. Selbstaedt is a pilot with Regional 1 Airlines with whom he has been employed since June, 2004. He now lives in Alberta. Ms. Selbstaedt is employed as an account representative for Aliant Yellow Pages. She too has been at this position for only a brief period of time. She was previously employed by Aliant in another division, retiring from that position in or about November, 2001. As part of her severance package, she continued to receive her full pay until November 3, 2004. She will begin to receive her pension on March 4, 2005. She and the children continue to live in the matrimonial home in Halifax.

[7] The parties have agreed to share joint custody of the children with the children residing primarily with Ms. Selbstaedt and Mr. Selbstaedt having liberal access. Their agreement includes provisions regarding consultation and the exchange of information regarding the children. However, the parties have been unable to agree on all aspects of Mr. Selbstaedt's access to the children which is complicated by the fact that he now resides in Alberta and his availability to spend time with the children is uncertain because of the nature of his employment.

[8] It has been agreed that Mr. Selbstaedt will pay child support based on the Federal Child Support Guidelines but there is still some disagreement with respect to the sharing of additional expenses that fall under Section 7 of the Guidelines.

[9] There is no agreement on the division of assets and debts.

THE DIVORCE

[10] The parties separated February 4, 2003. At no time since that date did they resume cohabitation. They have therefore lived separate and apart for more than a year. I am satisfied that all jurisdictional requirements of the *Divorce Act* have been met. I am satisfied too that there has been a breakdown of the marriage and there is no reasonable possibility of a reconciliation. A Divorce Judgment will therefore issue.

ISSUES

[11] The issues are as follows:

(a) conditions in connection with Mr. Selbstaedt's access to the children;

(b) the sharing of costs associated with Mr. Selbstaedt's access to the children;

(c) the division of the parties' assets and debts;

(d) child support (the table amount, special or extraordinary expenses

and retroactivity); and

(e) costs.

DISCUSSION:

Conditions in Connection with Mr. Selbstaedt's Access to the Children:

[12] Section 16 of the *Divorce Act* applies to custody and access orders and reads as follows:

> 16. (1) A court of competent jurisdiction may, on application by either or both spouses or by any other person, make an order respecting the custody of or the access to, or the custody of and access to, any or all children of the marriage.
>
> (2) Where an application is made under subsection (1), the court may, on application by either or both spouses or by any other person, make an interim order respecting the custody of or the access to, or the custody of and access to, any or all children of the marriage pending determination of the application under subsection (1).
>
> (3) A person, other than a spouse, may not make an application under subsection (1) or (2) without leave of the court.
>
> (4) The court may make an order under this section granting custody of, or access to, any or all children of the marriage to any one or more persons.
>
> (5) Unless the court orders otherwise, a spouse who is granted access to a child of the marriage has the right to make inquiries, and to be given information, as to the health, education and welfare of the child.
>
> (6) The court may make an order under this section for a definite or indefinite period or until the happening of a specified event and may impose such other terms, conditions or restrictions in connection therewith as it thinks fit and just.
>
> (7) Without limiting the generality of subsection (6), the court may include in an order under this section a term requiring any person who has custody of a child of the

> marriage and who intends to change the place of residence of that child to notify, at least thirty days before the change or within such other period before the change as the court may specify, any person who is granted access to that child of the change, the time at which the change will be made and the new place of residence of the child.
>
> (8) In making an order under this section, the court shall take into consideration only the best interests of the child of the marriage as determined by reference to the condition, means, needs and other circumstances of the child.
>
> (9) In making an order under this section, the court shall not take into consideration the past conduct of any person unless the conduct is relevant to the ability of that person to act as a parent of a child.
>
> (10) In making an order under this section, the court shall give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child and, for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact.

[13] The terms of the parties' parenting arrangement that have not been contested are approved and shall be incorporated into the Corollary Relief Judgment. I will address only those terms that are in dispute.

[14] Mr. Selbstaedt proposes that the parties' time with the children during their summer vacation from school be divided equally such that they would spend half of their vacation with him in Alberta and half with their mother in Halifax. Ms. Selbstaedt is not opposed to Mr. Selbstaedt having the children in Alberta for half the summer provided Mr. Selbstaedt is available to spend that time with the children. Due to his employment as a pilot Mr. Selbstaedt acknowledges that it is very possible that he will not be available to spend time with the children during the summer. That being the case, it is Ms. Selbstaedt's position that the children should remain in Halifax with her rather than be in Alberta without their father.

Mr. Selbstaedt believes that even if he is absent, the children should have that time with their grandparents as well as his siblings and their families. Ms. Selbstaedt does not expect Mr. Selbstaedt to necessarily be at home and at the beck and call of the children the entire time they are in Alberta. She has no problem, for example, with the children staying with their grandparents for approximately a week provided their father is with them the remainder of the time.

[15] Any order respecting access is to be made taking "into consideration only the best interests of the child . as determined by reference to the condition, means, needs and other circumstances of the child." Access as contemplated by the *Divorce Act*, is intended primarily for the children to benefit from time spent with the parent with whom they do not live the majority of the time. While undoubtedly the children will benefit from maintaining a relationship with other family members such as grandparents, aunts, cousins and the like, based on the evidence that I have heard of the children's relationship with their father's family I believe that it would be in their best interest for the majority of this time to be enjoyed with their father and, if he is not available, then with their mother.

[16] Therefore, it is ordered that the parties will share time equally with the children during the children's summer vacation from school provided Mr. Selbstaedt is available to be with the children at least three of the approximate four weeks that they will be in Alberta. If he cannot arrange his work schedule to be with the children for that period of time, then his summer access with the children will be restricted to the number of weeks that he is not working. It is hoped that the parties will be able to agree on how the precise dates are chosen. It is reasonable, as Mr. Selbstaedt proposed, that in odd numbered years Ms. Selbstaedt will have the first choice of her summer vacation time with the children and in even

numbered years Mr. Selbstaedt will have the first choice. Each should attempt to ensure that their weeks with the children run consecutively, and if Mr. Selbstaedt's time with the children is in July, it should commence no sooner than the fourth day after the last day of school and if it is in August, the children should return to Halifax no later than five days prior to the recommencement of school.

[17] Mr. Selbstaedt also proposes that he have the children with him every second Christmas and every second Easter beginning with Christmas in 2004 and Easter in 2005. He proposes that the children's four day Easter weekend be extended to a full week. He also proposes that the parent who does not have the children with him or her over Easter would have the children for their full March break. Ms. Selbstaedt is not opposed to Mr. Selbstaedt having access to the children at Christmas and Easter provided he is available to spend that time with them - something which he is not able or not prepared to guarantee. However, she is opposed to the Easter vacation being extended to a full week. She does not want them missing time from school - especially around Easter because it is just before their Spring examinations. In the alternative, she proposes that Mr. Selbstaedt have the children each March break rather than on alternate Easter weekends.

[18] Again, I believe that Ms. Selbstaedt's position with respect to Christmas and Easter access better serves the interests of the children. Mr. Selbstaedt shall therefore have the children for up to one week every second Christmas beginning with Christmas 2004 provided he is available to spend that time with the children. He may also have the children every second Easter weekend beginning in 2005 and every second March Break commencing 2006. I am not prepared to authorize removing the children from school in order for Mr. Selbstaedt to have additional time with the children at Easter unless Ms. Selbstaedt, after consulting with the

children's teachers, agrees with the children taking additional time off. With Ms. Selbstaedt's prior consent, he may trade his Easter weekend for her March break. His access with the children on Easter weekend and March break is again conditional upon him being available to spend that time with the children.

[19] Mr. Selbstaedt has also requested two additional weeks with the children during the time the children would otherwise be in school. Ms. Selbstaedt is opposed to this request because it would mean removing the children from school, and she does not believe that it is in their best interest to miss this much school time and risk falling behind their classmates. I again agree with Ms. Selbstaedt's position.

[20] The parties have agreed that the children will have telephone access to their father at reasonable times while they are in the care of their mother and telephone access to their mother at reasonable times when they are in the care of their father. They've agreed that neither will interfere with or listen in on the other's telephone conversations with the children. Mr. Selbstaedt proposes that he be permitted to install, at his expense, a phone and phone line and/or a computer and computer line in the children's room at Ms. Selbstaedt's residence as a means of facilitating more contact with him. Ms. Selbstaedt is not opposed to the children communicating with their father via email, however she expressed reservations concerning the children having access to the internet in their room while not under her supervision. Also, she considers the installation of another phone and phone line to be a needless expense and something which an eight and ten year old do not require. She already has three telephones in her home.

[21] I agree that the installation of another phone and phone line is an

unnecessary expense. That request, therefore, is denied. Mr. Selbstaedt will be permitted, at his own expense, to purchase a computer for the children and to pay all service charges associated with an internet hookup (including installation and monthly fees). However, Ms. Selbstaedt will decide where in her home the computer will be located so as to maximize her ability to supervise the children.

[22] In order for the children to spend time with their father in Alberta, it will be necessary for them to travel by air. Mr. Selbstaedt proposes that when confirmed seat travel is used, the children should be allowed to travel as unaccompanied minors in accordance with the airline carrier's policy. Ms. Selbstaedt is opposed to this request primarily because of the children's young ages. She is concerned that they might be too timid to ask for assistance or even snacks if needed and , being eight and ten, that they might argue with each other or in some other way cause a disturbance on the plane. While the concerns raised by Ms. Selbstaedt may be valid, it is not unusual for children of eight and ten to travel by plane using the unaccompanied minors program. Considering the cost of a chaperone and considering too the importance of continuing the children's relationship with their father, I am prepared to grant Mr. Selbstaedt's request provided all reasonable efforts are made to ensure that the children travel on direct flights when travelling unaccompanied by an adult.

[23] Mr. Selbstaedt has asked for a general provision to be included in the order stating that if he is unavailable to enjoy access with the children, his parents or other family members may enjoy access with the children during the time otherwise set aside for him. I believe I have already addressed this request. No such provision will be included in the order.

The Sharing of Costs Associated with Mr. Selbstaedt's Access to the Children:

[24] Mr. Selbstaedt seeks an order requiring Ms. Selbstaedt to share his access costs which he estimates will be approximately $4,000.00 per year. That figure includes not only air fare (which is reduced somewhat due to his ability to use airline passes made available to him through his sister who is an employee of one of the major airlines) but also room and board being charged to the children by their aunt while they are with their father (who lives with his sister) in Alberta. Mr. Selbstaedt proposes that an easy way for him to recover Ms. Selbstaedt's share of the access costs would be for her to forego child support during those periods of time that the children are with him.

[25] Whereas access is intended primarily for the benefit of the children it is reasonable for Ms. Selbstaedt to share a portion of the access costs. This issue could be addressed in the context of child support but I prefer, instead, to deal with it as a term or condition of access as contemplated by subsection 16(6) of the *Divorce Act*. Considering the means of the parties and the child support to be paid by Mr. Selbstaedt, Ms. Selbstaedt shall reimburse Mr. Selbstaedt for one half of his actual airline ticket expense incurred for the children for the purpose of them exercising access with their father up to a maximum of $1,000.00 per year. Her reimbursement cheque will be due within two weeks of Mr. Selbstaedt producing confirmation of the airline expense that he has incurred.

The Division of the Parties' Assets and Debts:

[26] The parties had the following assets as of the date of their separation:

(a) The matrimonial home located 155 Mallard Drive formerly known as 197 Sheldrake Crescent, Halifax County, Nova Scotia;

(b) Furniture, appliances and other household effects;

(c) There were two vehicles. Mr. Selbstaedt owned a 1995 Ford Taurus motor vehicle and Ms. Selbstaedt a 1996 Dodge Stratus;

(d) At the date of separation Mr. Selbstaedt had savings of $78.00 and Ms. Selbstaedt had Canada Savings Bonds having a value of $270.00;

(e) According to Ms. Selbstaedt's Statement of Property, she had two RRSP accounts. One is with League Savings and Mortgage and the other with the Royal Bank. Subsequent to the parties' separation and prior to trial, Ms. Selbstaedt deregistered most of her RRSP's.

Mr. Selbstaedt had six different RRSP accounts. As of December 31, 2002, according to his Statement of Property, they had a combined gross value of $73,215.21. No updated statements were provided; and

(f) Ms. Selbstaedt has a pension entitlement with Aliant. Some of her pension contributions were made prior to the marriage and some were made during the marriage.

[27] In addition to assets, the parties had the following debts:

(a) A President's Choice Financial line of credit in the sum of $16,000.00 in the name of Mrs. Selbstaedt;

(b) A President's Choice Financial line of credit in the name of Mr. Selbstaedt in the sum of $6,646.52;

(c) A Visa account in the name of Ms. Selbstaedt in the sum of $4,000.00;

(d) A Visa account in the name of Mr. Selbstaedt in the approximate sum of $933.82;

(e) Ms. Selbstaedt owed $4,034.63 to Canada Customs and Revenue Agency being income tax still owed in relation to income earned in 2001 and 2002;

(f) Ms. Selbstaedt also owed approximately $30,000.00 on a line of credit with the Royal Bank which line of credit is secured by a collateral mortgage on the matrimonial home;

(g) Mr. Selbstaedt also contends that he and his wife together owe his father approximately $38,300.00 in relation to money borrowed between February 1, 2000 and January 21, 2003;

[28] Mr. Selbstaedt is seeking an equal division of matrimonial assets and debts. Mrs. Selbstaedt is seeking what amounts to an unequal division of assets and debts in her favour.

[29] The following sections of the *Matrimonial Property Act* apply:

> 4 (1) In this Act, "matrimonial assets" means the matrimonial home or homes and all other real and personal property acquired by either or both spouses before or during their marriage, with the exception of
> (a) gifts, inheritances, trusts or settlements received by one spouse from a person other than the other spouse except to the extent to which they are used for the benefit of both spouses or their children;
> (b) an award or settlement of damages in court in favour of one spouse;
> (c) money paid or payable to one spouse under an insurance policy;
> (d) reasonable personal effects of one spouse;
> (e) business assets;
> (f) property exempted under a marriage contract or separation agreement;
> (g) real and personal property acquired after separation unless the spouses resume cohabitation.
>
> **...**
>
> 12 (1) Where
> (a) a petition for divorce is filed;
> (b) an application is filed for a declaration of nullity;
> (c) the spouses have been living separate and apart and there is no reasonable prospect of the resumption of cohabitation; or
> (d) one of the spouses has died,
> either spouse is entitled to apply to the court to have the matrimonial assets divided in equal shares, notwithstanding the ownership of these assets, and the court may order such a division.
> (2) An application for the division of matrimonial assets shall be made by a surviving spouse within six months after probate or administration of the estate of the deceased spouse is granted by a court of probate and not thereafter.
> (3) Notwithstanding subsection (2), where the court is satisfied that the surviving spouse did not know of the grant of probate or administration or did not have an adequate opportunity to make such an application, the court may extend the time for making the application but such an application shall relate only to matrimonial assets remaining undistributed at the date of the application.
> (4) Any right that the surviving spouse has to ownership or division of property under this Act is in addition to the rights that the surviving spouse has as a result of the death of the other spouse, whether these rights arise on intestacy or by will.
> 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;
> (b) the amount of the debts and liabilities of each spouse and the circumstances in which they were incurred;
> (c) a marriage contract or separation agreement between the spouses;
> (d) the length of time that the spouses have cohabited with each other during their

marriage;
(e) the date and manner of acquisition of the assets;
(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;
(g) the contribution by one spouse to the education or career potential of the other spouse;
(h) the needs of a child who has not attained the age of majority;
(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;
(j) whether the value of the assets substantially appreciated during the marriage;
(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;
(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;
(m) all taxation consequences of the division of matrimonial assets.

[30] The first step in determining the appropriate division of assets under the *Matrimonial Property Act* is to identify and classify the various assets. Subsection 4(1) of the *Act* defines matrimonial assets. When classifying assets the starting point is to presume property is a matrimonial asset. The onus of proof is on the party putting forward a different view. (*Grant* v. *Grant* (2001), 192 N.S.R. (2d) 302 (S.C. Family Division) at paragraph 105).

[31] Similarly, debts should be classified as "matrimonial" or non-matrimonial. "Matrimonial debt" is not a term found in the *Matrimonial Property Act*. However, it is commonly used by our courts. (*Ellis* v. *Ellis* (1999), 175 N.S.R. (2d) 268 (C.A.) beginning at paragraph 31). Unlike the process followed in classifying assets, a debt is presumed to be non-matrimonial unless proved otherwise. The individual who alleges that a debt is matrimonial has the burden of proving such (*Abbott* v. *Abbott* (2003), 208 N.S.R. (2d) 79 (S.C. Family Division) at paragraph 46).

[32] Once identified as "matrimonial" the presumption of an equal division found in section 12 that applies to matrimonial assets also applies to matrimonial debts. As stated by Campbell, J. in *Larue* v. *Larue* (2001), 195 N.S.R. (2d) 336 (S.C. Family Division) at paragraph 41:

> In summary, matrimonial debts should be identified and subtracted from matrimonial assets as part of the valuation exercise in considering a Section 12 presumption of equal division. It is that net value which should be divided equally by ordering an equalization payment to be made. Then and only then are the exceptions in Section 13 of the **Act**, to be considered one of which is subsection 13(b). Couples rarely accumulate assets alone. Their joint venture usually produces net worth, being the excess of assets over debt and it is that net worth which should be shared.

[33] The parties agree that the matrimonial home, household contents, the motor vehicles, the savings, the RRSP's and Ms. Selbstaedt's pension entitlement are all matrimonial assets.

[34] The parties also agree that the two lines of credit with President's Choice Financial and the two Visa accounts at the Royal Bank are "matrimonial debts". There is no agreement as to how Ms. Selbstaedt's income tax debt or Royal Bank line of credit should be treated, and Ms. Selbstaedt argues that if any money is owed to Mr. Selbstaedt's parents, it does not qualify as a matrimonial debt.

[35] I have no difficulty concluding Ms. Selbstaedt's income tax debt is matrimonial. Income tax on employment or professional income earned during the marriage will usually be considered "matrimonial". (See *Carmichael* v.*Carmichael* (1992), 110 N.S.R. (2d) 121 (T.D.)). The tax owed by Ms. Selbstaedt was incurred prior to the parties' separation although paid by Ms. Selbstaedt post-separation with money realized by the deregistration and liquidation of her RRSP savings. The treatment of Mr. Selbstaedt's family loan and Ms. Selbstaedt's Royal Bank

line of credit is not as straightforward.

[36] The onus falls on Mr. Selbstaedt to prove that a debt is owing to his parents and that it is matrimonial and the burden is on Ms. Selbstaedt with respect to her line of credit.

[37] Campbell, J. in *Larue, supra,* referring to the decision of Williams, J. in *Grant, supra,* summarized the definition of matrimonial debt as follows:

> I agree with Justice Williams' summary in *Grant, supra,* of the judge made definition of "matrimonial debt" which includes but is not limited to debt incurred for the benefit of the family unit, during the marriage, for ordinary household family matters reasonably incurred and, if incurred after separation, necessary for basic living expenses or to preserve matrimonial assets. The debt must be capable of legal enforcement. To that definition I would add the obvious comment that debts which are incurred for the purpose of acquiring a non-matrimonial asset or for non-family purposes would not be matrimonial in nature. (Paragraph 40)

[38] Mr. Selbstaedt testified that on eleven different occasions he received sums of money from his father which he categorizes as loans intended to be repaid to his parents. The first such advance, he says, took place in December, 1996 in the sum of $15,000.00 to assist Mr. Selbstaedt with the purchase of a motor vehicle. $11,000.00 of that advance was paid back. He is not seeking any contribution from Ms. Selbstaedt to the $4,000.00 still outstanding.

[39] The remaining advances took place between February 1, 2000 and January 21, 2003 and totalled $34,050.00. Mr. Selbstaedt submitted a ledger which he said was prepared by his father. The ledger summarized the advances and the balance of the alleged loans, together with interest. Also provided were four promissory notes signed by Mr. Selbstaedt and dated December 19, 1996, May 19, 2001,

October 30, 2001 and March 10, 2003 as well as a number of cheques made payable to Mr. Selbstaedt and signed by his father and some bank transfer forms.

[40] According to Mr. Selbstaedt, the advances were loans to help the parties with their household expenses. On direct, he testified that all of the funds from these advances were deposited "directly or indirectly" into the parties' joint account which was used solely for household purposes. When asked what he meant by indirectly, he said that the funds may have first been deposited to his own personal account before being transferred to the joint account.

[41] During cross examination, he stated that on a few occasions the funds may have been deposited into his personal account to replenish his account for household expenses that he previously paid from his own savings.

[42] Mr. Selbstaedt admitted that his wife was never shown any of the promissory notes and he never informed his wife of the loans owed to his father. Later he added that she was aware that money was borrowed from his father to pay down their mortgage - something which she denies. She said that when the mortgage had a balance of between $14,000.00 and $15,000.00 remaining, she received notification in the mail from the bank that the balance had been paid off. It was done without her prior knowledge. When she asked her husband how the mortgage came to be retired he told her that he cashed in a life insurance policy. Mr. Selbstaedt says that he did cash in a life insurance policy for $3,500.00 but that he had also told his wife about the loan from his parents.

[43] Ms. Selbstaedt confirmed that she had no knowledge of any loans from her husband's parents and never saw or was informed of any of the notes, cheques or

bank transfers between her father in law and her husband. She does not believe that the funds received by her husband from her father in law found their way to the joint account because, she said, the account was so often in an over-draft position. She said that her husband had no discussions with her regarding these alleged loans and she did not know anything about them until these divorce proceedings were commenced.

[44] I am not satisfied that the advances received by Mr. Selbstaedt from his parents can be categorized as "matrimonial debts". Mr. Selbstaedt has not convinced me that whatever funds he may have received from his parents were incurred for the benefit of the family or for family purposes. It is worth noting that the parties had a brief separation in late 1998 at which time Mr. Selbstaedt moved out of the matrimonial home. All of the cash advances which he now alleges are loans were made subsequent to that separation. Although it was well within his ability to provide supporting evidence in the form of testimony from his father and bank records to show that the advances were deposited to the joint account or otherwise used for the payment of an expense incurred for the benefit of the family or for the purchase of a matrimonial asset, such evidence was not provided.

[45] While it is not essential for both parties to be aware of a debt for it to be classified as "matrimonial", the non-disclosure of a significant debt by one of the parties may make the task of meeting the burden of proof more difficult to achieve.

[46] I find that Ms. Selbstaedt was not aware or any of the advances and did not know of any loan obligation between her husband and his parents. Where the evidence of Ms. Selbstaedt differs from that of Mr. Selbstaedt in relation to the alleged loans from Mr. Selbstaedt's parents, I prefer the evidence of Ms.

Selbstaedt.

[47] It is incredible that Mr. Selbstaedt would borrow money from his father on ten different occasions, intentionally not tell his wife of any of the advances or show her any of the promissory notes or cheques or any other documentation relating to the loans and not show her (or prove to the Court) how the money was spent and still expect the Court to conclude that these advances constitute a matrimonial debt. Mr. Selbstaedt's position is not helped by the fact that according to him even though his parents knew of the parties' marital difficulties neither of them ever spoke to Ms. Selbstaedt about the loans. The only conclusion I can reach is that the cash advances were never intended as loans or, if they were, it was never Mr. Selbstaedt's intention that his wife would be responsible for them. In any event, I have already concluded that there is insufficient evidence for the Court to conclude that they were ever used for the benefit of the family and therefore they are not "matrimonial debts".

[48] Ms. Selbstaedt submits that a line of credit in her name in the amount of $30,000.00 owing to the Royal Bank is a matrimonial debt. The line of credit is an agreement between Ms. Selbstaedt and the Royal Bank. When the line of credit was consolidated with a loan and a Visa account also incurred by Ms. Selbstaedt, it was secured by way of a collateral mortgage on their home. Mr. Selbstaedt did not sign the line of credit but did co-sign the collateral mortgage. The collateral mortgage was not introduced into evidence and neither of the parties clarified whether he signed as a mortgagor, guarantor or releasor.

[49] It seems to be agreed that the entire debt (including all the previous debts that were consolidated)was incurred by Ms. Selbstaedt. Mr. Selbstaedt believes

that the majority of the debt represents gambling losses incurred by his wife. Ms. Selbstaedt stated quite emphatically that none of the debt was incurred while gambling. While she said the debt was incurred for matrimonial purposes she offered no examples or supporting evidence.

[50] Mr. Selbstaedt also argued that he should not be responsible for any portion of the debt because of the terms of a marriage contract which he says the parties signed. He was unable to produce anything other than an unsigned draft of a marriage contract.

[51] I find that there was no marriage contract. I accept that Mr. Selbstaedt presented his wife with a draft agreement but I believe Ms. Selbstaedt's evidence that she refused to sign it. However, I have not been convinced that the line of credit debt was incurred for "the benefit of the family unit" or for "ordinary household family matters" or for the purchase or preservation of a matrimonial asset. Frankly, I do not know the reason it was incurred. Mr. Selbstaedt may have obligations to the Royal Bank but as between he and Ms. Selbstaedt, I find that the line of credit is not a "matrimonial debt".

[52] The second step in determining the appropriate division of net matrimonial assets is to value the assets and debts. Unfortunately, there is a paucity of evidence when it came to values.

[53] There is no evidence of the value of the matrimonial home other than the parties' own estimates. In her Statement of Property filed over a year prior to the trial, Ms. Selbstaedt stated that the then current market value of the matrimonial home was approximately $180,000.00. In Mr. Selbstaedt's Statement of Property

sworn in September, 2003 he estimated the property as having a market value of approximately $190,000.00. He thinks the property is worth more than that now. Neither party gave evidence of the municipal assessment and no expert evidence was offered.

[54] It was suggested that it was open to the Court to now order an appraisal of the property. These divorce proceedings were initiated approximately seventeen months before the trial. The trial dates were set seven and a half months prior to trial. Both parties had ample opportunity to have the property appraised or alternatively come to an agreement as to its value. I am not prepared to delegate the Court's fact finding function to an unnamed real estate appraiser whose opinion would not be subject to cross examination. Since the best evidence that the Court has is the opinions of the parties themselves (who have lived in the house for eleven or more years) and whereas neither party appears to be any more or less qualified than the other to offer an opinion with respect to the value of the property I am, in the absence of anything better, going to average their two estimates and find that the property has a value of $185,000.00. While every effort should be made in family law proceedings to keep costs to a minimum, that objective must be balanced against the need to provide the Court with evidence from which it can draw reasonable conclusions. From $185,000.00 I will deduct disposition costs being a real estate commission of 6 percent (plus HST of 15 percent) and legal fees and disbursements of $600.00, arriving at a net value of $171,635.00.

[55] With respect to the household contents, again no expert evidence was offered and there was no agreement between the parties with respect to values. In her Statement of Property, Ms. Selbstaedt estimated that the contents were worth $10,000.00. Mr. Selbstaedt estimated $5,000.00, inclusive of tools. Neither

estimate filled me with confidence. Mr. Selbstaedt provided the Court with a list of items that he sought from the matrimonial home. Many of these items Ms. Selbstaedt agreed to provide. Those items shall be given to Mr. Selbstaedt and I therefore order that she make the following items available to Mr. Selbstaedt to pick up within thirty days of the date of the Court's order:

(1) One half of the family's photographs including photographs of the children. If the parties cannot agree on how to share these photographs, then reproductions will be made with the cost of the reproduced photographs shared equally by the parties;

(2) One half of the family's "empty" photo albums;

(3) Copies of Mr. and Ms. Selbstaedt's wedding photographs with the cost of the copies to be borne by Mr. Selbstaedt;

(4) The remote controls for the Sony CD player, vcr and stereo which appliances are already in the possession of Mr. Selbstaedt;

(5) One auto chamois;

(6) Clamps;

(7) An electric grinder;

(8) Five horse power air compressor and accessories;

(9) Metal storage cabinet on wheels;

(10) Automotive creeper;

(11) Shop vac;

(12) Two cross-type tire wrenches;

(13) Automotive trouble light;

(14) Two car ramps; and

(15) Hydraulic car jack.

[56] Once these items have been made available to Mr. Selbstaedt, the value of the household contents will be deemed to have been divided equally.

[57] The parties did not disagree strenuously with respect to the value of their motor vehicles. Therefore, I accept Mr. Selbstaedt's figures and find that Mr. Selbstaedt's Ford Taurus motor vehicle has a value of $2,270.00 and Ms. Selbstaedt's Dodge Stratus motor vehicle has a value of $2,158.00.

[58] The parties agree that Mr. Selbstaedt's savings as of the date of separation came to $78.00 and Ms. Selbstaedt's Canada Savings Bond came to $270.00.

[59] Whereas Ms. Selbstaedt's pension will be divided at source, it was not necessary to calculate its capitalized value.

[60] The parties did not provide updated values for their respective RRSP's. The investments contained in Ms. Selbstaedt's RRSP's consisted entirely of guaranteed investment certificates. All but one would have matured prior to trial. No evidence was presented of ongoing interest rates. Both parties, however, seem satisfied with the Court calculating what her RRSP's would have been worth had they remained invested in guaranteed investment certificates and assuming they continued to grow at more or less the same rate of interest. At the Royal Bank, Ms. Selbstaedt had one GIC of $7,500.00 invested at a rate 4.5 percent maturing in February, 2004 and two other GIC's totalling approximately $5,300.00 which were market linked guaranteeing only that they would have no less than the original principal value on the date of maturity. For the sake of valuing Ms. Selbstaedt's Royal Bank RRSP, I will assume that all her Royal Bank certificates generated interest at the rate of 4.3 percent. She also had a GIC in a RRSP at League Savings and Mortgage maturing on December 26, 2003 having a value at that time of $4,921.04. I will assume that the principal of that account was reinvested at that time at 4.3 percent. This would result in her two RRSP accounts having a combined value as of December 31, 2004 of approximately $20,190.00.

[61] Mr. Selbstaedt has six RRSP accounts. Each account contains investments in mutual funds the value of which change daily. I shall deal with the division of his RRSP in specie.

[62] The parties agreed on the outstanding balances of the two lines of credit with President's Choice Financial and the two Visa accounts.

[63] Mr. Selbstaedt is seeking an equal division of matrimonial assets and debts

including an equal division of Ms. Selbstaedt's pension benefits earned from the date of the parties' marriage on May 1, 1993 up to the date of the parties' separation on February 4, 2003. Ms. Selbstaedt wants an unequal division.

[64] Section 12 of the *Matrimonial Property Act* presumes an equal division of matrimonial assets and debts. Section 13 of the *Act* provides that the Court may order an unequal division of matrimonial assets or 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 factors listed therein. Therefore, the third step in determining an appropriate division of assets is to presume an equal division before proceeding to the fourth step, the consideration of section 13.

[65] There is a heavy onus on the party seeking an unequal division to show that an equal division would be unfair or unconscionable. As MacKeigan, C.J.N.S. stated in *Harwood* v. *Thomas* (1981), 45 N.S.R. (2d) 414 C.A. at paragraph 7:
Equal division of the matrimonial assets, an entitlement proclaimed by the preamble to the Act and prescribed by s. 12 should normally be refused only where the spouse claiming a larger share produces strong evidence showing that in all the circumstances equal division would be clearly unfair and unconscionable on a broad view of all relevant factors. That initial decision is whether, broadly speaking, equality would be clearly unfair - not whether on a precise balancing of credits and debits of factors largely imponderable some unequal division of assets could be justified. Only when the judge in his discretion concludes that equal division would be unfair is he called upon to determine exactly what unequal division might be made.

[66] Bateman, J.A. in *Young* v. *Young* (2003), 216 N.S.R. (2d) 94 (C.A.) stated, beginning at paragraph 15:

> ... the division of matrimonial assets is *prima facie* equal, with unequal division permitted only in limited circumstances. The inquiry under s. 13 is broader than a straight forward measuring of contribution. The predominant concept under the **Act** is the recognition of marriage as a partnership with each party contributing in different ways. A weighing of the respective contributions of the parties to the acquisition of the matrimonial assets, save in unusual circumstances, is to be avoided. Since the introduction of the **Act**, it has been repeatedly stressed by this Court, that matrimonial assets will be divided other than equally, only where there is convincing evidence that an equal division would be unfair or unconscionable.

[67] And, at paragraph 18:

> It is not sufficient, for an unequal division of matrimonial assets, that one of the s. 13 factors be present. The judge must make the additional determination that an equal division would be unfair or unconscionable.
> **...**

[68] And paragraph 19:

> As directed in *Harwood v. Thomas, supra*, the judge must look at all of the circumstances, not simply weigh the respective material contributions of the parties. In *S.B.M. v. N.M.*, [2003] B.C.J. No. 1142; 183 B.C.A.C. 76; 301 W.A.C. 76 (C.A.), a recent decision of the British Columbia Court of Appeal, the court was asked to review the trial judge's unequal division of family assets. The *Family Relations Act*, R.S.B.C. 1996, c. 128, s. 65(1) permits a deviation from the prima facie unequal [sic] division of family assets, where an equal division would be "unfair". I would endorse the approach to the question of unfairness outlined by Donald, J.A., for the court. It is consistent with the direction in *Harwood, supra*, and the cases in this province which have followed:
>
> > para 23 ... The question is not whether an unequal division would be fair; that is not the obverse of the test in s. 65(1). The Legislature created a presumption of equality - a presumption that can only be displaced by a demonstration that an equal division would be unfair. <u>So the issue of fairness is not at large, allowing a judge to pick the outcome that he prefers from among various alternative dispositions, all of which may be arguably fair</u>. He must decide, in accordance with the language of s. 65(1), that an equal division would be unfair before he considers apportionment. Otherwise, although an equal division would be fair, a

> reapportionment could be ordered on the basis that it is more fair, and that, in my opinion, is not what the statute intends. (Emphasis added)

[69] On behalf of Ms. Selbstaedt , it is argued that an equal division would be unfair or unconscionable primarily because she owned the matrimonial home prior to the marriage. She proposes that a fair division would be to divide equally between the parties the increase in the equity in the home that has accrued from the date of the parties' marriage up to the date of the parties' separation.

[70] The *Matrimonial Property Act* does not allow the Court to choose a distribution of assets that the trial judge may consider to be fairer if unencumbered by section 13. Matrimonial assets and debts are to be divided equally unless the Court is first convinced based on "strong evidence" and a consideration of the factors listed in section 13 that an equal division would unfair or unconscionable. Only after the Court has reached that conclusion will the trial judge direct his/her mind to an unequal division. As Bateman, J.A. stated in *Morash* v. *Morash* (2004), 221 N.S.R. (2d) 115 (C.A.) at paragraph 23:

> In applying section 13, the question is not whether an unequal division would be fair or fairer, but whether the usual equal division dictated by the *Matrimonial Property Act*, would be unfair or unconscionable.

[71] By definition, matrimonial assets include assets acquired during the marriage or brought to the marriage by one or both of the parties. Simply because an asset was brought to the marriage is insufficient reason for an unequal division. See *Young*, *supra*, at paragraph 20:

> Section 4(1) of the *Act* expressly includes as a matrimonial asset (subject to the enumerated exceptions) all real and personal property acquired by either or both spouses before or during their marriage.

> Thus the mere fact of prior acquisition does not remove the asset from prima facie equal division.

[72] See also *Morash*, *supra*, paragraph 23:

> Absent a factual context supporting unequal division, the court is not free to exclude from division assets acquired by one party prior to marriage.

[73] The matrimonial home was the home of Ms. Selbstaedt and her former husband prior to their divorce. When they divorced, Ms. Selbstaedt apparently bought out her former husband's interest in the property, however, no evidence was given of the details of that buyout or what Ms. Selbstaedt may have received in return.

[74] After the parties were married Mr. Selbstaedt finished the basement of the home with the assistance of a contractor. He claims that he supplied much of the labour (the extent of his physical contribution is disputed) as well as $20,000.00 of what he described as his own money. He did not say if he brought any savings to the marriage. I assume, based on how the parties described their financial affairs, that the money that he is referring to was earned by Mr. Selbstaedt during the marriage.

[75] In addition to developing the basement, Mr. Selbstaedt contributed to the maintenance of the house and related property throughout the marriage and, together with Ms. Selbstaedt, contributed financially to the household expenses.

[76] Having reviewed section 13 and the evidence (or lack thereof) I find that it would not be unfair or unconscionable to divide the matrimonial assets and debts

equally.

[77] Therefore, the various matrimonial assets and debts will be divided equally as follows:

(1) The household contents will be divided as noted above;

(2) There shall be an equal division of the parties' respective registered retirement savings plan accounts which shall be accomplished by Mr. Selbstaedt transferring to Ms. Selbstaedt, by way of a spousal rollover, one half of the value of his various RRSP accounts less the sum of $10,095.00 being one half of the value that I have attributed to Ms. Selbstaedt's RRSP's as of December 31. On the date of transfer, Mr. Selbstaedt shall provide to Ms. Selbstaedt written confirmation provided by the financial institutions that manage his RRSP accounts that there were no withdrawals from or de-registrations of his various RRSP accounts from the date of the parties' separation to the date of transfer and confirmation of the then present values of his various RRSP accounts including any dividends that may have been generated by his holdings from the date of separation to the date of transfer. The rollover shall take place no later than December 31, 2004.

(3) Ms. Selbstaedt's Aliant pension earned from the date of the parties' marriage to the date of separation shall be divided equally at source.

(4) Of the remaining matrimonial assets and debts, they will be distributed as follows:

ASSET/DEBT	MR. SELBSTAEDT	MS. SELBSTAEDT
House	$171,635.00	
Cars	$ 2,270.00	2,158.00
Savings	78.00	
Canada Savings Bond	270.00	
Debts		
Lines of Credit	(6,646.52)	(16,000.00)
Visa Accounts	(933.82)	(4,000.00)
Income Tax	_	(4,034.63)
Net Matrimonial Assets	($ 5,232.34)	$150, 028.37
Balancing Cash Payment	77,630.35	(77,630.35)
Net Matrimonial Assets After Division	$ 72,398.01	$ 72,398.02

Ms. Selbstaedt will have the first option to buy out Mr. Selbstaedt's interest in the matrimonial home. She will have sixty days from the date of this decision to arrange financing and buy out Mr. Selbstaedt's interest in the home by paying him an equalization payment of $77,630.35. Should she fail to buy him out by that time or should she choose before then not to buy out his interest, he will have the option to buy out her interest in the matrimonial home. Should he have that option and decide to exercise it, he will pay her an equalization payment of $94,004.64. He will have forty five days after Ms. Selbstaedt's failure to exercise her option to exercise his. Should neither party wish to buy out the other, the matrimonial home will be sold with the net proceeds of sale being distributed such that the various matrimonial assets and debts noted above are divided equally.

(5) Ms. Selbstaedt testified that since the parties separated she has added to the balance of her line of credit. Her line of credit, whatever the current balance, will be her sole responsibility and shall not in any way reduce Mr. Selbstaedt's share of the net equity in the home. Mr. Selbstaedt will be solely responsible for any debt which may be owed to his parents.

Child Support

[78] Ms. Selbstaedt seeks an order for child support from Mr. Selbstaedt including a contribution by him to the children's private school costs and the costs of their after-school care. Mr. Selbstaedt agrees to pay the table amount for the two children, and he agrees to pay one half of their tuition costs. It is his position, however, that Ms. Selbstaedt's after-school care costs are too high. He proposes that she make use of the school's after-school care program, the cost of which is lower than what she is now paying. He would be prepared to pay half of that amount.

[79] Section 15.1 of the *Divorce Act* provides:

> 15.1 (1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to pay for the support of any or all children of the marriage.
>
> (2) Where an application is made under subsection (1), the court may, on application by either or both spouses, make an interim order requiring a spouse to pay for the support of any or all children of the marriage, pending the determination of the application under subsection (1).
> (3) A court making an order under subsection (1) or an interim order under subsection (2) shall do so in accordance with the applicable guidelines.
> (4) The court may make an order under subsection (1) or an interim order under subsection (2) for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order or interim order as it

thinks fit and just.

(5) Notwithstanding subsection (3), a court may award an amount that is different from the amount that would be determined in accordance with the applicable guidelines if the court is satisfied

(a) that special provisions in an order, a judgment or a written agreement respecting the financial obligations of the spouses, or the division or transfer of their property, directly or indirectly benefit a child, or that special provisions have otherwise been made for the benefit of a child; and

(b) that the application of the applicable guidelines would result in an amount of child support that is inequitable given those special provisions.

(6) Where the court awards, pursuant to subsection (5), an amount that is different from the amount that would be determined in accordance with the applicable guidelines, the court shall record its reasons for having done so.

(7) Notwithstanding subsection (3), a court may award an amount that is different from the amount that would be determined in accordance with the applicable guidelines on the consent of both spouses if it is satisfied that reasonable arrangements have been made for the support of the child to whom the order relates.

(8) For the purposes of subsection (7), in determining whether reasonable arrangements have been made for the support of a child, the court shall have regard to the applicable guidelines. However, the court shall not consider the arrangements to be unreasonable solely because the amount of support agreed to is not the same as the amount that would otherwise have been determined in accordance with the applicable guidelines.

[80] The *Child Support Guidelines* also provide as follows:

3. (1) Unless otherwise provided under these Guidelines, the amount of a child support order for children under the age of majority is

(a) the amount set out in the applicable table, according to the number of children under the age of majority to whom the order relates and the income of the spouse against whom the order is sought; and

(b) the amount, if any, determined under section 7.

...

(3) The applicable table is

(a) if the spouse against whom an order is sought resides in Canada,

(i) the table for the province in which that spouse ordinarily resides at the time the application for the child support order, or for a variation order in respect of a child support order, is made or the amount is to be recalculated under section 25.1 of the Act,

...

7. (1) In a child support order the court may, on either spouse's request, provide for an amount to cover all or any portion of the following expenses, which expenses may be

estimated, taking into account the necessity of the expense in relation to the child's best interests and the reasonableness of the expense in relation to the means of the spouses and those of the child and to the family's spending pattern prior to the separation:

(a) child care expenses incurred as a result of the custodial parent's employment, illness, disability or education or training for employment;
(b) that portion of the medical and dental insurance premiums attributable to the child;
(c) health-related expenses that exceed insurance reimbursement by at least $100 annually, including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy and prescription drugs, hearing aids, glasses and contact lenses;
(d) extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child's particular needs;
(e) expenses for post-secondary education; and
(f) extraordinary expenses for extracurricular activities.

(2) The guiding principle in determining the amount of an expense referred to in subsection (1) is that the expense is shared by the spouses in proportion to their respective incomes after deducting from the expense, the contribution, if any, from the child.

(3) In determining the amount of an expense referred to in subsection (1), the court must take into account any subsidies, benefits or income tax deductions or credits relating to the expense, and any eligibility to claim a subsidy, benefit or income tax deduction or credit relating to the expense.

[81] The parties agree and I find that Mr. Selbstaedt's annual income at the present time is $65,000.00 per year. Based on the Alberta table for two children, he is ordered to pay child support in the sum of $888.00 per month effective November 1, 2004 and on the first day of each month thereafter until otherwise ordered.

[82] The children attend the Halifax Christian Academy. The annual tuition for the school year 2004 - 2005 is $6,070.00 total for the two children. Although Mr. Selbstaedt's income is greater than Ms. Selbstaedt's, Ms. Selbstaedt requests that her husband contribute one half of the cost. He has agreed to do so. Therefore, it is ordered that Mr. Selbstaedt will pay one half of the children's private school

tuition costs. This provision shall take effect retroactive to the commencement of the 2004-2005 school year and continue in the future as and when the tuition costs are payable.

[83] The area of most disagreement is with respect to the cost of the children's after-school care. Ms. Selbstaedt has employed the same woman for the past five years to care for the children before and after school. Presently, this lady arrives at Ms. Selbstaedt's home at approximately 7:00 a.m. Monday through Friday. She helps the children with their breakfast and prepares their lunches (except for those times when they buy their lunch at school) and then takes them to school. They usually arrive at the school at approximately 8:15 a.m. so that the children have time to play prior to their classes. She then returns to Ms. Selbstaedt's home. While there, she cleans up the breakfast dishes, makes the children's beds and may put in a load of laundry before leaving around 10:00 a.m.. Sometimes she runs some errands for Ms. Selbstaedt.

[84] After school she picks the children up at approximately 3:30 p.m. and cares for them until Ms. Selbstaedt returns home from work around 5:00 p.m.. For this Ms. Selbstaedt pays $330.00 every two weeks or approximately $715.00 per month. No receipts are provided and Ms. Selbstaedt does not claim any portion of this expense on her tax return. When the children are not in school (such as on in-service days and the like) Ms. Selbstaedt pays an additional sum, taking the cost from $33.00 a day to $45.00 per day.

[85] The children usually stay at school over lunch. For six months of the year the children take part in the school's lunch program which provides them with two lunches each week at a cost of $79.00 each for the six months. The remaining days

the children pack a lunch. In addition to that, Ms. Selbstaedt pays $10.50 per month so that Natasha can take part in the school's milk program. Nolan takes his own juice to school.

[86] The school offers its own after-school care program (3:30 to 5:30 p.m.) at a cost substantially below that which Ms. Selbstaedt pays. For two children staying until 5:00 p.m., the cost is $8.00 a day or $80.00 every two weeks. The problem, however, is in the morning. Ms. Selbstaedt would not be able to drop the children off at or near 7:00 a.m.. She would therefore have to adjust her work hours in order to accommodate the school's hours. She does not believe that would be possible. She also believes that the children benefit by being in the care of someone whom they have known for many years and with whom they are comfortable.

[87] Subsection 7(1) of the Guidelines provides the Court with the discretion to include in a child support order an additional amount, over and above the table amount, intended to cover all or a portion of certain expenses listed in subsection 7(1) taking into account the necessity of the expense in relation to the child's best interests and the reasonableness of the expense in relation to the means of the spouses and those of the child and the family's spending pattern prior to the separation. Child-care expenses incurred as a result of the custodial parent's employment is one such expense. Housekeeping costs are not. Of the money spent by Ms. Selbstaedt for what she categorizes as child-care expenses a portion is attributable to services other than child care. Also, I do not consider the lunch program or the milk program in the circumstances of this case to be child-care expenses as contemplated by section 7(1). The children can and do take their own lunches and drinks to school.

[88] Subsection 7(3) provides that in determining the amount of an expense referred to in 7(1), the Court must take into account, among other things, any eligibility to claim an income tax deduction or credit relating to the expense. The *Income Tax Act*, R.S.C. 1985, c.1 permits Ms. Selbstaedt a child-care expense deduction from her gross income in arriving at her taxable income. Under Ms. Selbstaedt's child-care arrangements she chooses not to take advantage of that deduction. In 2001, prior to the parties' separation, Mr. Selbstaedt, who was then the lower income earner, did claim it as a deduction.

[89] I find that of the $330.00 every two weeks that Ms. Selbstaedt pays, approximately 65 percent of that cost, or $214.50 every two weeks ($464.75 per month) is a legitimate child-care expense. I find too that it is a necessary expense. However taking into account the means of the parties, the cost of the children's care relative to what the school would charge, Ms. Selbstaedt's decision not to deduct any portion of that expense for tax purposes, Mr. Selbstaedt's contribution to the tuition fees and my decision on the sharing of access costs, I do not believe it would be reasonable to require Mr. Selbstaedt to pay even one half of the child-care cost as requested by Ms. Selbstaedt. Instead he shall contribute $150.00 per month to that expense. This payment shall take effect as of November 1, 2004 and continue on the first day of each month thereafter until otherwise ordered.

[90] The Corollary Relief Judgment will contain the usual provisions requiring the exchange of income tax returns by the parties each year beginning with their 2004 tax returns and Notices of Assessments which will be exchanged no later than June 1, 2005 with such arrangements to continue on or before June 1 of each year thereafter. With the exception of the tuition fees which will be paid either directly to the school or to Ms. Selbstaedt (her choice). The child support shall be paid

through the office of the Director of Maintenance Enforcement.

Costs

[91] I am prepared to hear the parties on the issue of costs.

J.