

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Gaudet v. Crossman*, 2020 NSSC 204

Date: 2020-07-17

Docket: 1201-072629 / SFHD 118497

Registry: Halifax

Between:

Lissa Marie Rachel Gaudet

Petitioner

v.

David Lee Crossman

Respondent

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Judge: The Honourable Justice Elizabeth Jollimore

Heard: July 16, 2020

Summary: Request to dispense with personal service of divorce petition granted.

Key words: Family, Divorce, Corollary Relief, Service

Legislation: Civil Procedure Rules 2.03, 31.01(2), 31.10
Matrimonial Property Act, R.S.N.S. 1989, c. 275, subsections
4(d), 4(g)

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Counsel: Louis J. Matorin for Lissa Gaudet

By the Court:**Introduction**

[1] Lissa Gaudet wants an order dispensing with service of her petition for divorce and corollary relief on David Crossman.

Ms. Gaudet's circumstances

[2] Lissa Gaudet was 18 in 1993 when she met David Crossman. She was sharing an apartment with a roommate and had a summer job at Pizza Delight in the local mall. Shortly after they met, Mr. Crossman moved from Fredericton to Moncton and he and Ms. Gaudet began to cohabit.

[3] Ms. Gaudet and Mr. Crossman married shortly after she turned 19 in December 1993. Ms. Gaudet's friends and family attended a wedding shower. Her parents attended the ceremony and wedding photographs were taken at their home.

[4] Ms. Gaudet was the sole income earner throughout the relationship. She worked multiple jobs and sold her car to pay the bills. Mr. Crossman didn't work and sold their furniture, prompting them to move from their apartment into a rented room.

[5] In April 1994, Ms. Gaudet moved out. They cohabited for roughly 4 months.

[6] Ms. Gaudet and Mr. Crossman knew each other for no more than 6 months when they married. She never met his family or friends. She knew nothing about his education or any employment he may have had. The only personal information Mr. Crossman ever gave Ms. Gaudet about himself was that his father's name was John and he lived in Salisbury, New Brunswick. Ms. Gaudet didn't know how old Mr. Crossman was. She believed he was a few years older than she was.

[7] Ms. Gaudet and her family have had no contact with Mr. Crossman since April 1994.

[8] Mr. Crossman met Ms. Gaudet's family and friends. Her parents continued to live in the house that Mr. Crossman had visited until approximately 1999. Ms. Gaudet remained in New Brunswick until 2006 -13 years after the couple separated. There was no contact from Mr. Crossman.

[9] In 2008, Ms. Gaudet hired an investigator to locate Mr. Crossman. The investigator couldn't locate Mr. Crossman. The investigator searched for lawsuits involving David Lee Crossman, checked 5 – 6 years of Fredericton High School graduates, and made inquiries using Mr. Crossman's photograph. Ms. Gaudet was able to search Mr. Crossman's name on the Service NB website: no one she found was close to Mr. Crossman's apparent age.

[10] More recently, Mr. Matorin's legal assistant unsuccessfully searched the internet for information about Mr. Crossman, searching Google, Facebook, LinkedIn, and Nova Scotia's Property Online service. No one named David Crossman on Canada411 was Ms. Gaudet's husband. Photographs on the internet didn't match the 1993 wedding pictures.

[11] Ms. Gaudet maintains accounts on 2 social media sites. On each, the unique spelling of her first name would enable Mr. Crossman to locate her easily. There has been no contact.

[12] The Central Divorce Registry in Ottawa confirmed that Mr. Crossman hasn't started a divorce anywhere in Canada.

[13] Ms. Gaudet has no information about her husband's whereabouts and no information about any means that would relay information to him.

The Civil Procedure Rules

[14] Ms. Gaudet must give notice of her Petition to Mr. Crossman under Rule 31.01(2).

[15] I have the discretion to dispense with notice to a party under Rule 2.03(1)(c).

[16] The discretion to dispense with service is limited under Rules 2.03(2) and 2.03(3).

Rule 2.03(2) – considerations in dispensing with notice

[17] If I exercise my discretion to dispense with notice, Rule 2.03(2) requires me to consider:

1. If I excuse compliance with a time period set by a Rule, I must consider imposing a new time period
2. I must consider requiring something in substitution for compliance with the Rule and
3. I must consider ordering indemnification for expenses resulting from the failure to abide by the Rule.

[18] Dispensing with notice is not excusing compliance with a time period, so I don't need to consider imposing a new time period under Rule 2.03(2)(a).

[19] I must consider whether Ms. Gaudet should do something in substitution for giving notice of the Petition to Mr. Crossman under Rule 2.03(2)(b).

[20] Ordering a substituted method of giving notice is the typical response when personal service isn't possible. Rule 31.10 addresses substituted notice. Where a

respondent can't be located, an order for substitute notice allows an alternate method of service to bring the Petition to the respondent's attention: Rule 31.10(4).

[21] Substitute notice is about securing the best possibility of notice to the respondent: *CIBC Mortgages Inc. v. MacLean*, 2017 NSSC 106, at paragraph 13.

[22] Ms. Gaudet has unsuccessfully searched for Mr. Crossman using every method listed in Rule 31.10(2) that is available to her. Her evidence shows there is no likelihood that any manner of substitute notice will bring her Petition to Mr. Crossman's attention. Because there's no likelihood that substitute notice will make Mr. Crossman aware of the divorce, I find that substitute notification is not a method of substitute compliance with the requirement of personal service.

[23] I must consider ordering indemnification for expenses resulting from the failure to personally serve Mr. Crossman: Rule 2.03(2)(c). The absence of notice denies Mr. Crossman the chance to respond to Ms. Gaudet's claims for a divorce and an order that each party retain ownership of all property that she or he owned when they separated in 1994.

[24] When the parties separated, there was no property other than clothing and personal effects. Ms. Gaudet had sold her car. Mr. Crossman had sold the household furnishings and the washing machine.

[25] The parties cohabited for approximately 4 months and the property brought to the marriage was, largely, dissipated during their brief cohabitation. There's nothing to divide and no reason to divide anything under the *Matrimonial Property Act*, R.S.N.S. 1989, c. 275, subsections 4(d) and (g), subsections 13(d) and (e).

[26] Mr. Crossman will incur no expense or loss that should be indemnified if I dispense with notice.

Rule 2.03(3) – limits on my discretion to dispense with notice

[27] My discretion to dispense with notice doesn't override mandatory provisions, limitations on my discretion and directions on what I must consider when exercising my discretion: Rule 2.03(3). Rule 31.02, requiring Ms. Gaudet to give notice of the Petition to Mr. Crossman, doesn't limit my discretion in any of these ways.

[28] I conclude that I may exercise my discretion to dispense with notice and I dispense with the requirement of personally serving the Petition on Mr. Crossman.

Elizabeth Jollimore, J.S.C. (F.D.)

Halifax, Nova Scotia