

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: *Wintrup v Adams*, 2021 NSSC 164

Date: 20210202
Docket: SFH 1201-070192
Registry: Halifax

Between:

Roberta Wintrup

Petitioner

v.

Bradley Adams

Respondent

Judge: The Honourable Justice Samuel C. G. Moreau

Heard: November 24, 25, 26 and 27, 2020 in Halifax, Nova Scotia

Written Decision: May 13, 2021

Counsel: Richard Bureau, for the Petitioner
Christine Doucet, for the Respondent

By the Court:

INTRODUCTION

[1] Roberta Wintrup and Bradley Adams met in late 2008/2009. They were married on June 30, 2014. There are no children of the marriage.

[2] This case has been before the Court since March, 2017.

[3] This has been a highly contentious matter.

History of Proceedings

[4] Ms. Wintrup's initial Petition for Divorce was filed on March 13, 2017. She filed an amended Petition for Divorce on July 27, 2017.

[5] On November 29, 2017, Ms. Wintrup filed a Notice of Motion for Interim Relief, seeking an Order for Interim spousal support. An Interim Hearing was held on May 31, 2018, before Justice Beaton, who found no interim spousal support payable. The Interim Order issued July 16, 2018, dismissed Ms. Wintrup's motion for interim spousal support.

[6] At the Interim Hearing Ms. Wintrup was represented by Christopher Robinson and Mr. Adams by Bernard Thibault.

[7] On July 12, 2018, Ms. Wintrup filed a Notice of Intention to Act on One's Own.

[8] A Conference was held on July 16, 2018. The parties agreed to participate in a Settlement Conference scheduled for November 5, 2018, which was later adjourned at Ms. Wintrup's request.

[9] A conference was held on November 29, 2018. The matter was scheduled for trial to take place on June 11 and 12, 2019.

[10] A case management conference was held on February 21, 2019. Conferences were held on March 25, 2019, and June 10, 2019. The June 11 and 12, 2019, trial dates were released.

[11] By consent, Ms. Wintrup filed an Amendment to the Amended Petition for Divorce on April 8, 2019.

[12] On June 10, 2019, a Notice of New Counsel was filed indicating Mr. Adams was represented by Ms. Doucet.

[13] The matter was again scheduled for Settlement Conference to proceed on November 5, 2019.

[14] On June 19, 2019, a Notice of New Counsel was filed indicating Ms. Wintrup was represented by Ms. Diana Musgrave.

[15] During the October 29, 2019, conference, Ms. Wintrup withdrew her consent to participate in the November 5, 2019, Settlement Conference. As a result, it was rescheduled to April 1, 2020.

[16] During the November 27, 2019, conference, Ms. Wintrup withdrew her consent to participate in the April 1, 2020, settlement conference.

[17] During the February 18, 2020 conference, trial dates were scheduled for November 17-20, 2020, inclusive (which were later rescheduled to November 24-27, 2020, inclusive).

[18] During the June 17, 2020, conference filing deadlines were provided.

[19] On August 19, 2020, a Notice of New Counsel was again filed indicating Ms. Wintrup was now represented by Mr. Richard Bureau.

[20] The parties appeared for a Pre-Trial Conference on September 28, 2020. Counsel for Mr. Adams requested an adjournment of the trial because of travel restrictions due to the global Covid 19 Pandemic.

[21] Mr. Adams is employed and resides within the Kingdom of Saudi Arabia.

[22] Counsel for Ms. Wintrup indicated her objection to the adjournment request and also advised of an issue regarding Interrogatories previously sent to Mr. Adams' counsel.

[23] Counsel for Mr. Adams was directed to file a written motion regarding the adjournment request and counsel for Ms. Wintrup was directed to follow up with respect to the interrogatories.

[24] During the October 1, 2020 pre-trial conference Mr. Adams' motion to adjourn the trial was denied. The issue regarding the interrogatories was not resolved. Counsel were directed to file submissions.

[25] During the October 27, 2020, pre-trial conference, counsel for Mr. Adams filed a written request that Mr. Adams appear for trial by video conference without a commissioner from his place of residence in Saudi Arabia.

[26] Counsel for Mr. Adams indicated a settlement proposal had been provided to counsel for Ms. Wintrup. Filing deadlines were adjusted.

[27] During the November 3, 2020 pre-trial conference, I indicated Mr. Adams could appear for the trial by video conference without a commissioner from his place of residence in Saudi Arabia, as per the Order issued October 30, 2020.

[28] Also, during the November 3, 2020 conference the parties agreed to participate in a settlement conference scheduled for November 18, 2020. The matter did not settle.

[29] The trial commenced on November 24, 2020 and concluded on November 27, 2020. Mr. E.A. (Bud) Malay provided expert evidence regarding the appraisal of three real properties. Both parties were cross-examined by opposing counsel.

[30] Written Submissions were subsequently provided.

Jurisdiction

[31] The issue of jurisdiction was not contested. However, given the unique nature in which this matter evolved within the context of the global pandemic, I consider it requisite to comment on the issue.

[32] I take judicial notice that the world has experienced and continues to live through the Covid 19 Pandemic and resultant effects on everyday activities including restrictive rules and policies on travel, especially international travel.

[33] As noted, I issued an order on October 30, 2020, allowing Mr. Adams to appear for the trial by video conference without a commissioner from his place of residence in Saudi Arabia.

[34] In contemplating Mr. Adams' request to appear by video conference without a commissioner, I weighed the following factors; the customary mandatory requirement that a litigant be present in person so that the opposing party have the opportunity to pose questions (if they so choose) and also that the trier of fact have the opportunity to observe the litigant during that process, versus the very serious health concerns brought about by the prospect of international travel during the global pandemic. In travelling from Saudi Arabia to Halifax, Mr. Adams would have had to transfer flights in one or two European cities and the Canadian cities of Toronto or Montreal. Upon arrival in Nova Scotia he would have been subject to a mandatory fourteen day self-isolation period before being allowed to move about in the general public.

[35] Mr. Adams is not from Nova Scotia and so securing accommodations in which to self-isolate proved problematic.

[36] In addition, in order to leave and re-enter Saudi Arabia, he would have had to arrange for private Covid-19 tests.

[37] *Civil Procedure Rule 51* governs the conducts of a trial.

[38] *Civil Procedure Rule 51.08* states:

51.08 A presiding judge may permit testimony by video conference, or by telephone or other telecommunication, in accordance with Rule 56 - Commission Evidence and Testimony by Video Conference.

[39] *Civil Procedure Rule 56* governs Commission Evidence and Testimony by video conference. *Civil Procedure Rule 56.01* states:

- 56.01 (1) This Rule provides for obtaining evidence from a witness who does not personally attend court.
- (2) The evidence is obtained by one of the following methods:
- (a) a commission to take the evidence and deliver a transcript to the court;
 - (b) a commission to transmit the evidence to the court by video conference while the court is in session;
 - (c) a transmission under order without a commission.
- (3) This Rule also provides for assistance to a court outside the province that takes evidence from a witness within Nova Scotia.

[40] *Civil Procedure Rule 56.08* states:

- 56.08 (1) An order for transmission without a commissioner may be made in writing or orally, before or during the trial or hearing in which the evidence is to be received.
- (2) The order must include a requirement for the administration of an oath or affirmation that accords with the laws of the place from which the evidence is to be transmitted.
- (3) The judge who presides at the trial or hearing must be satisfied on each of the following:
- (a) the required oath or affirmation is administered;
 - (b) the witness is in a room with doors closed;
 - (c) no one other than the witness is in the room, except as permitted by the judge;
 - (d) the witness agrees to comply with all directions of the court, not to communicate with others during examination unless the judge permits, not to look at a note or other thing containing information unless the judge

permits, and to report to the judge anything unusual that happens in the room.

[41] The *Judicature Act*, RSNS 1989, c 240, sets out broad jurisdiction for the Supreme Court and Court of Appeal:

Section 13: **13** The jurisdiction of the Court shall be exercised in the manner provided in this Act and the Rules and, where no special provisions are contained in this Act or the Rules, it shall be exercised in accordance with the practice and procedure followed by the Supreme Court of Nova Scotia before the first day of March, 1972. R.S., c. 240, s. 13; 1992, c. 16, s. 42.

Section 28: **28** Subject to the Rules, the Supreme Court and the judges thereof shall have power to sit and act at any time and at any place for the transaction of any part of the business of the Supreme Court, or of a judge, or for the discharge of any duty which by any statute or otherwise is required to be discharged. R.S., c. 240, s. 28; 1992, c. 16, s. 54.

Section 29: **29** The judges of the Supreme Court or a majority of them, in addition to any other such power granted to them by this Act, may make rules respecting sessions, sittings or circuits of the Supreme Court and any matter relating thereto. R.S., c. 240, s. 29; 1992, c. 16, s. 54.

Section 32 A: **32A (1)** The Supreme Court (Family Division) has and may exercise in such judicial districts, or parts of a district, as are designated by the Governor in Council pursuant to Section 32H the powers and duties possessed by the Supreme Court in relation to, and has and may exercise jurisdiction in relation to, proceedings in the following matters:

- (a) formation of marriage;
- (b) dissolution and annulment of marriage;
- (c) judicial separation and separation orders;
- (d) rights to property in disputes among spouses or members of the same family;
- (e) restitution of conjugal rights;
- (f) applications under the *Testators' Family Maintenance Act*;
- (g) declarations of status, including validity of marriage, parentage, legitimacy and legitimation;
- (h) alimony, maintenance and protection for spouses;
- (i) maintenance of children, including affiliation proceedings and agreements;
- (j) maintenance of parents;

- (k) enforcement of alimony and maintenance orders, including reciprocal enforcement of those orders;
- (l) custody and access to children;
- (m) adoption;
- (n) matters arising under the *Child Abduction Act*;
- (o) interspousal and familial torts;
- (p) *repealed 1998, c. 12, s. 6.*
- (q) consent to medical treatment of minors;
- (r) *repealed 1998, c. 12, s. 6.*
- (s) change of name;
- (t) *parens patriae* jurisdiction;
- (u) divorce;
- (v) the interpretation, enforcement or variation of a marriage contract, cohabitation agreement, separation agreement or paternity agreement;
- (w) resulting trust or unjust enrichment involving persons who have cohabited including, but not limited to, relief by way of constructive trust or a monetary award;
- (x) those other matters that are provided by or under an enactment to be within the jurisdiction of the Family Division.

(2) In addition to those matters referred to in subsection (1), the Governor in Council may by order confer on the Supreme Court (Family Division) jurisdiction over any or all charges, offences and matters arising from any one or more of the following Acts or subjects:

- (a) the *Labour Standards Code* in so far as it relates to a prosecution for an offence respecting the employment of children;
- (b) the *Young Persons' Summary Proceedings Act*;
- (c) the *Young Offenders' Act* (Canada);
- (d) sections 172, 215 and 733.1 of the *Criminal Code* (Canada);
- (e) sections 266, 810 and 811 of the *Criminal Code* (Canada), where the parties are spouses or parent and child;
- (f) charges or proceedings under the *Criminal Code* (Canada) with respect to incest and other sexual offences committed by a family member against another member of the same family, corrupting children, failing to provide necessities, abandoning children, abduction of children by members of the same family, assaults by a member of a family against another member of

the same family and thefts by a family member from another member of the same family;

(g) such other Acts or matters as the Governor in Council deems appropriate. 1997 (2nd Sess.), c. 5, s. 6.

[42] The Supreme Court of Nova Scotia (Family Division) possesses inherent jurisdiction. Our Court of Appeal in *Smith v Lord*, 2013 NSCA 34 provides the following commentary at paragraph 24:

[24] Chief Justice MacDonald in **Central Halifax Community Association v. Halifax (Regional Municipality)**, 2007 NSCA 39 provided the following definition of inherent jurisdiction:

34 Every superior court in this country has a residual discretion to control its process in order to prevent abuse. Procedural rules, however well intentioned, cannot be seen to stand in the way of basic fairness. This overriding judicial discretion is commonly referred to as the court's inherent jurisdiction. It is a jurisdiction sourced independently from any rule of court or statute. ...

Paragraph 26:

[26] In **Goodwin v. Rodgeron**, 2002 NSCA 137, this Court is unequivocal:

17 The inherent jurisdiction of the court has been described as a vague concept and one difficult to pin down. It is a doctrine which has received little by way of analysis, but there is no question it is a power which a superior trial court enjoys to be used where it is just and equitable to do so. ... (Emphasis mine)

[43] Sections 13 and 14 of the *Canada Evidence Act* state:

13 Every court and judge, and every person having, by law or consent of parties, authority to hear and receive evidence, has power to administer an oath to every witness who is legally called to give evidence before that court, judge or person.

R.S., c. E-10, s. 13

Solemn affirmation by witness instead of oath

14 (1) A person may, instead of taking an oath, make the following solemn affirmation:

I solemnly affirm that the evidence to be given by me shall be the truth, the whole truth and nothing but the truth.

Effect

(2) Where a person makes a solemn affirmation in accordance with subsection (1), his evidence shall be taken and have the same effect as if taken under oath.

R.S., 1985, c. C-5, s. 14

1994, c. 44, s. 87

[44] Likewise, section 62 of the *Nova Scotia Evidence Act* provides:

62 (1) Every person shall be permitted to make his solemn affirmation instead of taking an oath, in all places and for all purposes where an oath is or shall be required by law, which affirmation shall be of the same force and effect as if he had taken the oath.

(2) Every such affirmation shall be as follows: I, A.B., do solemnly, sincerely, and truly declare and affirm (and then proceed with the words of the oath prescribed by law, omitting any words of imprecation, or calling to witness)

R.S., c. 154, s. 62

[45] The Legislation and inherent jurisdiction creates and provides the Supreme Court (Family Division) with a broad power to regulate its own practice and procedure.

[46] In deciding whether to grant Mr. Adams' request to appear for trial by video conference without a commissioner, significant consideration was given to the Supreme Court of Nova Scotia (Family Division) Notice # 11 to Bar issued on October 9, 2020.

[47] Prior to hearing Mr. Adams' evidence I was satisfied of the following:

- a. that the required oath or affirmation would be properly administered;
- b. that Mr. Adams was in a room with the door(s) closed;
- c. that no other person was in the same room in which Mr. Adams was present to provide his evidence; and
- d. Mr. Adams agreed to comply with all directions provided by this Court, including but not limited to communication with others during examination, not to look at a note or other things containing information and to report to me anything unusual happening in the room he was in.

[48] During the entirety of this four-day trial Mr. Adams appeared on screen as if physically present in the courtroom.

[49] There were no technological glitches (save for a minor connection issue on one occasion, which was immediately rectified), which would question the solemnity of the proceeding.

[50] The global pandemic is an uncommon circumstance and given its nature, requires unique and creative procedures (Notice to Bar # 11) to ensure the health and safety of the public, including court staff and the judiciary while maintaining the ability to keep our courts functioning in a proficient manner.

[51] The inherent jurisdiction of the Court and broad powers imposed by the legislation enables procedures such as appearance by video conference for trial in the manner as occasioned in this case.

[52] I am satisfied that during this trial all Court procedures were adhered to and Mr. Adams' appearance by video conference without a commissioner did not compromise nor affect the Court's jurisdiction nor the fairness of the proceeding.

ISSUES

[53] The issues before the Court are:

1. The granting of a divorce.
2. The date of separation.
3. Spousal Support (including retroactive and prospective spousal support).
4. Division of property.

Divorce

[54] I find the jurisdictional requirements to grant a Divorce Order have been established and no bars to the issuance of the Order exist.

[55] I therefore grant the issuing of a Divorce Order pursuant to the *Divorce Act* R.S.C. 1985, c.3(2nd supp.).

Date of Separation

[56] The parties disagree as to the date of separation.

[57] Mr. Adams maintains the date of separation is June 28, 2015.

[58] Ms. Wintrup takes the position the parties reconciled in December, 2015, and separated for the last time on July 25, 2016.

[59] Section 8(3) of the *Divorce Act, supra*, states:

(3) For the purposes of paragraph (2)(a),

(a) spouses shall be deemed to have lived separate and apart for any period during which they lived apart and either of them had the intention to live separate and apart from the other; and

(b) a period during which spouses have lived separate and apart shall not be considered to have been interrupted or terminated

(i) by reason only that either spouse has become incapable of forming or having an intention to continue to live separate and apart or of continuing to live separate and apart of the spouse's own volition, if it appears to the court that the separation would probably have continued if the spouse had not become so incapable, or

(ii) by reason only that the spouses have resumed cohabitation during a period of, or periods totalling, not more than ninety days with reconciliation as its primary purpose.

[60] Both parties acknowledge their relationship and marriage was not traditional. During the uncontroverted periods of their relationship and marriage, they were often in different countries.

[61] As noted by Justice Jollimore in *Wells v King*, 2015 NSSC 232, each marriage is different, so is each separation.

[62] That the parties separated on June 28, 2015, is unchallenged. Ms. Wintrup's email of July 6, 2015, to Mr. Adams confirms this.

[63] The issue to be resolved is; did the parties reconcile between December, 2015, and July 25, 2016, as alleged by Ms. Wintrup.

[64] During the period December, 2015 to April, 2016, the parties spent significant periods of time together.

[65] Ms. Wintrup puts the total number of days at 78 and Mr. Adams approximately 75. This time together included trips to Asia and Australia.

[66] I accept the parties engaged in sexual relations during this period. I also accept Mr. Adams wished to reconcile with Ms. Wintrup.

[67] Parties may live separate and apart and engage in sexual relations: *Wells v King supra* and *K.L.S. v. D.R.S.*, 2012 NBCA 16.

[68] Subsequent to receiving the July 6, 2015 email, Mr. Adams requested Ms. Wintrup rescind same in writing. She never did.

[69] Pertinent to this discussion is the intention of the parties during the relevant period and not how each now chooses to delineate same period given the benefit of hindsight.

[70] The evidence in this case leads me to the conclusion that between December, 2015 and July 25, 2016, the parties did not reconcile:

- In her initial Petition for Divorce, filed March 13, 2017, and Amended Petition for Divorce filed July 27, 2017, (Ms. Wintrup was represented by legal counsel when the Amended Petition was filed), Ms. Wintrup claimed the date of separation as June 28, 2015.
- On both her 2015 and 2016 Income Tax and Benefit returns Ms. Wintrup indicates Divorced with respect to marital status.
- The parties' communications evidenced at Exhibit 2 Vol 1 Tab 3 (I) and (K).

[71] Even if I were to accept that December, 2015 to July 25, 2016, was a period of reconciliation, I am satisfied the legislated 90 day threshold (even within the context of the parties' relationship) was not met.

[72] Based on the evidence before me, I am not satisfied Ms. Wintrup's intention was to reconcile with Mr. Adams. I find the parties did not reconcile between December, 2015 and July 25, 2016. I find the date of separation is June 28, 2015.

Spousal Support

[73] Ms. Wintrup advances a claim for spousal support (retroactive and prospective) under both compensatory and non-compensatory grounds. In considering this claim, analysis of entitlement is the first requirement. If entitlement is established, I then have to consider the elements of quantum and duration.

[74] The issue of spousal support is governed by Section 15.2 of the *Divorce Act*.

Sections 15.2 (1), 15.2(4) and 15.2 (6) states:

15.2 (1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse.

...

(4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including

- (a) the length of time the spouses cohabited;
- (b) the functions performed by each spouse during cohabitation; and
- (c) any order, agreement or arrangement relating to support of either spouse.

...

(6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should

- (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
- (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
- (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
- (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[75] In *Morrison v Morrison*, 2018 NSSC 119, Justice Gregan was called upon to analyze a spousal support claim. At paragraph 48 he states:

Under the case authorities as well as *Bracklow v Bracklow*, 1999 CanLII 715 (scc), [1999] 1 SCR 420 and *Moge v Moge*, 1992 CanLII 25 (SCC), [1992] 3 SCR 813, the Courts have determined the 3 categories of spousal support on the basis:

- Compensatory – which has been described as support to address economical advantages and disadvantages flowing from the marriage and the role adopted leaving the marriage;
- Non-Compensatory support which has been described as being to address the disparity between the needs and means of the parties and arising from the marriage breakdown; and
- Contractual spousal support obligation either expressed or implied (which does not apply here).

[76] In *Wells v King, supra*, Justice Jollimore states:

25 ... Non-Compensatory support looks to a spouse’s “actual ability to fend for himself or herself and the effort that has been made to do so, according to Justice McLachlin at paragraph 40 in *Bracklow*, 1999 CanLII 715.

36 An entitlement to compensatory support may be established where a spouse’s ability to achieve self-sufficiency has been compromised by family commitments or where one spouse conferred a substantial career advantage on the other.

[77] This was the second marriage for both parties. They married on June 30, 2014, and separated on June 28, 2015. This was a short-term, non-traditional marriage. There were no children of the marriage.

[78] Both parties make reference to the case *Shurson v Shurson*, 2008 NSSC 264 and the factors articulated therein with respect to entitlement on a compensatory basis.

[79] Both parties are currently 60 years old. At the time of their marriage, both were well established in their respective careers.

[80] Ms. Wintrup is a Registered Nurse (with a specialty in occupational health nursing) and was teaching at the College of the North Atlantic in Doha, Qatar, when the parties met in 2008/2009. Mr. Adams is a logistics manager on construction sites.

[81] Subsequent to her employment in Qatar, Ms. Wintrup was employed as a nurse educator with Capital Health in Halifax. The parties resided together in Halifax for a brief period in 2010.

[82] Subsequently, Mr. Adams lived in Ontario and after his father's passing, returned to Halifax for a brief period then to Qatar for employment in the spring of 2011. At this point, Ms. Wintrup began employment in Northern Ontario on a contractual basis.

[83] Upon the conclusion of her employment in Northern Ontario, in June, 2012, Ms. Wintrup went to Qatar for two months. The parties returned to Canada in August, 2012, and Ms. Wintrup to Halifax. She was employed on a contractual basis from September to December 2012. In August 2013, Ms. Wintrup moved to

Qatar as she accepted a two year employment contract through the University of Calgary. The parties resided together in Qatar until June, 2015.

[84] It is Ms. Wintrup's position that the parties began cohabitating in May, 2010, and continuing to the time of separation. I do not accept Ms. Wintrup's position.

[85] I am satisfied the evidence establishes the parties cohabitated from September, 2013 to June, 2015. Even within the non-traditional context of their relationship, there is no evidentiary basis to support the conclusion that the parties cohabitated from May, 2010 to June 28, 2015.

[86] Ms. Wintrup argues entitlement to spousal support on a compensatory basis as her move to Qatar in 2013 to live with Mr. Adams impacted her career trajectory, employment security and seniority within the Nova Scotia Health Authority (NSHA). Prior to 2013, Ms. Wintrup held several positions of employment via short to medium term contracts. While residing in Qatar, she was employed in her field. Further, her stated intention (Exhibit 10 Tab E) was to work in the Middle East for three years.

[87] Ms. Wintrup chose to accept the contract through the University of Calgary and live in Qatar for 2 years.

[88] Subsequent to separation, Ms. Wintrup travelled to various locations, including trips to Malaysia, Singapore and Thailand, in 2016/2017.

[89] In 2017, Ms. Wintrup was employed by Health Canada on a contract position and in July, 2018, obtained a contract with NSHA until January, 2020.

[90] In 2018, she spent four weeks in Africa, which included climbing Mount Kilimanjaro in Kenya.

[91] Ms. Wintrup's annual income for the years 2017 to 2020 is as follows:

2017 - \$37,872
2018 - \$69,980
2019 - \$118,042
2020 (May to November) – approximately \$52,000

[92] Ms. Wintrup is a Registered Nurse with considerable experience. She was not dependent on Mr. Adams during their relationship and marriage and has remained self-sufficient subsequent to separation. She owns three rental properties in the Halifax area. The evidence substantiates her ownership of an RRSP of significant value, nine accounts (bank accounts and investment accounts) of varying values (some containing significant funds), a LIRA and a modest pension from the University of Calgary.

[93] Ms. Wintrup remains capable of being employed in her field and has not demonstrated any economic (or otherwise) disadvantage as a result of the

breakdown of her relationship and marriage to Mr. Adams. Her lifestyle has not been negatively impacted.

[94] The parties had no contractual obligation, expressed or implied.

[95] I conclude and am satisfied Ms. Wintrup has not substantiated a claim for compensatory spousal support. There is no evidentiary basis to support this claim.

[96] Likewise, I am also satisfied Ms. Wintrup has not substantiated a claim for non-compensatory spousal support. She argues entitlement as a result of medical conditions, post separation. I am without sufficient evidence (medical or otherwise) to validate this claim.

[97] I find Ms. Wintrup is not entitled to spousal support (retroactive or prospective) from Mr. Adams.

Division of Property

[98] As the parties are married, the *Matrimonial Property Act* is applicable.

[99] The assets in this matter involve seven real properties, RRSP, pensions, accounts (bank accounts and investment accounts) and monies alleged to have been provided and/or removed without consent. Save for one real property, there is no agreement as to how the assets should be divided. As such, I shall inquire into

the assets as an analysis is required based on review of the legislation and case law regarding classification of seven real properties.

[100] Reference is made to Sections 2, 4, 12, 13 and 18 of the *Matrimonial Property Act*.

[101] Section 2 of the *Matrimonial Property Act* states:

Section 2:

Interpretation

2 In this Act,

(a) "business assets" means real or personal property primarily used or held for or in connection with a commercial, business, investment or other income-producing or profit-producing purpose, but does not include money in an account with a chartered bank, savings office, loan company, credit union, trust company or similar institution where the account is ordinarily used for shelter or transportation or for household, educational, recreational, social or aesthetic purposes;

(b) "child" means a child of both spouses born within or outside the marriage and includes

(i) a person adopted by both spouses, and

(ii) a person whom both spouses have demonstrated a settled intention to treat as a child of the marriage,

but does not include a person placed with them as foster parents for consideration by a person having lawful custody;

(c) "court" means the Trial Division of the Supreme Court unless the context otherwise requires;

(d) "dwelling" includes a house, condominium, cottage, mobile home, trailer or boat occupied as a residence;

(e) "marriage contract" means a marriage contract pursuant to Section 23;

(f) "separation agreement" means an agreement in writing between spouses who are living or intend to live separate and apart;

(g) "spouse" means either of a man and woman who

- (i) are married to each other,
- (ii) are married to each other by a marriage that is voidable and has not been annulled by a declaration of nullity, or
- (iii) have gone through a form of marriage with each other, in good faith, that is void and are cohabiting or have cohabited within the preceding year,

and for the purposes of an application under this Act includes a widow or widower. R.S., c. 275, s. 2.

Section 4:

"matrimonial assets" defined

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.

Section 12:

Application for division of matrimonial assets

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.

Limitation period for surviving spouse

(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.

Extension of time

(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.

Right of surviving spouse as additional right

(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. R.S., c. 275, s. 12.

Section 13:

Factors considered on division

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. R.S., c. 275, s. 13; revision corrected.

Section 18:

Contribution to business asset by spouse

18 Where one spouse has contributed work, money or moneys worth in respect of the acquisition, management, maintenance, operation or improvement of a business asset of the other spouse, the contributing spouse may apply to the court and the court shall by order

- (a) direct the other spouse to pay such an amount on such terms and conditions as the court orders to compensate the contributing spouse therefor; or
- (b) award a share of the interest of the other spouse in the business asset to the contributing spouse in accordance with the contribution,

and the court shall determine and assess the contribution without regard to the relationship of husband and wife or the fact that the acts constituting the contribution are those of a reasonable spouse of that sex in the circumstances. R.S., c. 275, s. 18.

[102] In analyzing this issue I have taken considerable guidance from our Court of Appeal as articulated in the case, *Roberts v Shotton*, 1997 NSCA 197. This case involved a twelve month marriage.

[103] The husband had brought all of the assets into the marriage, including a rental property, bank and RRSP accounts of significant value, a pension

contribution and offshore interests. The husband held a PhD in oceanography. In September 1992, he resigned from his employment with the Canadian Government to accept a position with the United Nations in Rome, Italy. The wife was employed as a waitress when the parties met. She held a Bachelor of Arts degree and had completed a journalism program. A prior divorce left her with minimal assets. The wife quit her employment and moved to Rome with the husband shortly after getting married.

[104] The wife returned to Nova Scotia a little less than 12 months later. The marriage is characterized as a short term, traditional marriage; in Rome the wife looked after the home and the husband was the financial provider. At pages 4-5 the Court states:

Analysis:

Over the last twenty years, across Canada, provincial matrimonial property legislation was enacted. It was required to compensate for the inability of the equitable and the common law remedies to adequately recognize the contribution of the homemaker to the acquisition, maintenance and improvement of family assets. The broad intent of the legislation is to provide a fair distribution of assets upon dissolution of the marriage. The *Matrimonial Property Act* S.N.S. 1980, c.9, s.1 is no exception.

The recitals to the *Matrimonial Property Act* set out its purpose:

WHEREAS it is desirable to encourage and strengthen the role of the family in society;

AND WHEREAS for that purpose it is necessary to recognize the contribution made to a marriage by each spouse;

AND WHEREAS in support of such recognition it is necessary to provide in law for the orderly and equitable settlement of the affairs of the spouses upon the termination of a marriage relationship;

AND WHEREAS it is necessary to provide for mutual obligations in family relationships including the responsibility of parents for their children;

AND WHEREAS it is desirable to recognize that childcare, household management and financial support are the joint responsibilities of the spouses and that there is a joint contribution by the spouses, financial and otherwise; that entitles each spouse equally to the matrimonial assets.

The **Act** was not, however, implemented as a tool to arbitrarily redistribute or equalize wealth between married persons. I agree with the comment of Davison, J. in *Zimmer v. Zimmer*, (1989), 90 N.S.R. (2d) 243 (N.S.S.C.T.D.) at p.253:

The legislature did not intend for the *Matrimonial Property Act* to be used as a vehicle for one party to profit by entering into a short marital relationship and departing with a profit by reason of the contribution made to the marriage by his or her spouse. . .

And that of Baker, J. in **Jensen v. Jensen**, [1994] B.C.J. 2603 (B.C.S.C.) at p.29:

In my view, the authorities establish that the division of assets, following the breakdown of a marriage of very short duration between two mature adults, should not result in a considerable financial windfall to one of the parties. Marriage is not a legal institution created for the redistribution of wealth.

The decision of the trial judge must be reviewed in the context of the purpose of the legislation.

[105] Notwithstanding the distinguishing features in *Roberts v Shotton* and the present case, the principles enunciated provide authority and guidance regarding the division of assets in a short term marriage.

[106] The parties take the following positions with respect to classification of the seven real properties:

	Ms. Wintrup	Mr. Adams
Consecon	Matrimonial home	Inheritance – therefore exempt from division

Cleve Park	Matrimonial asset	Funds from sale of this property exempt from division because of prior divorce settlement
George Street	Business asset	Business asset
Eden Street	Matrimonial asset	Business asset
Spinnaker	Matrimonial asset	Matrimonial asset
Windstone Close	Business asset	Matrimonial asset
Moirs Mills	Business asset	Matrimonial asset

[107] In *Robaczewski v Larson*, 2019 NSSC 78, at paragraphs 9 and 18, Justice Jollimore provides the following:

[9] All assets are matrimonial and presumptively subject to equal division unless they fall within a specifically excluded category. The person claiming an asset falls within an excluded category bears the burden of proving the exclusion: *Cashin*, 2010 NSCA 51 at para 8.

[18] The hallmark of business assets is that they have, as their purpose, the generation of income in an entrepreneurial sense: *Volcko*, 2015 NSCA 11 at para 25. The definition of business assets has “been restricted to assets that are truly of a business character which involves the employment of capital for the purposes of generating income in an entrepreneurial sense”: *Eyking*, 2012 NSSC 409 at para 114. The “chance of profit or loss” is entrepreneurial: *Tibbetts*, 1992 NSCA 17 (CanLII), 1992 CanLII 2541 (NSCA) at para 17.

The Real Properties

[108] The Consecon Property – This property is located at 821 Stinson Block Road, Consecon, Ontario. Mr. Adams inherited this property from his late father, Bill Adams, who passed away on March 3, 2011.

[109] Ms. Wintrup maintains this property should be classified as a matrimonial home and therefore, subject to an equal division.

[110] The parties never resided at the Consecon property. There were short visits (two weeks being the longest visit) to the property in the years 2010 through and including 2014. The property was used for vacation purposes and intermittently occupied by tenants.

[111] Ms. Wintrup assisted with the tenants by arranging some of the rental aspects and utilities. She also assisted with the clean up and upkeep of the property during some of the visits. She stored some personal items at the property.

[112] Ms. Wintrup refers to the case *Fisher v Fisher*, 2001 NSCA 18.

[113] Mr. Adams takes the position that the Consecon property is an inheritance and therefore, exempt from division. This property was used (albeit minimally) for matrimonial purposes.

[114] I am satisfied the Consecon property meets the definition of a matrimonial asset as contemplated by the case law. This property was not a matrimonial home.

[115] The Cleve Park property – This property is located at 18 Cleve Park, Perth, Scotland. It is the former matrimonial home of Mr. Adams and his first wife, Carla

Assenti. They were divorced in 2013. As per the divorce agreement, Mr. Adams paid 1,200 GBP per month for the upkeep of the home. Ms. Assenti remained in the home until 2015/2016. It was sold on July 28, 2016.

[116] Mr. Adams received 80,849.59 GBP from the proceeds of the sale.

[117] Ms. Wintrup argues this property is a matrimonial asset. She contends funds from the parties' joint account in Qatar was used to benefit this property. Mr. Adams argues the payments made with respect to this property (mortgage payments) were required by his divorce settlement with Ms. Assenti.

[118] Ms. Wintrup never visited nor made any financial contribution to this property. Mr. Adams argues an exception as per s. 4(1)(a) of the *Matrimonial Property Act* on the basis that the funds derived from the sale were as a result of a prior settlement.

[119] This property should not be categorized as a matrimonial asset as a comingling of funds by parties cohabitating is not sufficient to merit categorization as a matrimonial asset given the method of acquisition and settlement agreement.

[120] I am satisfied this property is exempt from division as per s. 4(1)(a) of the *Matrimonial Property Act*. As such, the funds from sale of this property are not subject to division.

[121] The George Street property – This property is located at 30E George St., Perth, Scotland. Ms. Wintrup concedes this property is a business asset and not subject to division.

[122] The Eden Street property – This property is located at 4H Eden Street, Dundee, Scotland. Ms. Wintrup argues this property is a matrimonial asset. Mr. Adams takes the position it is a business asset and exempt from division.

[123] This property is not used to generate income. Based on the evidence, it appears Mr. Adams uses this residence as a U.K. address and for storage. As guided by the case law, I classify this property as a matrimonial asset.

[124] The Spinnaker property – This property is located at 225 Spinnaker Drive, Halifax, Nova Scotia.

[125] It is utilized by Ms. Wintrup as a rental property. It is a matrimonial asset.

[126] Significant funds from a Scotiabank account owned by Mr. Adams was used for the down-payment on this property.

[127] The Windstone Close property – This property is located at 20 Windstone Close, Bedford, Nova Scotia. Ms. Wintrup's position is that this property is a business asset. Mr. Adams argues it should be categorized as a matrimonial asset.

Mr. Adams resided with Ms. Wintrup at this property for a short period in 2010.

He assisted with minor tasks. He did not pay rent. There is agreement he contributed toward expenses. Ms. Wintrup has since used this property as a rental property.

[128] I conclude this property should be classified as a matrimonial asset.

[129] The Moirs Mills property – This property is located at 96 Moirs Mill Road, Bedford, Nova Scotia. Mr. Adams' position is that it is a matrimonial asset. Ms. Wintrup maintains it is a rental property and as such, a business asset. Mr. Adams had a brief visit to this residence in 2012, during which he helped with minor repairs to the home. Ms. Wintrup resided in this residence from June, 2011 to June, 2012. I classify this property as a matrimonial asset.

Pensions

[130] Ms. Wintrup has a modest pension from the University of Calgary and a LIRA (RBC) (V.G. Hospital Pension). Mr. Adams is entitled to a modest pension from his service in the British Military.

RRSPs

[131] Ms. Wintrup has an RRSP with RBC. The RRSP contains significant funds.

ACCOUNTS (Banking and Investment)

[132] Mr. Adams owns and/or has an interest in seven Scotiabank accounts, one Royal Bank of Scotland account and one Commercial Bank of Qatar account.

[133] Ms. Wintrup owns five RBC accounts, three TD accounts and one Simplii Financial Savings account.

Cash provided for Investments and/or Gifts

[134] Mr. Adams references the amount of \$87,428.08 he provided to Ms. Wintrup during the relationship and marriage (in various increments) for investment purposes. Mr. Adams alleges the various amounts were given to Ms. Wintrup in cash for investment purposes. Ms. Wintrup disputes receiving some of these funds.

[135] I accept Mr. Adams gave the funds to Ms. Wintrup, however, I am not convinced the entirety of these funds were strictly for investment purposes. Mr. Adams seeks a return of these funds in addition to interest, in the amount of \$18,841.00 (5% per annum compounded annually since 2016).

[136] Mr. Adams provided these monies to Ms. Wintrup within the context of their relationship and marriage. There were no signed documents nor agreements. Upon breakdown of the marriage, he cannot now claim all of the funds were provided for

investment purposes and seek to recoup, including interest. I accept portions of these funds were intended as gifts. My comments here include the proceeds of sale from the Volkswagen Touareg vehicle, which Mr. Adams says was given to Ms. Wintrup to invest. She maintains it was a gift. There is insufficient evidence to make a determination in favour of the position advanced by Mr. Adams.

Monies from the Scotiabank Account

[137] This has been and continues to be a highly contentious issue between the parties.

[138] Ms. Wintrup had access (by consent) to Mr. Adams' Scotiabank online banking information, including password. Ms. Wintrup would sometimes transfer monies between Mr. Adams' Scotiabank accounts, as he put it, to "deal with the expenses of the Ontario home" (The Consecon property). Mr. Adams maintains he was unaware that Ms. Wintrup would have complete access to all his Scotiabank accounts, including those held jointly with his sister and father. One of those accounts held inheritance monies provided to Mr. Adams from his father.

[139] On August 7, 2014, \$80,000 was withdrawn from an account Mr. Adams held jointly with his father and sister and deposited into a Scotiabank account held jointly by the parties. On August 9, 2014, Ms. Wintrup withdrew \$100,000 and on

the same date a further \$20,000, from the Scotiabank account held jointly between Mr. Adams, his father and sister and deposited all into the parties' joint Scotiabank account. On August 9, 2014, Ms. Wintrup withdrew \$200,000 from the parties' joint Scotiabank account. Mr. Adams contends he never provided Ms. Wintrup consent to withdraw the funds from the account held jointly with his father and sister. Ms. Wintrup maintains he did. She says they discussed purchasing a property as an investment and these monies were for that purpose. The Spinnaker property was purchased with a portion of these funds; \$80,000 was used for the down-payment.

[140] It is Ms. Wintrup's evidence that the parties transferred \$80,000 from Mr. Adams' Scotiabank account (held jointly with his father and sister) to their jointly held Scotiabank account on August 7, 2014, while together in Ontario. Mr. Adams' evidence with respect to August 7, 2014, paints a different picture. I reference Exhibit 2, Tab 3. Paragraphs 58-63 are reproduced here in its entirety:

58. At the end of the two weeks, I was returning to Qatar and Roberta to Halifax. We left for the airport around noon on August 7, 2014. About one kilometer into the journey, Roberta told me in the car that she wanted a divorce. I was flabbergasted as we had been married less than two months and had actually met with a lawyer to update our wills the previous evening. We drove the remaining two hours to the airport mostly in silence. We arrived at the airport and went our separate ways.

59. When I returned to Qatar, Roberta sent me messages to tell me I should be out of the apartment by the time she returned to Qatar. Attached to my affidavit as **Exhibit "D"** is excerpts of a Skype Messenger between me and Roberta from

August 9-15, 2014 and Roberta's email to me dated August 11, 2014 confirming Roberta told me she wanted me to leave our apartment. On August 15, 2014, Roberta told me, "as far as I'm concerned, we are over."

60. I subsequently learned on November 9, 2015 during a Messenger chat that Roberta had attempted to have the marriage annulled two weeks after we got married. The Following is a screenshot of Roberta's message to me indicating the same.

Brad Adams

I realise i have fucked up.

I am apologising

Roberta Wintrup

Marrying you was a mistake. If I could undo it, I would. I called the BC Family court 2 weeks after we got married and asked them to undo it.

61. By approximately August 17, 2014, Roberta's communications had returned to normal. Several days later, Roberta began messaging me about wanting to buy a house. On August 20, 2020, she sent me a link to pictures of a house she wanted to buy. Although we had previously discussed buying a different income property, this was the first I heard about the Spinnaker Drive house.

62. On August 21, 2020, Roberta wrote me, "If we get the house, I will have a good downpayment [*sic*] and finance the rest at 2.89".

63. On August 22, 2014, Roberta told me that I was the "proud half owner" of a new house. On August 23, 2014, Roberta told me we were approved for borrowing \$270,000 and the bank had "cut her a cheque" for \$89,000. I believed such down-payment for the house had come from Roberta's savings over the past 11 months. At no time during our conversations leading up to the purchase did she ask me to contribute financially to the purchase nor did I give her permissions to use any funds in any of my accounts for this purpose. Our Skype conversations about the purchase are attached and marked as **Exhibit "E"**: to this my affidavit.

[141] I am satisfied one date referenced in paragraph 61 and the date referenced in paragraph 62 contain typographical errors.

[142] Exhibit “D” as referenced in paragraph 59 contains excerpts of Skype conversations between the parties beginning July 22, 2014 to August 15, 2014. I submit Exhibit “D” offers significant insight into the circumstance of the parties’ relationship during this time period.

[143] I further submit Exhibit 6, Tab 4 also bears relevance to this discussion, in particular, Ms. Wintrup’s comment at 21-Aug-14 1:24:13 P.M.

[144] I am satisfied Exhibit 2, Tab3, Exhibit “D” and Exhibit 6, Tab 4 corroborates Mr. Adams’ evidence regarding the circumstances of the parties’ relationship on August 7, 2014, and the period following as addressed in paragraphs 58-63 of Mr. Adams’ Affidavit.

[145] In *Salah v Salah*, 2013 NSSC 308, Justice Beaton provides a very helpful synopsis of what I must consider when assessing the credibility of a witness.

Paragraphs 20 to 24 state:

[20] The issue of credibility is also an issue which is front and centre in this matter. For example, the Applicant says the Court should not rely on the evidence of the Respondent where it is contradicted by other earlier sworn statements made by her which were generated in relation to other processes. One example of that would be any one of the “KGB statements” to which the Respondent was referred during cross-examination. The Respondent asserts in her evidence that the Applicant has been manufacturing evidence by hiring parties to spy on her and provide false information, or by creating false postings on Facebook or in text messages.

[21] Much has been written in the case law about the exercise of assessing credibility. I could go on at some length about what Courts have had to say and how credibility assessment has, by times, been described as more of an art than a science. But for the purposes of this hearing, I will explain to the parties that I am cognizant of discussions about credibility which are found in any number of Court of Appeal decisions in this province, not the least of which would be the discussion by Justice Cromwell in *R. v. Mah*, 2002 NSCA 99. It's a criminal case, but the discussion about the legal analysis of the credibility finding or credibility determination exercise as it relates to the burden of proof is one which is entirely apropos in the family law context, as well.

[22] Counsel for the Applicant had also referred me to the Court of Appeal decision in *Hurst v. Gill*, 2011 NSCA 100 which cites with approval from a decision of my colleague, Justice Forgeron in *Baker-Warren v. Denault* which is a 2009 decision reported at NSSC 59. I'm also cognizant of the case ... it's probably best described as the "old chesnut," *Faryna v Chorney* 1951 CanLII 252 (BC CA), [1952] 2 D.L.R. 354. It's discussed in *Baker-Warren v. Denault*. *Faryna v Chorney*, goes back to 1952 and the principle enunciated there is still good law and still applies with respect to whether the evidence is in harmony with the preponderance of probabilities that a reasonable and informed person might expect in the circumstances.

[23] It may be helpful to the parties to reference a very succinct but useful list of factors taken into account when balancing credibility as enumerated by Justice Forgeron in *Baker-Warren v. Denault*. That list is found at paragraph 19 of the decision, wherein Justice Forgeron wrote:

19. With these caveats in mind, the following are some of the factors which were balanced when the Court assessed credibility:

(a) What were the inconsistencies and weaknesses in the witness' evidence which include internal inconsistencies, prior inconsistent statements, inconsistencies between the witness' testimony and the documentary evidence and the testimony of other witnesses? *Re Novak Estate*, 2008 NSSC 283;

(b) Did the witness have an interest in the outcome or was he or she personally connected to either party;

(c) Did the witness have a motive to deceive;

(d) Did the witness have the ability to observe the factual matters about which he or she testified;

- (e) Did the witness have a sufficient power of recollection to provide the Court with an accurate account;

- (f) Is the testimony in harmony with the preponderance of probabilities which a practical and informed person would recognize ... pardon me, would find reasonable, given the particular place and conditions? *Faryna v. Chorney* 1951 CanLII 252 (BC CA), [1952] 2 D.L.R. 354;

- (g) Was there an internal consistency and logical flow to the evidence;

- (h) Was the evidence provided in a candid and straightforward manner or was the witness evasive, strategic, hesitant, or biased, and;

- (i) Where appropriate, was the witness capable of making an admission against interest or was the witness self serving?

[24] So this is a list of factors. It's not intended to be an exhaustive list, at least in my view, but it is certainly a helpful list when the Court is required to conduct a credibility assessment. I have employed these factors and others related to or similar to this list in assessing the evidence of the witnesses.

[146] After considering the evidence in relation to the circumstances of the parties' relationship during the relevant time period, and on a balance of probabilities, I find Mr. Adams' evidence as it relates to the withdrawal of the \$200,000 from his Scotiabank account (held jointly with his father and sister) to be credible and logical. Ms. Wintrup was of the view that the marriage was over, and had a motive

to deceive. There is a logical flow to Mr. Adams' evidence as it relates to this issue. I do not accept Ms. Wintrup's evidence with respect to this issue.

[147] Mr. Adams maintains he was unaware of the withdrawal until Christmas Day, 2014. Subsequently, he believed the entire amount (\$200,000) was invested in the Spinnaker property. He says that in 2017, he became aware that \$120,000 of the funds was invested in the stock market.

[148] On cross-examination, Mr. Adams stated he looked at the Scotiabank accounts sometime during the fall season of 2014, but did not notice the withdrawal. I am left with a doubt as to the veracity of exactly when Mr. Adams became aware of the \$200,000 withdrawal.

[149] However, as to when Mr. Adams became aware of the \$200,000 withdrawal does not question nor alter my conclusion as relates to the issue of consent.

[150] As trier of fact, I may accept all, portions or none of a witness's evidence.

Cole v Luckman, 2012 NSSC 118.

[151] I am satisfied Mr. Adams did not provide Ms. Wintrup with his consent to withdraw \$200,000 from the account held jointly with his father and sister and also that he later believed the entire amount was invested in the Spinnaker property.

Decision on Division of the Matrimonial Assets

[152] In *Gouthro v Gouthro*, 2017 NSSC 246, at paragraph 39, Justice Forgeron provides a helpful review of the case law regarding asset division:

Law

[39] Before giving my decision, I will provide an overview of the law so that the parties have a better appreciation of the legal foundation upon which my order is based. The legal principles which I considered include the following:

- The **MPA** must be given a liberal interpretation in keeping with its remedial purpose: **Clarke v. Clarke**, 1990 CanLII 86 (SCC), [1990] S.C.J. No. 97 (S.C.C.).
- The **MPA** affords significant rights to spouses. Asset division is not based on a strict economic analysis. To the contrary, the **MPA** recognizes the intrinsic value of noneconomic contributions and views marriage as a partnership. In **Young v. Young**, supra, Bateman, J.A. confirmed that the “predominant concept under the **Act** is the recognition of marriage as a partnership with each party contributing in different ways” para 15.
- All real and personal property acquired by either spouse is presumed to be a matrimonial asset, unless falling within certain narrow exceptions, and is subject to a presumptive equal division: **Morash v. Morash**, 2004 NSCA 20, per Bateman, J.A. at para 16.
- The burden of establishing entitlement rests upon the spouse who seeks an unequal division.
- An unequal division is only permitted where “there is convincing evidence that an equal division would be unfair or unconscionable”: Bateman, J.A., **Young v. Young**, supra, para 15; or where there is “strong evidence showing that in all the circumstances an equal division would be unfair or unconscionable on a broad view of all relevant factors:” **Harwood v. Thomas** (1981), 1981 CanLII 4167 (NS CA), 45 N.S.R. (2d) 414 (A.D.) at para 7 per MacKeigan, C.J.N.S.
- Although “‘unfair’ and ‘unconscionable’ do not have a precise meaning”, “unfair” “evokes ethical considerations and not merely legal ones:” para 18, **Young v. Young**, supra, per Bateman, J.A.

- Unconscionable means "unreasonable", "unscrupulous", "excessive" and "extortionate" and when "coupled with the requirement that "strong evidence" must be produced to support an unequal division, the burden upon the party requesting an unequal division of matrimonial assets is somewhat onerous:" **Jenkins v. Jenkins** (1991), 1991 CanLII 4342 (NS SC), 107 N.S.R. (2d) 18 (T.D.), per Richard, J. at para 10.
- The question to be asked is "whether 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:" **Harwood v. Thomas**, supra, para 7 per MacKeigan, C.J.N.S.
- Courts are instructed to examine all the circumstances and not to simply weigh the respective material contributions of the parties except in unusual circumstances: **Young v. Young**, supra, paras 15 and 19, per Bateman. J.A. Marriage is not a business arrangement.
- When focusing on claims grounded in s. 13 (d) of the **MPA**, the length of cohabitation is a reference to short term, not long term unions: **Briggs v. Briggs** (1984), 64 N.S.R. (2d) 40 (N.S. T.D.) as affirmed at (1984), 65 N.S.R. (2d) 126 (N.S. C.A.) **and Donald v. Donald** (1991), 1991 CanLII 2563 (NS CA), 103 N.S.R. (2d) 322 (N.S. C.A.).
- The determination of whether an equal division will produce an unfair or unconscionable result is a fact-based decision.

[153] As regards the Spinnaker property, I find Mr. Adams has substantiated a claim for an unequal division in his favour. Ms. Wintrup withdrew the funds used for the down-payment from Mr. Adams' Scotiabank account held jointly with his father and sister without his consent.

[154] But for Ms. Wintrup's surreptitious actions, the Spinnaker property may not be a factor in this case. Mr. Adams may not have agreed to make that investment.

[155] Based on the sum of the evidence, it is not possible to determine with an acceptable degree of certainty the fate of the remaining \$120,000. Ms. Wintrup maintains it was invested in the stock market.

[156] I am satisfied it would be unfair or unconscionable for Ms. Wintrup to retain one half of the Spinnaker property. I find Mr. Adams is entitled to \$268,019 (\$200,000 + \$68,019, which represents interest at 5% per annum compounded annually since 2014) from Ms. Wintrup with respect to the Spinnaker property. According to Ms. Wintrup's Statement of Property sworn November 20, 2019, 225 Spinnaker was valued at \$360,000 as per Mr. Malay's appraisal. The amount due Mr. Adams is approximately 74% of the stated value.

[157] In *Roberts v Shotton* at page 9 the Court states:

The assignment of the percentage for division involves an exercise of discretion. That discretion must be exercised judicially....

[158] This was a short term, non-traditional marriage. Notwithstanding, the Qatari joint account, the parties' finances were not integrated. Neither was financially dependent on the other. Prior to the relationship and marriage, each was well established in their respective careers and financially sound. Each continued to remain so post separation. I find neither party was negatively affected and/or financially disadvantaged (save for Mr. Adams - \$200,000 withdrawal from the

Scotiabank account held jointly with his father and sister) as a result of the dissolution of the marriage. The evidence demonstrates each retained their lifestyles.

[159] As per Section 12(1) of the *Matrimonial Property Act*, where a petition for divorce is filed either spouse is entitled to apply to the Court to have the matrimonial assets divided in equal shares, notwithstanding the ownership of these assets. Pursuant to Section 4(1)(a) and (e), settlements and business assets are among those assets exempt from classification as matrimonial assets (except to the extent to which they are used for the benefit of both spouses or their children) and the presumptive equal division. Pursuant to Section 13 of the *Matrimonial Property Act* an unequal division of matrimonial assets may be awarded as per the factors stated. In the exercise of my discretion, I find that an equal division of the remaining matrimonial assets would be unfair or unconscionable as this language is used in Section 13 of the *Matrimonial Property Act*. I find based on the facts of this case and applied to the principles as articulated in the case law, considering the applicable legislation and all relevant circumstances, the remaining matrimonial assets shall be divided as follows:

- Pursuant to Section 13 (d) and (e) of the *Matrimonial Property Act* Ms. Wintrup shall retain the Moirs Mills property, the Windstone property,

pension with the University of Calgary, LIRA (RBC)(V.G. Hospital Pension), RRSP and the entirety of her accounts (banking and investing) in her sole interest.

- Pursuant to Section 13 (d) and (e) of the *Matrimonial Property Act* Mr. Adams shall retain the Consecon property, the Eden Street property, British Military Pension and the entirety of his accounts (banking and investing) in his sole interest.

[160] I am satisfied that the doctrine of unjust enrichment is not applicable in this case. Case authorities suggests this doctrine should be utilized in cases involving unmarried persons.

Conclusion

[161] The Divorce is granted.

[162] The date of separation is found to be June 28, 2015.

[163] Ms. Wintrup's claim for spousal support (retroactive and prospective) is dismissed.

[164] The division of property shall be as per the previous section.

[165] Counsel for Mr. Adams shall prepare the Corollary Relief Order and Divorce Order.

[166] Within three weeks of the issuing of the Corollary Relief Order and Divorce Order, counsel may provide written submissions as to costs.

Samuel C.G. Moreau,