

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Annand v Annand*, 2022 NSSC 70

Date: 20220311

Docket: SFH No. 1201-072061

Registry: Halifax

Between:

Krystle Annand

Petitioner

v.

Jason Annand

Respondent

Judge: The Honourable Justice Theresa Forgeron

Heard: October 19, 20 and 21, December 8, 2021, February 1, 2022,
in Halifax, Nova Scotia

Decision: March 11, 2022

Counsel: Krystle Annand, self-represented
Jason Annand, self-represented

By the Court:

Introduction

[1] Krystle and Jason Annand are separated spouses and the parents of two preteen children. A multi-day trial was held during which evidence was led on the contested parenting, property, and support issues.

[2] Although the parties love their children, they differ as to what they believe will meet their best interests. Ms. Annand seeks primary care and final decision making in the event of an impasse. For his part, Mr. Annand wants a shared parenting order should his employment circumstances change. He also wants to be involved with all decisions impacting the children, including decisions about any future relocation.

[3] In addition, the parties disagreed about what should be divided as matrimonial assets and debt. Mr. Annand wants to exclude the pre-marriage portion of the cash surrender value of a life insurance policy, a shareholder loan, and the balance in a corporate bank account. Ms. Annand wants these assets divided. Moreover, Mr. Annand asks to have his income tax debt, together with the corporate tax and the payroll remittance debts equally divided. Ms. Annand objects.

[4] Further, support issues were also contested, including the determination of the parties' annual incomes, the quantum of child support, the quantum and duration of spousal support, and retroactive support.

Issues

[5] In my decision, I will decide the following issues:

- What is the appropriate parenting order?
- Are any assets exempt from division?
- Are any debts exempt from division?
- What is the appropriate division of the assets and the debts?
- What is the income of each of the parties?
- What is the appropriate order for child support?
- What is the appropriate order for spousal support?
- Should there be a retroactive order for support?

- What insurance provisions are to be included in the CRO?

Background

[6] The parties began a serious relationship while they were pursuing their education. Ms. Annand graduated with a degree in counselling psychology. Mr. Annand graduated with a degree in marine engineering.

[7] After graduation, the parties began to cohabit and were married about five years later in March 2010. They welcomed two children into their lives – a daughter born in 2013 and a son born in 2015. The parties separated on August 13, 2018.

[8] Before the children were born, Ms. Annand was employed at Regional Residential Services from 2004 until 2013 where she earned an annual income of about \$42,000 to \$45,000. Days before the birth of her first child, Ms. Annand was hired as a casual case aide with the Department of Community Services. She then took a year of parental leave.

[9] After returning to the workforce, Ms. Annand struggled to meet employment expectations because of difficulties working after hours while providing primary care to the parties' daughter. In addition, in 2015, Ms. Annand gave birth to their second child, a son. She took another year of parental leave.

[10] Ms. Annand did not immediately return to the workforce after her son was born. Instead, the parties agreed that she would assume the role of primary caregiver, while Mr. Annand would continue to work fulltime, in a job that required him to be at sea about 50% of the time.

[11] Beginning in 2016, Ms. Annand began to upgrade her education through on-line learning. In June 2019, about a year after separation, she graduated with a Master of Arts in counselling therapy.

[12] After graduation, Ms. Annand applied for many jobs but with limited results – at one point even working in the deli department of a grocery store. Ms. Annand's pursuit of stable and suitable employment was impeded by challenges with childcare, finances, transportation, separation issues, and then COVID.

[13] By the time of trial, Ms. Annand finally found employment as an independent contractor in the counselling field. This position provides the flexibility and income potential that Ms. Annand requires. Ms. Annand's income from this source, however, is difficult to ascertain because there is little historical data upon which to draw.

[14] For his part, after graduating, Mr. Annand found employment as a marine engineer. Mr. Annand was able to prioritize his career because Ms. Annand assumed primary care of the children. Mr. Annand became the primary wage earner of the family. He earned a sizable income. In more recent years, Mr. Annand's annual income is between \$160,000 to \$200,000.

[15] In 2015, Mr. Annand incorporated a consulting company as a tax planning measure so that a portion of the corporate income could be paid out in dividends to both parties, thus minimizing the family's overall tax burden. Unfortunately, in 2017, Mr. Annand did not make all necessary income tax instalments or payroll remittances. Additionally, the company did not declare dividends for the 2017 tax year. As a result, Mr. Annand owes a personal income tax debt, and the company owes significant sums to CRA.

[16] The parties' separation was filled with conflict. Communication was often reactive. Trust was lacking. Ms. Annand was in a vulnerable financial position because she had no reliable income source and was the primary care provider of the children.

[17] At the time of separation, the parties owned a home, several vehicles, household chattels, savings, investments, a consulting company, and RRSPs. They also owed substantial debt. They could not agree on how the assets and debts should be divided.

[18] Eventually, Mr. and Ms. Annand agreed to sell the matrimonial home. After the payment of the usual adjustments on closing and a vehicle loan, net sale proceeds of \$61,788.94 were realized. The proceeds are held in a solicitor trust account pending my decision. Although the parties agree to an equal division of the sale proceeds, their disbursement is subject to all adjustments made by me in this decision, such as those connected to property and debt division, and those connected to maintenance.

[19] Ms. Annand filed a divorce petition in July 2019. Initially, both parties were represented by counsel. An interim hearing was held, at the conclusion of which Justice Chiasson ordered Mr. Annand to pay both child and spousal support. Mr. Annand's income was set at \$178,922 while an annual income of \$22,000 was imputed to Ms. Annand. Starting in March 2020, Mr. Annand was ordered to pay monthly spousal support of \$1,844 and child support of \$2,876, composed of the table amount and s. 7 expenses. Mr. Annand's subsequent attempt to vary the interim order was not successful.

[20] The file was reassigned to me, and the divorce trial scheduled. The contested divorce proceeding was held on October 19, 20, and 21, 2021; December 8, 2021; and February 1, 2022. Most of the trial was held in person.

[21] By the time of trial, both parties were self-represented. Each testified and introduced voluminous exhibits. Many of the exhibits were not as organized as they ought to have been. At times, the exhibits were less than helpful.

[22] During the trial, the parties also entered into further agreements about some of the contested parenting issues and about the values to be ascribed to some of the assets and debts. I considered their consents when making my decision.

[23] At the conclusion of the trial, each party provided oral and additional written submissions to augment those previously filed.

Analysis

[24] **What is the appropriate parenting order?**

Position of the Parties

[25] Ms. Annand seeks primary care and final decision-making in the event the parties cannot come to a joint decision after meaningful and timely consultation. For his part, Mr. Annand wants to share decision making. He also wants to revert to a shared parenting arrangement in the event his employment changes next year when his current contract ends.

Law

[26] Section 16 (1) of the *Divorce Act* provides me with the jurisdiction to make a parenting order in the best interests of the children. The *Act* notes that I must give primary consideration to the children's physical, emotional and psychological safety, security, and well-being. A lengthy list of subfactors composing the best interests test are found in s. 16 (3) of the *Act*, and focus my attention on the children's needs; the children's relationship with each parent and other family members; the parent's willingness to foster the children's relationship with the other parent; the history of child care; the views of the children; the children's cultural and heritage needs; the parent's parenting plan; the parents' ability to communicate with the other; the parent's ability to follow a court order; and the impact of any family violence.

[27] Further, past conduct is only relevant to the extent it relates to a party's parenting ability. Additionally, I am required to maximize time between the children and each parent as is consistent with the children's best interests.

Decision

[28] I find that it is in the children's best interests to continue in the primary care of Ms. Annand and for Ms. Annand to have final decision-making authority in the event the parties cannot reach agreement on important matters affecting the children, after timely and meaningful consultation.

[29] I do not grant Mr. Annand's request for a shared parenting order should his circumstances change once his current employment contract ends. I will not speculate as to future events.

[30] I reach my decision on parenting for the following reasons:

- Mr. Annand is not available to be a primary care provider because his employment takes him away from the local area for about 50% of the time.
- When Mr. Annand is at sea, there are times when he cannot be reached because of technology challenges and limitations.
- Ms. Annand was and continues to be the children's primary caregiver.
- The children have done exceptionally well under their mother's primary care. Ms. Annand meets all the children's physical, emotional, educational, medical, and social welfare needs. She is an insightful, dedicated, and proactive parent who prioritizes the needs of the children.
- Although the children have a strong connection with both of their parents, they are particularly connected to Ms. Annand because she was and is their primary care parent.
- Ms. Annand will continue to encourage a strong bond between the children and their father.
- Both parents will abide by court orders.
- The parties are not always able to communicate in a healthy and respectful fashion. It is necessary to assign final decision-making to avoid conflict. I encourage both parties to undertake counselling to ensure healthy, child-focused, and respectful communication with the other.
- At various times, Mr. Annand advised the court that he consented to Ms. Annand having primary care of the children. His consent was freely given. His consent was an acknowledgement that a primary care order was and is in the children's best interests.

[31] The CRO will contain the following parenting provisions in the children's best interests:

Decision Making

1. Krystle Annand and Jason Annand will exercise joint decision making for the benefit of the children. The following conditions will apply to the administration of joint decision making:
 - a. The parties will continue to make joint decisions on all major issues for the children such as those relating to their health, education, religion, and general welfare. The parties will have timely and meaningful consultation about all important decisions affecting the health, education, religion, and general welfare of the children. In the event the parties do not reach agreement after timely and meaningful consultation, Krystle Annand will have final decision-making authority on all matters with the exception of relocation which, if it arises, will be determined by clause 1 (e) herein, such that any relocation of the permanent residence of the children requires the written consent of both parties or a court order.
 - b. The day-to-day decisions respecting the children will be made solely by the parent providing physical care on any given day.
 - c. In the case of a medical emergency, whichever parent has physical custody of the children at the time of the emergency will have the right to authorize emergency medical care and will, as soon as practicable, notify the other parent.
 - d. Each party will be entitled to receive information relating to the children, such as school report cards, medical reports, information regarding their social and recreational activities, and will continue to be entitled to attend any functions and meetings relating to the children that parents are normally entitled to attend, such as school-related events, medical and dental appointments, recreational activities, concerts, and the like.
 - e. Neither party will relocate with the children outside of the Halifax Regional Municipality without the prior written agreement of the other parent or an order of the Supreme Court of Nova Scotia (Family Division).
 - f. For the purpose of the *Hague Convention*, the habitual residence of Hailey and Liam is HRM, Halifax County, Nova Scotia, Canada.

Parenting Time Schedule

2. Krystle Annand shall have primary care of the children.
3. Jason Annand shall have parenting time with the children approximately 25% of the time.
4. Jason Annand works offshore approximately 50% of the time. Jason Annand's parenting schedule shall be determined by his offshore work schedule. While Jason

- Annand is in Nova Scotia, parenting shall be on a week-about rotation, beginning the Monday following Jason's return to Halifax.
5. Transitions between the parents shall continue by way of drop off and pick up at school each Monday.
 6. Jason Annand's parenting time shall end the day before Jason's departure offshore. Transition to Krystle Annand shall be by drop off and pickup at school, or otherwise at 5:00 pm if the transition occurs on a weekend.
 7. Jason Annand shall provide Krystle Annand with a copy of his work schedule, as generated, and provided to him by his employer, immediately upon receipt.
 8. When transitions directly between parents are necessary, Jason Annand shall transport the children.
 9. The following holidays and special occasions will be exceptions to the regular parenting schedule:
 - a. **March Break:** This will be the period from 8:00 am Monday until the Friday at 5:00 pm. Krystle Annand will have this parenting time with the children in odd-numbered years and Jason Annand will have his parenting time with the children in even-numbered years. If either parent must work during his or her parenting time during March break, that parent shall be responsible for organizing and incurring the cost of March break childcare.
 - b. **Easter:** This shall be the period from after school on Thursday until school time on Tuesday. In odd numbered years, Krystle Annand shall have parenting time with the children for Easter, and in even numbered years, Jason Annand shall have parenting time with the children for Easter. If the Easter schedule would cause one parent to have parenting time three weekends in a row, then the other parent shall have parenting time with the children the weekend after Easter, as well as the following weekend, which would be his or her parenting weekend under the regular parenting schedule.
 - c. **Mother's Day and Father's Day:** This shall be the period from after school on Friday until school time on Monday. The celebrating parent shall have parenting time with the children for the Mother's Day or Father's Day weekend.
 - d. **Thanksgiving:** This shall be the period from after school on Friday until school time on Tuesday. In odd-numbered years, Krystle Annand shall have parenting time with the children for Thanksgiving, and in even numbered years, Jason Annand shall have parenting time with the children for Thanksgiving. If the Thanksgiving schedule would cause one parent to have parenting time three weekends in a row, the other parent shall have parenting time with the children the weekend after Thanksgiving, as well as the following weekend, which would be his or her parenting weekend under the regular parenting schedule.

- e. ***Christmas:*** This will be the period from after school on the last day of school until school time on the first day of school. The Christmas break will be equally divided between the parties. In even numbered years, Jason Annand will have parenting time with the children during the first half of the break, and Krystle Annand will have parenting time with the children during the second half of the break. In odd numbered years, Krystle Annand will have parenting time with the children during the first half of the break, and Jason Annand will have parenting time with the children during the second half of the break. Transitions will be at 5:00 pm. Each year, the parent without parenting time with the children on Christmas Day, will have the opportunity to spend four hours with the children, at a mutually agreed time. In the event of a disagreement, the parent with Christmas Day parenting time may determine the time.
- f. ***Birthdays of the Parties:*** On each of the parties' birthdays, he or she will have parenting time with the children after school until school time the next day, or otherwise from 5:00 pm until 9 am the following day if one day lands on a weekend.
- g. ***Flexibility:*** The parties acknowledge the need for flexibility in their parenting arrangements to accommodate the work and personal schedules of the parties, as well as the wishes of the children.
- h. ***Jason Annand's Unavailability:*** The parties acknowledge that Jason Annand may be unavailable for his holiday parenting time. If Jason Annand is not available for his holiday parenting time, he shall have the option to assume Krystle Annand's holiday parenting time for the same holiday the following year. (For example, if Jason Annand misses Easter in 2020, he will have the option to have Krystle Annand's 2020 Easter parenting time). This option shall exist for one year only and shall not compound if Jason Annand is not available for holiday parenting time two years in a row. Jason Annand must provide notice 60 days in advance if he is unavailable for his holiday parenting time and notice 60 days in advance if he will exercise the option to assume Krystle Annand's parenting time. If notice is not provided 60 days in advance, Jason Annand will not be entitled to assume Krystle Annand's parenting time.

Travel with Children

- 10. Both parties may travel within Canada and internationally with the children during his or her parenting time. If either parent's intended travel would cause the children to miss more than two school days, this must be agreed between the parents.
- 11. The travelling parent must provide notice to the other parent at the time travel is scheduled and must provide an itinerary and contact information for the duration of travel.
- 12. Krystle Annand shall keep the passports for the children, and shall ensure that they are renewed when necessary, and, in advance of any travel. The parties must co-

operate with transferring the children's passports and signing all necessary travel letters to facilitate the children's travel with the other parent.

[32] Are any assets exempt from division?

Position of the Parties

[33] Mr. Annand seeks to exclude three assets from division. First, he wants to exclude the value of the shareholder loan in the amount of \$11,508 as a matrimonial asset. Mr. Annand states that the company is essentially bankrupt because it owes more debt than there are assets. Thus, the company will not be able to pay out the shareholder loan.

[34] In contrast, Ms. Annand says the shareholder's loan is a legally enforceable debt that should be included.

[35] Second, Mr. Annand wants to exclude the balance in the company's bank account because it no longer exists. Ms. Annand disagrees; she wants the bank balance included. The separation day balance of the corporate bank account was \$4,069.

[36] Third, Mr. Annand seeks to exclude the pre-marriage portion of the cash surrender value of the Manulife life insurance because he states that it was a personal gift from his parents and that it was accrued without any contribution from Ms. Annand. In the alternative, if the pre-marriage portion is matrimonial, Mr. Annand seeks an unequal division of the pre-marriage portion because it was a gift to him.

[37] For her part, Ms. Annand states that the pre-marriage portion is not exempt because all pre-marriage assets are presumptively matrimonial. She said that the cash surrender value was intended for the parties' retirement and that family income was used to pay the premiums on the policy throughout their marriage. Further, she says that the evidence does not support a finding of unfairness or unconscionability. From her perspective, the unequal division claim must fail.

Law

[38] I must apply the provisions of the *Matrimonial Property Act* to the classification and division of the parties' assets. The following underlying principles apply to my decision:

- The *MPA* must be given a liberal interpretation in keeping with its remedial purpose: *Clarke v. Clarke*, [1990] S.C.J. No. 97 (S.C.C.).
- The *MPA* affords significant rights to spouses.

- The *MPA* recognizes the intrinsic value of noneconomic contributions and views marriage as a partnership. In *Young v. Young*, (2003), 216 NSR (2d) 94 (N.S.C.A.), at para 15, Bateman, JA confirmed that the “predominant concept under the Act is the recognition of marriage as a partnership with each party contributing in different ways”.
- All real and personal property acquired by either spouse, before or during the marriage, 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, para 16.
- Section 4 (1) of the *MPA* confirms that pre-marriage assets are captured within the definition of matrimonial assets. The “... mere fact of prior acquisition does not remove the asset from *prima facie* equal division:” *Young v. Young*, para 20.

[39] Further, to succeed with his request for an unequal division, Mr. Annand must produce “convincing evidence that an equal division would be unfair or unconscionable”: *Young v. Young*, supra, para 15; or he must produce “strong evidence showing that in all the circumstances an equal division would be unfair or unconscionable on a broad view of all relevant factors:” *Thomas v. Harwood* (1981), 45 N.S.R. (2d) 414 (A.D.) at para 7, per MacKeigan, C.J.N.S. Although the word “unfair” and “unconscionable” do not have “a precise meaning”, they nonetheless evoke “ethical considerations and not merely legal ones:” *Young v. Young*, supra, para 18.

[40] Unconscionable has been held to mean "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), 107 N.S.R. (2d) 18 (T.D.), at para 10.

[41] 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:” *Thomas v. Harwood*, supra, para 7.

[42] 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.

My Decision

[43] I will now provide my decision on the contested assets, dealing first with the shareholder loan and the corporate bank account.

[44] Both parties have shares in the consulting company which was created to minimize the family's tax burden on the income earned by Mr. Annand by income splitting. The company owes Mr. Annand \$11,508 from a shareholder loan. Although shareholder loans are ordinarily matrimonial assets, I am not including the loan as an asset to be divided because at the time of separation, the company's only discernable asset was the balance in its bank account. Further, the company stopped operating; it had no source of income. Therefore, the bank balance of **\$4,069** will be included as a matrimonial asset while the shareholder loan will not.

[45] I will now address the whole life policy. I find that all the cash surrender value of the Manulife policy, including the pre-marriage portion, is properly classified as a matrimonial asset that is subject to an equal division. While at its inception, the whole life policy was owned by Mr. Annand's parents, in about 2009, ownership of the policy was transferred to Mr. Annand. The whole life policy is thus presumed to be a matrimonial asset. Mr. Annand did not prove otherwise. To the contrary, I accept the evidence of Ms. Annand when she stated that the parties discussed that the policy was intended to be part of the family's overall retirement fund. Further, family income was used to pay the policy premiums after ownership was transferred to Mr. Annand.

[46] Moreover, I find that Mr. Annand did not prove that an unequal division should be ordered because the evidence does not support a finding that an equal division would be unfair or unconscionable. To the contrary, the evidence confirms that an equal division is warranted for the following reasons:

- Ms. Annand did not impoverish the assets.
- Ms. Annand did not unreasonably increase the family debt.
- The Annand marriage was not a short marriage; it was not a second marriage.
- Ms. Annand made significant non-economic contributions to the marriage by assuming the role of primary caregiver; by postponing her career development and advancement for the sake of the family; and by allowing Mr. Annand to concentrate on his career.
- Ms. Annand made financial sacrifices for the benefit of the family unit.

[47] Therefore, the sum of **\$15,185** will be included as a matrimonial asset and divided equally between the parties.

[48] **Are any debts exempt from division?**

Position of the Parties

[49] Mr. Annand states that his substantial income tax debt and the corporate tax and payroll remittance debts, together with any penalty and interest charges, must be equally divided. He states that these debts are associated with the income he earned and that his income was used to pay the family expenses. He states that he is personally responsible for the corporate CRA debts because he is the director. From his perspective, the debts associated with his income must likewise be equally divided.

[50] Ms. Annand disagrees. She states that Mr. Annand consistently failed to disclose the documents necessary to support his claims. Further, she states that the amount of the outstanding income tax debt could have been reduced if Mr. Annand simply cooperated with her lawyer as she repeatedly requested. Finally, she states that Mr. Annand is in a better financial position than she to assume the debt.

[51] Mr. Annand also wants the principal and interest payments that he made on the various debts considered, together with the NSP account. Ms. Annand disagrees. She also notes that the NSP account is considered as part of the retroactive support payment.

Law

[52] In *Ellis v Ellis*, 1999 NSCA 31 and *Bailey v. Bailey* (1990), 98 N.S.R. (2d) 9 (N.S.C.A.), the appeal court reviewed legal principles associated with debt division in family law, noting that:

- “Matrimonial debt” is not a term defined in the *MPA* as debt is only referenced in s. 13: para 31 of *Ellis*.
- In determining whether debts should be divisible, courts are to consider whether they were incurred for the benefit of the family; whether they are ordinary household debts; and if they were incurred after the separation, whether they were necessary to meet basic living expenses or preserve matrimonial assets; and whether the debts were reasonably incurred: pg 14 of *Bailey*.

- There is no presumption that matrimonial debt will be equally divided. The assignment of responsibility for debts is a discretionary matter under s. 13 of the *MPA*. Each case must be decided on its own facts: para 32 of *Ellis*.

Decision

[53] I find that Mr. Annand proved that *most* of his personal income tax debt, together with most of the corporate income and payroll remittance debts should be equally divided. These debts are all associated with the income ultimately earned by Mr. Annand which was used to support the family. I am, however, reducing the overall burden by \$10,000 for two reasons:

- Not all the debt was reasonably incurred. Mr. Annand did not cooperate in reducing the family's overall tax burden. He failed to provide prompt disclosure and did not cooperate in the adoption of the tax saving strategy, declaring dividends, previously employed to reduce the family's global tax burden.
- Mr. Annand earns a sizeable income while Ms. Annand did not and does not. Ms. Annand has primary responsibility for the children 75% of the time. Mr. Annand is in a better financial position to pay debt and any associated interest and penalty charges that may arise.

[54] Thus, I find that **\$50,592.85** is the equally divisible matrimonial debt based on the following calculation: \$40,928.62 (Mr. Annand's 2017 income tax balance) + \$6,946.73 (Corporate payroll remittance balance) + \$12,717.50 (Corporate payroll income tax balance) - \$10,000 = \$50,592.85.

[55] Further, I will not give credit for the principal and interest charges that Mr. Annand paid after separation for three reasons. First, the principal portion of the payment is considered as part of the equalization schedule. Second, Mr. Annand was in a better financial position than was Ms. Annand after separation. Mr. Annand was able to make the debt payments while Ms. Annand had no ability to do so. Third, the debt payments will be considered under the retroactive support issue.

[56] Finally, the NSP account will also be considered as part of the retroactive support claim.

[57] **What is the appropriate division of the assets and the debts?**

[58] Subject to my previous findings, I am ordering an equal division of the assets and debts. The values that I ascribe below are based on my findings of fact as derived from the evidence and any applicable consents confirmed by the parties

and which I adopted. I will provide my decision on the registered investments before outlining the division of the balance of the assets and debts.

RRSPs

[59] Both parties cashed in some RRSPs before the trial. To equalize the after-tax value of the collapsed RRSPs, Ms. Annand must pay Mr. Annand **\$3,258**. This amount will form a credit to Mr. Annand.

[60] The remaining RRSPs, with a balance of about **\$95,697**, are held in Mr. Annand's name and will be equally divided at source using a tax-free spousal rollover. Mr. Annand confirmed that he did not and will not cash in any of the following listed RRSPs until they are equally divided between the parties. The parties shall cooperate in having their remaining RRSPs equally divided by attending the relevant financial institutions and signing all necessary banking and income tax forms to affect the equal division of the following RRSPs, including all increases in their value from interest, capital gains, or otherwise since separation:

- Scotiabank ***9077 about **\$54,210**, plus any increase in value.
- Great West Life / Northumberland ***42055 about **\$28,852**, plus any increase in value.
- Manulife ***6459 about **\$3,555**, plus any increase in value.
- Canada Life / AEG Financial *** 9787 about **\$9,080**, plus any increase in value.

[61] Therefore, each of the parties will receive about **\$47,849** in RRSPs, together with increases earned on these sums since separation.

Division of Remaining Assets

[62] Mr. Annand will have ownership and possession of the following assets with a total value of **\$134,006**:

- ½ of the net proceeds from the sale of the matrimonial home **\$30,894**.
- Garage contents, shed items, camper items, and household items valued at **\$6,800**.
- Honda Odyssey sale proceeds of **\$7,000**.
- Grey Wolf trailer, Land Cruiser, Yamaha and trailer, Outlander and trailer, and Camaro valued at **\$48,100**.
- Bank accounts of **\$7,151**.
- Corporate bank account of **\$4,069**.

- 2018 income tax refund prorated of **\$2,587**.
- Cash surrender value of the Manulife policy of \$15,185, together with the remaining policies having a cash value of \$11,257.38 for a total amount of **\$26,442**.
- Scotiabank Visa which had a surplus of **\$963**.

[63] Ms. Annand will have ownership and possession of the following assets with a total value of **\$39,766**:

- ½ of the net proceeds from the sale of the matrimonial home valued at **\$30,894**.
- Household contents valued at **\$2,000**.
- Jeep sale proceeds of **\$5,000**.
- Bank accounts of **\$236**.
- 2018 Income tax refund prorated of **\$1,636**.

Division of Debt

[64] Mr. Annand is solely responsible for the payment of the following debts with a total balance of **\$106,755**:

- Personal and Corporate CRA debt in the amount of **\$50,593**.
- AMEX ***013 in the amount of **\$4,909**.
- Line of Credit ***386 in the amount of **\$41,650**.
- RSPLOC in the amount of **\$5,313**.
- Belfor Property Restoration, Aqua Advantage, Snooks Septic, and overdraft, with a total balance of **\$4,290**.

[65] Mr. Annand must use all reasonable efforts to have this debt placed in his sole name, including the Line of Credit ***012, which had a zero balance as of separation. The parties must co-operate in signing all banking documents necessary to facilitate this outcome. Mr. Annand must indemnify Ms. Annand should she be called upon to pay any portion of these debts.

[66] Ms. Annand is solely responsible for the payment of the following debts with a total balance of **\$25,350**:

- CIBC LOC ***637 in the amount of **\$25,080**.

- The locksmith and junk removal debt of **\$270**.

[67] Ms. Annand must use all reasonable efforts to have this debt placed in her sole name. The parties will co-operate in signing all banking documents necessary to facilitate this outcome. Ms. Annand must indemnify Mr. Annand should he be called upon to pay any portion of this debt.

[68] Both parties must cooperate in signing all banking documents required to ensure that all joint debt has a declining balance only until it is paid in full.

Equalization Transfer

[69] The following equalization schedule summarizes the division of the nonregistered matrimonial assets and matrimonial debts:

Asset	Value	Husband	Wife
Sale Proceeds	\$61,788	\$30,894	\$30,894
Various Contents	\$8,800	\$6,800	\$2,000
Honda Proceeds	\$7,000	\$7,000	
Jeep Proceeds	\$5,000		\$5,000
Various Vehicles/Trailers	\$48,100	\$48,100	
Personal Bank Accounts	\$7,387	\$7,151	\$236
Corporate Bank Account	\$4,069	\$4,069	
2018 Tax Refund	\$4,223	\$2,587	\$1,636
Cash Value Life Insurance	\$26,442	\$26,442	
Scotiabank Visa Surplus	\$963	\$963	
Total	\$173,772	\$134,006	\$39,766
Debt	Balance	Husband	Wife
Personal/Corporate CRA	\$50,593	\$50,593	
Amex	\$4,909	\$4,909	
LOC	\$41,650	\$41,650	
LOC	\$25,080		\$25,080
RSPLOC	\$5,313	\$5,313	
Miscellaneous	\$4,560	\$4,290	\$270
Total	\$132,105	\$106,755	\$25,350
Equity Positions	Husband	Wife	
	\$134,006	\$39,766	
	(\$106,755)	(\$25,350)	
Total	\$27,251	\$14,416	

Equalization	$\$27,251 - \$14,416 = \$12,835 / 2 = \mathbf{\$6,417.50}$		

[70] Mr. Annand owes Ms. Annand \$6,418 to equalize the division of the assets and debts, less credit for the collapsed RRSPs offset of \$3,258 for a total equalization of **\$3,160**. The equalization transfer is subject to further adjustments for retroactive support and costs.

[71] **What is the income of each of the parties for support purposes?**

Position of the Parties

[72] The parties do not agree as to the income each earns or can earn. In her oral closing submissions, Ms. Annand states that the court should apply a three year average to determine Mr. Annand's annual income. A three year average would produce an annual income of \$182,116 to Mr. Annand.

[73] Mr. Annand disagrees. He acknowledges an earlier aberration in his earnings because he was working in a danger zone and as result, was paid more money. Mr. Annand states this no longer occurs. He asks that his income be based on his actual income of \$162,768.

[74] Furthermore, Mr. Annand wants to impute income to Ms. Annand because she can earn more than she discloses. In his oral closing submissions, Mr. Annand asked that an income of \$55,000 be imputed.

[75] In contrast, Ms. Annand states that she recently started a new job and is uncertain what she will be earning. She is self-employed because she must be available to meet the needs of the children. She states that Mr. Annand is not reliable to assist and that his failure to follow the parenting schedule wrecks havoc with her ability to earn an income. Ms. Annand suggests a net annual income of about \$23,000.

Decision

[76] The law on imputation is not in contest. I have the discretionary authority to impute income under s. 19 of the *Child Support Guidelines*. The law which I must apply is set out in the cases cited by the parties. After reviewing the law and the evidence, I find that this is not an appropriate case to impute income.

[77] I will not impute income to Mr. Annand because I accept that he is no longer being compensated for hazardous work conditions. He no longer travels to war zones. Further, I must use current and not past income. I will not use an average to

calculate Mr. Annand's income because his income is no longer subject to significant fluctuations.

[78] I find that Mr. Annand's annual employment income for support purposes is as follows:

- 2019 \$200,964
- 2020 \$164,846
- 2021 \$162,768.

[79] Further, I will not impute an income to Ms. Annand, this despite the interim order being based on an imputed annual income of \$22,000. I am not bound by the interim order as interim orders are subject to adjustment after the court has the benefit of hearing all the evidence. I am satisfied that Ms. Annand's ability to find employment was hindered by many factors including the following:

- She had primary care of the children for 75% of the time given Mr. Annand's employment schedule.
- She was involved in an education program until she graduated in June 2019.
- She diligently searched for employment but was unsuccessful for the most part. She even worked in a grocery store when she could find no other suitable employment.
- She faced significant barriers after separation because of financial, transportation, and childcare issues, as well as the impact of COVID.

[80] I find that Ms. Annand's annual income for support purposes is as follows:

- 2018 Nil
- 2019 Nil
- 2020 \$4,382

[81] Although I do not impute income to Ms. Annand, I must nonetheless calculate her income for 2021 and 2022 because she recently secured employment. For 2021, I find that Ms. Annand's income will be about \$22,000 given the evidence about income earned at Sobeys, Thoughtful Changes, Homeward Health, and the Anxiety Trauma Clinic.

[82] For 2022, I am satisfied that Ms. Annand will continue to work as an independent contractor with the Trauma Clinic. I likewise find that Ms. Annand will increase her client base and will be able to build a successful practice. I am

cognizant, however, of the following factors that will reduce the amount of her gross earnings:

- She will not be paid for vacations, holidays, or illness.
- She will be responsible for the children 75% of the time.
- She must pay a 30% referral fee to the clinic.
- She must pay her own professional expenses, including licencing fees, continuing education expenses, and liability insurance.
- She must purchase her own business supplies, including a computer and printer.

[83] In the circumstances, commencing in 2022, I find that Ms. Annand will earn a net income of about \$45,000 from her employment.

[84] **What is the appropriate order for child support?**

[85] Mr. Annand must pay the table amount of child support to Ms. Annand in the amount of **\$2,141**, commencing March 2022 and continuing monthly thereafter unless varied by court order.

[86] When calculating the prorated division of s. 7 expenses, I include the spousal support award as required in the *CSG*. Once spousal support is included/deducted, Mr. Annand's proportionate share of the s. 7 expenses is 69%.

[87] The following are the designated s.7 expenses for which Mr. Annand must pay 69%:

- Childcare expenses of \$706 per month which are tax deductible to Ms. Annand. Mr. Annand's after tax prorated responsibility is **\$278** per month.
- Health and dental expenses that exceed insurance reimburse by at least \$100 annually.
- Reasonable extracurricular activities and tutoring expenses which are not to exceed **\$100** per month.

[88] I cannot affix a specified amount for health and dental expenses, including speech therapy, because their cost will fluctuate. Therefore, Ms. Annand must forward to Mr. Annand proof of the health or dental expenses less the amount covered by health insurance. Mr. Annand must pay Ms. Annand 69% within 30 days through e-transfer. The same process will apply to any activity and tutoring expenses.

[89] **What is the appropriate order for spousal support?**

Position of the Parties

[90] Mr. Annand disputes Ms. Annand's claims for spousal support. He wants to limit the amount and duration of spousal support because he states that Ms. Annand is under-employed given her education, skills, and employment history. He further notes that Ms. Annand was employed during the marriage. Theirs was not a traditional union where a lengthy spousal support order should be granted. Mr. Annand suggests a monthly payment of \$720 for six and half years based on the incomes he submitted for each of the parties.

[91] In addition, Mr. Annand also expressed concerns about what he states is the crippling financial effect of the support award. He states that he cannot meet his own reasonable needs given the current maintenance that he is paying. Mr. Annand states that he is living at the poverty line.

[92] In contrast, Ms. Annand seeks spousal support at the high range of the *Spousal Support Advisory Guidelines* because she states that she has a high compensatory and non-compensatory claim and that her needs are reasonable. Ms. Annand sought monthly spousal support of \$2,651, based on the incomes she submitted for each of the parties.

Decision

[93] Section 15.2(1) of the *Divorce Act* provides the jurisdiction to grant a spousal support award. Ms. Annand bears the burden of proof. The factors which I must consider when deciding spousal support are stated in s. 15.2(4) of the *Divorce Act*:

15.2(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.

[94] The objectives to be considered are set out in s. 15.2(6) of the *DA*:

15.2(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.

[95] In *Bracklow v. Bracklow*, [1999] 1 SCR 420 , the Supreme Court of Canada confirmed that entitlement to spousal support is grounded in one, or more, of the following three principles:

- Compensatory support to address economic advantages and disadvantages flowing from the marriage, or the roles adopted during the marriage.
- Non-compensatory support to address the disparity between the needs and means of the parties, and arising from the marriage breakdown.
- Contractual spousal support, either expressed or implied.

[96] In *Strecko v Strecko*, 2014 NSCA 66 as confirmed in *MacDonald v MacDonald*, *supra*, the Court of Appeal held that although the SSAGs are not law, they are nevertheless a useful tool which can enhance legitimacy and consistency. Therefore, my primary focus must be on the factors and objectives stated in the *Divorce Act*, while using the SSAGs as a useful comparative tool.

[97] In setting the appropriate spousal support order, I reviewed the factors and objectives of the *Divorce Act*, the parties' budgets, and the SSAGs. In so doing, I first find that Ms. Annand proved that she is entitled to spousal support on a compensatory and non-compensatory basis for the following reasons:

- Ms. Annand was employed on a full-time basis until the birth of the children.
- Ms. Annand was advancing in her career until the birth of the children.
- Ms. Annand assumed primary responsibility for the care of the children. As a result, Ms. Annand's employment income reduced until she no longer worked outside the home.
- Mr. Annand's employment was not affected by the birth of the children because he was not the primary care provider. Mr. Annand was able to prioritize his career because of the economic sacrifices of Ms. Annand.

- The parties lived together for 13 years. Their relationship was not a brief relationship.
- Ms. Annand became financially dependent on Mr. Annand because he was the primary wage earner.
- At separation and currently, there was and is a significant disparity between the incomes of the parties.
- Ms. Annand continues to be the primary caregiver as she cares for the children about 75% of the time given Mr. Annand's employment.
- Although Ms. Annand upgraded her education towards the end of the marriage, she is now only beginning to establish a career. She will always have to juggle the demands of her career with the demands of a primary caregiver.

[98] Second, in reviewing the parties' budgets and the evidence, the following of my findings are noted:

- Ms. Annand's budget is reasonable and necessary, with little room for trimming, other than clothing expenses. However, \$200 a month represents the cost of clothing for three people who do not likely share a wardrobe given their ages and genders. Likewise, Ms. Annand's shelter, food and transportation expenses are not unusual. They too are reasonable and necessary. Although the childcare expense will be prorated, Ms. Annand did not include projections for the speech therapy and tutoring expenses.
- Ms. Annand is responsible for the children 75% of the time and thus will incur more expenses than many other parents who have primary care parenting scenarios. Often, in primary care parenting plans, the other parent will exercise parenting for about 35% of the time.
- Mr. Annand's budget has significant room for trimming. Even though he has the children only 25% of the time, his shelter, food, and transportation expenses are either greater or equal to those budgeted by Ms. Annand. His food expense should be significantly less because when Mr. Annand is working, his meals and lodging are provided by his employer. Further, Mr. Annand's discretionary spending is substantially more than that budgeted by Ms. Annand.

[99] Third, I have examined the *SSAGs* based on the incomes I found that the parties earn. Under the "With Child Support" formula, the low amount of monthly spousal support is \$1,042; the mid-range is \$1,608; and the high range is \$2,170. I

find that Ms. Annand was entitled to the high range of support until 2022 and thereafter to the mid-range. Although Ms. Annand has a high compensatory claim, she did graduate with a Master's degree in 2019 and has recently secured a job in her field. Ms. Annand was out of the work force for six years.

[100] The SSAGs also suggest a range of seven to 15 years from the date of separation. The parties separated in 2018. Mr. Annand will pay spousal support for another eight years, with his final payment up to and including February 2030.

[101] Given the *Divorce Act* factors and objectives, the parties' budgets and other evidence, and the comparative SSAGs, I find that Mr. Annand must pay monthly spousal support of **\$1,608** commencing March 2022 and continuing monthly thereafter until February 2030.

[102] I make a further direction given the evidence of a potential bankruptcy assignment. The amount and duration of spousal support is predicated on the stated division of the assets and debts. If, however, either party is required to pay the debt that was assigned to the other because of bankruptcy or otherwise, then the quantum and duration of spousal support can and should be adjusted.

[103] **Should there be a retroactive award of support?**

Position of the Parties

[104] The parties agree that no retroactive support is payable from the date of separation until June 2019 because Mr. Annand continued to pay the family's expenses through his employment income.

[105] The interim order was effective March 2020. MEP started to enforce the order once the enrollment process was completed in May 2020. By that time, Mr. Annand was \$8,490 in arrears. Arrears as of December 4, 2021 are said to be \$10,290.

[106] The parties do not agree on the amount of retroactive support owing. Ms. Annand seeks retroactive support of \$39,731 as noted in her four pages of calculations attached as an exhibit to one of her affidavits. She summarizes her position as follows:

- From June to December 2019, given payments made, no table amount of child support is due; a credit of \$582 is due to Mr. Annand for an overpayment of s. 7 childcare expenses; and \$16,609 in spousal support is due.

- From January to June 2020, given payments made, no table amount of child support is due but \$1,344 in s. 7 expenses is due; and \$11,716 in spousal support is due.
- From June to December 2020, given payments made, \$1,855 in the table amount of child support is due; a credit of \$574 is due to Mr. Annand for an overpayment of s. 7 childcare expenses; and \$9,363 is due in spousal support.

[107] Mr. Annand disagrees for reasons which include the following:

- He actually paid more money than Ms. Annand stated. He states that from June 2019 until May 2020, he paid \$3,915 for childcare; \$28,020 for the table amount of child support; and \$15,245 in spousal support.
- From June 2019 until February 2020, he paid \$6,237 on the loan for the van used by Ms. Annand.
- After June 2019, he paid \$18,864 in interest and minimal principal charges on the matrimonial debt.
- He paid \$1,368 on the NSP account.

Decision

[108] The law on retroactive child support was recently revisited by the Supreme Court of Canada in *Michel v Graydon*, 2020 SCC 24 and *Colucci v Colucci*, 2021 SCC 24. The law on retroactive spousal support is set out in *Kerr v. Baranow*, 2011 SCC 10. I apply the law as stated. I find:

- Ms. Annand sought support after the parties stopped sharing expenses in June 2019. Indeed, she filed a Petition for Divorce in July 2019. There was no delay.
- Mr. Annand had the ability to pay and should have paid appropriate child and spousal support. I recognize that Mr. Annand did pay some support and was making debt payments at the time.
- Ms. Annand and the children required support given the roles adopted during the marriage and the disparity in the incomes of the parties. Ms. Annand had to rely on family to help with her budget. Ms. Annand and the children were experiencing financial difficulties compounded with the stress associated with irregular and insufficient payments of support.

- Any hardship factors arise because Mr. Annand did not pay the support when he ought to have. Any hardship is therefore of his own making.

[109] I find that Mr. Annand owes Ms. Annand retroactive spousal and child support. In calculating this award, I consider the following:

- From 2019 until 2021, Mr. Annand earned between \$200,964 and \$162,768, while Ms. Annand earned between zero to \$22,000. For the purposes of the retroactive considerations, no income is imputed to Ms. Annand despite the interim order.
- Between 2019 and 2022, Ms. Annand was entitled to a *high* compensatory spousal support award, together with child support. Ms. Annand would have been entitled to more spousal support because of her high compensatory claim and reduced income, even though Mr. Annand also earned less than found in the interim order.
- Retroactive spousal support is not taxable to Ms. Annand and is not deductible by Mr. Annand. Ms. Annand's calculations do not adjust for the tax free nature of a lump sum payment, recognizing however the negligible tax impact on Ms. Annand given her tax bracket at the time.
- Mr. Annand did pay the NSP account of \$1,368, the van payments of \$6,237, and interest and minimal principal loan payments of \$18,864. These payments do not however result in a dollar for dollar credit because the payments also benefited Mr. Annand and because Mr. Annand had a greater ability to pay.
- Even prior to March 2020, Mr. Annand overpaid childcare expenses in some months.

[110] In the circumstances, I award Ms. Annand retroactive support of **\$12,500** for the period between June 2019 and March 2020 when support will be enforced as per the provisions of the interim order, but subject to an adjustment for childcare expenses as follows:

- The removal of Mr. Annand's obligation to pay \$541 in s. 7 childcare expenses for the months of April, May, June, July, and August 2020 because no childcare expenses were incurred.

[111] MEP is directed to make the above changes in their records and recalculate the outstanding arrears. If the arrears in the MEP records have not changed, Mr. Annand will owe a lump sum of **\$20,085** calculated as follows: retroactive support of \$12,500 + arrears of \$10,290 - \$2,705 for the childcare credit.

[112] **What insurance provisions should be included in the CRO?**

[113] I adopt the consent terms that were placed on the record with respect to insurance. It is not appropriate for Mr. Annand to resile from these agreements. The insurance provisions are a form of support. Should there be a material change in the circumstances as contemplated by the *Divorce Act*, then an application to vary can be made.

[114] The following insurance provisions are included in the CRO:

- Mr. Annand must maintain medical and dental insurance for the children. Mr. Annand must provide Ms. Annand with insurance cards for the children and authorize Ms. Annand to make and receive claims under the plan, so long as it is authorized under the plan. Otherwise, he shall ensure that Ms. Annand is promptly reimbursed for insured medical expenses incurred.
- Mr. Annand must maintain life insurance with a face value of \$800,000 to secure the payment of child and spousal support. Mr. Annand must name Ms. Annand as the irrevocable trustee. This obligation continues until Mr. Annand's obligation to pay support terminates or a court otherwise orders.
- Ms. Annand must maintain life insurance with a face value of \$100,000 for the benefit of the children. Ms. Annand must name Mr. Annand as the irrevocable trustee. This obligation continues until the children are no longer dependent.
- Each party must supply the other with proof of compliance and the yearly payment of the life insurance premiums.

Conclusion

[115] The following relief is granted:

- A divorce.
- The adoption of the primary care parenting plan stated in this decision.
- A division of the assets and debts as outlined. Mr. Annand must pay an equalization payment to Ms. Annand of **\$3,160** from his share of the proceeds of sale.
- Mr. Annand must pay monthly child support of **\$2,141** for the table amount and s. 7 expenses including childcare expenses of **\$278** per month.
- Mr. Annand must pay monthly spousal support of **\$1,608**.

- Mr. Annand must pay retroactive lump sum support of **\$12,500** for the period between June 2019 and March 2020, together with a collection of all MEP calculated arrears less credit of **\$2,705** for the overpayment of childcare for five months in 2020. The amount outstanding will be paid from Mr. Annand's share of the proceeds of sale and processed through MEP.
- The inclusion of the stated insurance provisions.

[116] The court will draft the Divorce Order and the Corollary Relief Order. The court must be provided with a current MEP Record of Payment to confirm the current arrears.

[117] If either party seeks costs, written submissions should be provided by April 15, 2022. Response submissions are due on April 29, 2022.

Forgeron, J.