

SUPREME COURT OF NOVA SCOTIA

Citation: Soucy v. Soucy, 2013 NSSC 292

Date: 20130920

Docket: Tru 151893

Registry: Truro

Between:

Guy Soucy

Applicant

v.

Linda Soucy

Respondent

Judge:

The Honourable Justice Patrick J. Duncan

Heard:

June 6, 2013, in Truro, Nova Scotia

Counsel:

Peggy Power, for the Applicant

Linda Soucy, Respondent, on her own behalf

By the Court:

Introduction

[1] Guy Soucy has applied to terminate a court order directing that he pay spousal support to Linda Soucy. Following a hearing I ordered a continuation of an existing order that suspended spousal support payments, with my further determination and reasons to follow.

[2] An application to terminate child support on the basis that their children were no longer children of the marriage within the meaning of the **Divorce Act**, S.C. 1985 c.3, s.2 was granted on consent of both parties.

Marital History

[3] The parties lived together for approximately 21 years. They were in a common law relationship for approximately 5 years before being married on August 30, 1982. Until 1985, both were gainfully employed and had no dependents.

[4] The couple have 3 children together. They are:

1. Tara Marie Soucy born June 18, 1985, now age 28;
2. Kelsey Leigh Soucy born September 17, 1987, now age 26; and
3. Sheldon Anthony Soucy born May 18, 1991, now age 22.

[5] The parties separated on October 5, 1998 and divorced on September 8, 1999. A Corollary Relief Judgement was issued November 16, 1999.

Applicable Law

[6] The power of a court to vary a spousal support order is found in section 17(1) (a) of the **Divorce Act**. The factors a court must consider in deciding such an application are set out in section 17(4.1):

Factors for spousal support order

(4.1) Before the court makes a variation order in respect of a spousal support order, the court shall satisfy itself that a change in the condition, means, needs or other circumstances of either former spouse has occurred since the making of the spousal support order or the last variation order made in respect of that order, and, in making the variation order, the court shall take that change into consideration.

[7] The objectives are set out in s. 17(7) of the **Act**, the relevant portions of which are:

- (7) A variation order varying a spousal support order should
 - (a) recognize any economic advantages or disadvantages to the former spouses arising from the marriage or its breakdown;
 - (b) apportion between the former 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 former spouses arising from the breakdown of the marriage; and
 - (d) in so far as practicable, promote the economic self-sufficiency of each former spouse within a reasonable period of time.

[8] The Supreme Court of Canada in *Moge v. Moge* [1992] 3 S.C.R. 813 and in *Bracklow v. Bracklow* [1999] 1 S.C.R. 420 confirmed that all four objectives are to be considered in every case. No one objective has paramountcy. If any one objective is relevant upon the facts, a spouse may be entitled to receive support.

[9] The analysis involved in the application of these provisions has been summarized by B. MacDonald J. in *S.(T.L.) v. M.(D.J.)* 2009 NSSC 79, at paras. 60-72:

[60] In *Bracklow v. Bracklow, supra*, the Supreme Court analysed the statutory objectives and held that they create three rationales for spousal support:

1. Compensatory support to address the economic advantages and disadvantages to the spouses flowing from the marriage or from the roles adopted in marriage.
2. Non-compensatory dependency based support, to address the disparity between the parties, needs and means upon marriage breakdown.
3. Contractual support, to reflect an express or implied agreement between the parties concerning the parties' financial obligations to each other.

[61] ...

[62] The Supreme Court did recognize that many claims have elements of two or more of the stated rationales. It confirmed that analysis of all of the objectives and factors is required. Pigeonholing was to be avoided.

[63] ...

[64] McLachlan, J. in *Bracklow, supra*, indicated that the basis for a spouse's support entitlement also affects the form, duration, and amount of any support awarded.

[65] Examples of circumstances that may lead to a decision that a spouse is entitled to compensatory support are:

a) a spouse's education, career development or earning potential has been impeded as a result of the marriage because, for example:

-- a spouse has withdrawn from the workforce, delays entry into the workforce, or otherwise defers pursuing a career or economic independence to provide care for children and/or a spouse;

-- a spouse's education or career development has been negatively affected by frequent moves to permit the other spouse to pursue these opportunities;

-- a spouse has an actual loss of seniority, promotion, training, or pension benefits resulting from an absence from the workforce for family reasons;

b) a spouse has contributed financially either directly or indirectly to assist the other spouse in his or her education or career development.

[66] Non-compensatory support incorporates an analysis based upon need and ability to pay. If spouses have lived fully integrated lives, so that the marriage creates a pattern of dependence, the higher-income spouse is to be considered to have assumed financial responsibility for the lower-income spouse. In such cases a court may award support to reflect the pattern of dependence created by the marriage and to prevent hardship arising from marriage breakdown.

L'Heureux-Dubé, J. wrote in *Moge v. Moge*, supra, at p. 390:

Although the doctrine of spousal support which focuses on equitable sharing does not guarantee to either party the standard of living enjoyed during the marriage, this standard is far from irrelevant to support entitlement (see *Mullin v. Mullin* (1991), [1991] P.E.I.J. No. 128, supra, and *Linton v. Linton*, [1990] O.J. No. 2267, supra). Furthermore, great disparities in the standard of living that would be experienced by spouses in the absence of support are often a revealing indication of the economic disadvantages inherent in the role assumed by one party. As marriage should be regarded as a joint endeavour, the longer the relationship

endures, the closer the economic union, the greater will be the presumptive claim to equal standards of living upon its dissolution (see Rogerson, "*Judicial Interpretation of the Spousal and Child Support Provisions of the Divorce Act, 1985 (Part I)*", supra, at pp. 174-75).

[67] It is not clear from Justice L'Heureux-Dubé's decision whether entitlement arising from a "pattern of dependence" is compensatory or non-compensatory. A pattern of dependence may create a compensatory claim because it can justify an entitlement even though a spouse has sufficient income to cover reasonable expenses and might be considered to be self-supporting. This often is described as the "lifestyle argument" - that the spouse should have a lifestyle upon separation somewhat similar to that enjoyed during marriage. (*Linton v. Linton*, 1990 CarswellOnt 316 (Ont. C.A.)) A lengthy marriage generally leads to a pooling of resources and an interdependency even when both parties are working. Usually the recipient spouse will never be able to earn sufficient income to independently provide the previous lifestyle. This would form the basis of a compensatory claim but does not necessarily entitle a spouse to lifetime spousal support. The essence of a compensatory claim is that eventually it may be paid out. This leads to a discussion about the quantum and duration of the claim.

[68] Once it is decided that a spouse is entitled to spousal support, the quantum (amount and duration) is to be determined by considering the length of the relationship, the goal of the support (is it compensatory, non-compensatory or both), the goal of self-sufficiency, and the condition, means, needs and other circumstances of each spouse. In considering the condition, means, needs and other circumstances of each spouse one may examine the division of matrimonial property and consider the extent to which that division has adequately compensated for the economic dislocation caused to a spouse flowing from the marriage and its breakdown and any continuing need the spouse may have for support arising from other factors and other objectives set forth in s. 15(2). (*Tedham v. Tedham*, [2005] B.C.J. No. 2186, 2005 CarswellBC 2346 (B.C.C.A.))

[69] There will be cases when the analysis may indicate that the only way to adequately address the compensatory or non-compensatory claim is to continue support for significant periods of time possibly during the entire life of the recipient or payor. (*Rondeau v. Kerby*, [2004] N.S.J. No. 143, 2004 CarswellNS 140 (N.S.C.A.)). This most often will occur in respect to lengthy marriages where there is significant income disparity.

[70] Generally a non-compensatory claim in a short to mid-length marriage is satisfied when a spouse becomes self-supporting and, in such a case, neither the payor spouse's greater income nor the inability of a recipient spouse to replicate a previous lifestyle, is a factor entitling a spouse to continuing support. When spouses have not had a lengthy relationship and the only effect of the relationship, has been that a spouse has enjoyed a better lifestyle than he or she could afford alone, the duration of support will likely be for a period required to ease the recipient spouse's transition to economic independence. Self-sufficiency, however, is a relative concept. It constitutes something more than an ability to meet basic living expenses. It incorporates an ability to provide a reasonable standard of living from earned and other income exclusive of spousal support.

[71] Every case involving a parent who has withdrawn from the workforce to raise a child will invoke a claim for compensatory support. Many argue against this because conditions in families have changed since the analysis in *Moge* and *Bracklow*. It is now very common for both parents to work even though young children are present in the home. In fact, it often is essential that both parents work. Having children is often seen as a choice women have rather than a social norm to which they must subscribe. It is not an accepted norm today that children require a stay at home parent in order to thrive and prosper. If one parent wants the other to work, but the other believes the children require that he or she stay at home it can create tension. What is a parent in this situation to do? He or she cannot force the other to work. Unlike previous generations when each parent had a defined role in the marriage that was accepted this is not the case today. However today's parents must recognize that, irrespective of their personal preferences or the circumstances from which dependency evolved, if there are children and one parent has stayed at home the other parent will be required to assist by paying spousal support until the compensatory and non-compensatory claim of the stay at home parent has been satisfied or until some other factor intervenes justifying termination of spousal support.

[72] Critical to a proper analysis of spousal support is what each party will have in his or her pocket to pay reasonable living expenses after paying or receiving child support and spousal support. Even if the spousal support guidelines are used to suggest various possible amounts of spousal support, what a person might actually retain must be examined in respect to what is required for that individual to pay for housing, heat, food, etc.

(see also, B. MacDonald J., in *L.(J.A.) v. L.(S.B.J.)*, 2009 NSSC 87, at paras. 5-18.)

History of court orders

[10] The Corollary Relief Judgement issued in November 1999 required Mr. Soucy to make payments to Ms. Soucy in an amount totalling \$4,200 per month, comprised of \$3,000 per month of spousal support and \$1,200 per month of child support. In addition, he was required to pay a lump sum of \$4,800.00 in February of each year from an anticipated annual performance bonus. This lump sum payment began in February, 2000. Mr. Soucy further agreed to reimburse Ms. Soucy for any additional income tax she might have to pay for spousal support received for the period from January 1, 1999 to and including September 1, 1999, so spousal support payments for this period would be net of tax. If these payments resulted in the loss of any child tax benefit he agreed to reimburse this amount to Ms. Soucy as well.

[11] The three children were ages 14, 12 and 8 at that time and Mr. Soucy's income was \$156,000 per year. The Court accepted this support structure, which was set up in such a way as to provide a more favorable tax treatment, although

the child support payments were below **Federal Child Support Guideline** amounts.

[12] The parties returned to court in 2003, upon the application of Ms. Soucy, to vary the child support provisions to require Mr. Soucy to contribute to the university expenses for their eldest child, Tara. As well, Ms. Soucy sought a retroactive increase in the amount of child support payable. Tara had turned 18 in June of 2003 and graduated from high school. She was planning to go to university in the fall of that year. In a decision reported as *Soucy v. Soucy* 2003 NSSC 194, McDougall, J. found:

1. Mr. Soucy had an annual income of approximately \$150,000;
2. Ms. Soucy had an annual income of \$41,000 generated from cleaning houses and working as a part time school monitor.
3. Mr. Soucy would contribute 73.5% of the costs of Tara's education related expenses.

4. Retroactive variation and prospective support payment determinations were deferred.

[13] The issues of support returned for hearing before Justice McDougall in 2004. By that time Tara had completed one year of university, but had decided to return to live with her mother and attend Community College. As reported in *Soucy v. Soucy* 2004 NSSC 167, Justice McDougall concluded:

1. The application by Ms. Soucy to retroactively vary child support payments was refused.

2. That effective September 1, 2004 Mr. Soucy pay child support for his three dependent children based on an estimated 2004 income of \$154,830.95, which was comprised of base salary of \$123,864.76 and maximum bonus of \$30,966.19. In accordance with the **Federal Child Support Guidelines** prospective child support was set at \$2,380.00 per month.

3. The requirement to pay the lump sum amount of \$4,800.00 annually was terminated.

4. Spousal support was reduced from \$3,000 per month to \$2,500 per month.

The net effect of this decision was to require child support to be increased to comply with the **Guideline** amounts and to offset that somewhat by reducing spousal support. Overall the monthly payment required by Mr. Soucy increased from \$4,200 per month to \$4,880 per month. The annual lump sum equivalent to about \$400 per month was terminated. There would have been an increase in the amount paid from Mr. Soucy's after tax income.

[14] In assessing Ms. Soucy's entitlement to spousal support, Justice McDougall made the following comments:

[35] The corollary relief judgment requires the respondent to pay \$3,000.00 per month for spousal support. When the parties divorced their three children were 14, 12 and 9 years of age. They are now 19, nearly 17 and 14. The applicant has been primarily a stay-at-home mother to her children. After the divorce she moved to Truro with the children and had to provide for more of the children's needs since the respondent remained living in the Halifax area and consequently was seldom available to provide for such things as transportation or child care. The children are now older but they still need close parental care and supervision.

[36] The applicant has worked part-time over the last several years in order to be there for her children. She could not work full-time and accomplish this. In the past she has worked in restaurants and at one time was employed in a

supervisory capacity. She now hopes to return to full-time work at a local Tim Horton's provided she can work the late shift which will enable her to be available to care for her children during the day. This might lead to something more meaningful and lucrative in the future but for now she cannot expect to earn much more than minimum wage.

[37] The existing spousal support order is clearly intertwined with child support. It appears to take into consideration an anticipated tax liability incurred by the respondent in the final year of marriage. He had collapsed certain R.R.S.P.s to carry out renovations to the matrimonial home which was later sold. The proceeds were divided unequally in favour of the applicant.

[38] Instead of trying to speculate on why the figures are what they are I prefer to simply look at the applicant's current needs and the respondent's present ability to pay.

[39] It is clear that the applicant, in addition to child support, needs on-going spousal support. She has been working part-time over the past few years. She hopes to eventually return to full-time work in the future, however, her ability to earn income is considerably less than that of the respondent.

[40] The respondent continues to enjoy an excellent income. He resides in a common law relationship with a woman who earns in excess of \$43,000.00 per year. She has one child from a previous relationship. They live quite comfortably.

[41] The applicant, on the other hand, has had to cash-in most of the R.R.S.P.s she received as part of the divorce settlement just to make ends meet. This has resulted in an income tax liability. She continues to struggle to provide for herself and the children. There is no evidence to suggest that she has intentionally prolonged her need for spousal support. If she goes back to work full-time she will be better able to provide for more of her own and her children's needs. She is however, far from being totally financially independent. Indeed, she might never be.

[42] For the present time, the applicant continues to need spousal support from the respondent. The respondent, although he can anticipate incurring considerable education costs for his children in the near future, has an ability to pay. Now that the appropriate amount for child support has been established based on the guidelines, the amount for spousal support should be varied from \$3,000.00 per month to \$2,500.00 per month commencing September 1, 2004. As with child support these payments can be made in two equal installments on the 1st and the 15th of each month.

[43] The respondent should also continue to provide medical and dental coverage for the applicant and his three children as he has done in the past.

It is the 2004 judgement of Justice McDougall that is subject to variation in this application.

[15] When this application was first presented to the court, Justice Scanlan granted an order dated April 4, 2013 suspending the payments of support pending further order of the court, or further agreement of the parties. It is that order which I continued pending my further consideration.

Analysis

Change in Circumstances

[16] Since 2004, much has changed for both parties and for their children. Tara Soucy terminated her post-secondary education in December of 2004. In early 2005 she moved to Ontario where she was not in school and was living independently of her mother. This information only came to Mr. Soucy in September of 2005, who unilaterally reduced his monthly child support but not until December 2006.

[17] There is some disagreement between the parties as to the breakdown of the monthly payments as of December 2006. Ms. Soucy says she received \$2,233.55 biweekly as child and spousal support. This amounts to \$58,072.30 per year or \$4,839.36 per month. The spousal portion was \$2,500 leaving child support paid at \$2,339.36 per month.

[18] Tara is now 28 and lives independently in Calgary, Alberta and has not been a "child of the marriage" within the meaning of **Divorce Act** since at least 2005.

[19] Kelsey Soucy completed one term of university in the fall of 2005, and then took a cosmetology course which she completed in 2007. After a 6 month apprenticeship ended in August 2007 she moved to Alberta to live with Tara.

[20] Child support continued to be paid by Mr. Soucy for Kelsey's care until September 1, 2007. Kelsey was then 20 years old. At that time, by agreement of the parties, Mr. Soucy reduced his child support to \$1240 per month for the support of Sheldon only.

[21] Kelsey is now 25. She moved home to live with her mother in June of 2012 where she continues to reside. She has been looking for employment and has plans to return to school when possible. The parties agreed that she was no longer a "child of the marriage" as of September 2007.

[22] Sheldon obtained an engineering diploma granted by Dalhousie University in May 2012 after he successfully completed his studies at the Truro Campus. He must do two years of study at the Halifax campus to obtain his degree, but has not done so yet. According to his mother this is because he does not have the financial ability to do so. Sheldon is now 22 and lives at home with his mother. He has been working full time at a local lumber company since approximately July 2012. Ms. Soucy says that he is saving money to pay toward the future costs of

his education. He has not been a "child of the marriage" since the summer of 2012.

[23] Mr. Soucy continued to pay spousal support and child support for Sheldon in the amount of \$2,740 per month through December 2012 at which time he stopped making payments due to the loss of his job. His application to vary was filed March 1, 2013.

[24] Linda Soucy is now employed full time as a Continuing Care Assistant and her income level is less than it was in 2004. Guy Soucy is now unemployed and relies upon Employment Insurance. He has shown a dramatic reduction in his income since the last court order was made. I will more fully detail the financial circumstances of the parties later in this decision.

[25] I am satisfied that there has been a material "... change in the condition, means, needs or other circumstances" of both spouses since the making of the last variation order in respect of spousal support.

Condition, Means and Needs of Linda Soucy

[26] The respondent has retrained and obtained her diploma as a Continuing Care Assistant. She incurred no debt to retrain as it was a government funded program. She has been working in this field for three years.

[27] In cross examination on her affidavit evidence Linda Soucy testified that the base wage for her position is \$17.50 per hour. This is increased by a night shift bonus of \$1.50 per hour and a weekend rate that pays a \$3.00 per hour bonus. As she works night shifts and weekends the respondent's rate of compensation is either \$19.00 or \$20.50 per hour and she is able to work 32 hours per week. Her gross pay on this basis is approximately \$32,000 per year.

[28] The respondent opts for vacation pay in lieu of vacation time. She receives health benefits. An employer sponsored RRSP contribution or pension plan benefit is available to her at her option.

[29] The respondent has presented her Income Tax returns. Her reported employment income for 2012 was \$26,623. Spousal support payments totaled \$30,000 for a line 150 income total of \$56,623.

[30] The respondent's employment and spousal support income for 2011, as reflected on line 150, totalled \$50,130. I infer that her 2011 employment income was \$20,130.

[31] The respondent's employment and spousal income for 2010, as reflected on line 150, totalled \$38,691. I infer that her 2010 employment income was \$8,691.

[32] In addition to her house and car, the respondent has an RRSP that was valued on December 31, 2012 at \$64,184.65. She withdrew \$20,440 on January 31, 2013 to assist her in meeting her financial obligations, leaving \$44,184 in the account.

[33] The respondent has filed a Statement of Expenses which claims total monthly expenses of \$5,414.67 or almost \$65,000 per year. Against this she claims in her Statement of Income a before tax amount of \$2,000 per month. After

accounting for income tax deductions she declares a deficit of \$3,132.65 per month.

[34] Approximately \$475 per month is being paid on debts owed to Royal Bank Visa, a Royal Bank line of credit, and a Sears credit account.

[35] A further \$730 is being paid monthly for arrears of taxes owing. Ms. Soucy acknowledges that this was incurred by her under-remitting amounts that she knew would be payable. She explains this as being the result of not having enough money to meet all of her financial obligations.

[36] Ms. Soucy says that the cost of housing, including mortgage, heat, insurance, taxes, and home maintenance payments, amounts to \$1,951 per month.

[37] Motor vehicle expenses total \$673 per month. Health and medical insurance related expenses total \$150 per month. Discretionary spending as such as gifts, newspapers magazines, charitable donations and entertainment total \$250 per month. There is an amount allowed for maintenance of the family pet; and

typical charges related to telephone, postage and cable television services.

Amounts charged for food, toiletries, clothing and dry-cleaning are unremarkable.

[38] If this Statement of Expenses is to be accepted at face value then it suggests that the respondent is spending almost \$65,000 a year of after tax money while having a personal gross income of about \$32,000 a year. (Where there is disagreement between the respondent's Statement of Income and her in court testimony I prefer the latter and so accept that her annual income is \$32,000 not \$24,000 as the Statement of Income suggests). In fact, the respondent's expenses exceed the total amount she received in 2012 by way of income and support payments together. It is unsurprising that she is incurring increasing debt loads if this is accurate.

[39] The respondent concedes that she has been overspending relative to her means. A closer look at her lifestyle and expenses shows that it is within her means to be self-supporting.

[40] Ms. Soucy lives in a 4 bedroom house with two of her adult children. She has not required financial contributions from either of Kelsey or Sheldon. Her

expenses reflect the fact that she chooses to support them although there is no legal obligation upon either her or the applicant to do so. It is reasonable to seek their financial contribution since the respondent is incurring the costs of maintaining a house that far exceeds the needs of a single person, and is providing other necessities at her own expense. This could supplement the respondent's income and reduce her expenses.

[41] Ms. Soucy would like to keep her house. That choice comes at a high cost to her. The monthly payments for her consumer debt and income tax liability total \$1204.74. She pays a bi-weekly accelerated mortgage payment totalling \$711.00 per month. Mortgage insurance, paid by-weekly, costs \$40.58 per month and property taxes, also paid bi-weekly total \$219.53 per month. Therefore, her total cost per month for mortgage, mortgage insurance and property taxes is \$971.11. When combined with the consumer debt, these obligations cost \$2,176.00 per month.

[42] The house is assessed for \$218,900 and has an outstanding mortgage as at December 31, 2012 of \$45, 706.53. There is now less than 6 years remaining on the amortization period of the mortgage.

[43] There is approximately \$170,000 of equity in the house that is solely the property of the respondent. That equity could be used to retire all of her outstanding debts (which I estimate to be \$50,000) and still leave her with money, by either sale of the house or refinancing the mortgage to pay out the consumer and tax debts while enjoying the benefits of overall lower interest charges and using a longer amortization period.

[44] In summary, I find that the respondent has the financial ability to support herself, though it will require a reorganization of her finances. If she does this then she would no longer be dependent upon receipt of spousal support for her maintenance.

[45] This is but one factor that is to be considered in the overall analysis.

Condition, means and needs of the applicant

[46] Mr. Soucy is currently in receipt of Employment Insurance benefits in the amount of \$2,169.33 per month. His end of claim date is February 15, 2014. This

represents a significant reduction from the levels of income that he has enjoyed over a very long period of time. Most recently his line 150 income has been:

2012	\$170,356
2011	\$168,454
2010	\$184,242

[47] In addition, he holds an ownership interest in an enterprise called Haystacks Media. A review of the balance sheet shows that each of the last three years the accounts receivable, retained earnings and shareholder equity has increased. The last balance sheet available to me is dated January 31, 2012. It shows accounts receivable in the amount of \$348,875. Retained earnings were \$366,080. I do note, however, that profits had dropped in that year to \$19,418 from the previous year's total of \$162,388.

[48] On the face of it, the applicant has enjoyed a significant advantage over the respondent in his available funds for daily living expenses.

[49] Mr. Soucy's current expenses total \$4,084 per month, which are composed of:

Housing	\$1534
Transportation	\$ 315
Medical costs and life insurance	\$ 394
Consumer debt	\$1125
Food, Clothing, Sundries	\$ 680

The expenses are reasonable, but there is a deficit incurred while he is earning any amount less than \$49,000 per year after taxes.

[50] Mr. Soucy has equity in his house of approximately \$67,000; vehicles valued at \$37,500 and RRSP investments valued at \$241,720. He has no pension plan. His debts, other than the mortgage total \$57,657.

[51] Mr. Soucy's common law partner had an income of \$129,339 in 2012. (Line 150) I do not have particulars of her income, expenses, assets, or liabilities.

[52] Mr. Soucy provided affidavit and in person evidence at the hearing of this application in which he reviewed his very favorable income earning capacity over

the years and how he finds himself now out of work and on EI support. In short, he held a very senior management position in a food industry company until he was terminated in July 2011. He was provided with a reduced support position in the company that ended on December 31, 2012. He advised the respondent of the impending loss of employment.

[53] He started up Hurley's Restaurant Ltd. in July of 2011 in hopes of creating a profitable business that would be a source of long term income. The business failed and closed on December 31, 2012. There are debts associated with the operating losses.

[54] Haystack Media Productions Ltd. provides marketing services to Mr. Soucy's former employer. The respondent's common law spouse is one of four employees of the company. The contract with the former employer provides 95% of the revenue for the company. The respondent is a 1/3 shareholder. No wages are paid to the shareholders, although he received his first dividend from the company in August 2012 in the amount of \$35,600 which he deposited to his RRSP. Mr. Soucy is concerned about the company's long term survival because of its dependence on a single customer for most of its business.

[55] In cross examination he testified that he has looked for employment but there is a very limited market for his skills in Atlantic Canada. If he leaves to take employment outside of this area, then his common law spouse would have to give up her job and his position as a shareholder with Haystack would possibly be put in jeopardy.

Entitlement: Compensatory

[56] A review of the circumstances of these parties as evidenced in the past decisions of this court, as well as the further evidence tendered on this application demonstrates that there was a clear basis for entitlement on a compensatory basis during the period up to the time that the last child, Sheldon, became independent in 2012.

[57] In the 2004 application to vary hearing, the children were still seen as being in the day-to-day care of their mother who had to be available to them. The respondent had been working part time over the previous years to be available for

the children and so Justice McDougall viewed her ability to earn an income as limited.

[58] Ms. Soucy worked at part time employment so that she could provide better care for the children. While raising the children and working she was unable to pursue educational or work training programs that could provide her with greater economic independence.

[59] Having said that, the restrictions upon the respondent created by caring for the children diminished quickly after that 2004 court order. Within a few months, Tara was out of school and on her own. Kelsey finished high school in 2005 and by 2007 was living independently of her mother. Sheldon has continued to be at home with his mother. He finished high school in 2009 then went on to college and ultimately began working in 2012.

[60] The respondent worked from 2000 to 2009 as a housekeeper and school monitor. She successfully undertook retraining after her son graduated from high school and has gainful employment which should provide her with economic self-sufficiency, providing she takes the necessary steps to reorganize her

finances. I note that she earns less now as a full time worker than she did in 2004 when working part-time.

[61] Throughout these years the applicant has paid a substantial amount of spousal support as well as child support, sometimes for periods in excess of what the law may have required of him. Any outstanding financial problems that the respondent has now do not, in my view, stem from the marriage breakdown, but from the delay in coming to grips with the need to reorganize her financial affairs as the family circumstances changed.

[62] The evidence, in my opinion, no longer supports entitlement on a compensatory basis.

Entitlement: Non compensatory

[63] Historically, there has been a significant difference in the income levels of these two parties. Mr. Soucy has enjoyed six figure incomes and Ms. Soucy, while raising three children has had reasonable income levels attained by the

combination of support payments and employment income, but her gross income has been typically less than half of Mr. Soucy's gross income.

[64] I am cognizant of the fact that the difference in after tax income of each party would have been narrowed by the effect of the support payments. Those payments have been made for 14 years after a marriage of 16 years. Ms. Soucy draws attention to the fact that the parties lived in a common law relationship for 5 years before marriage. The evidence is, however, that for those 5 years and for the first 3 years of marriage, until the birth of their first child, the parties were both gainfully employed, and so the degree to which there was a financial dependency created during the marriage would have occurred in the period 1985 to 1998.

[65] I have concluded that the evidence does not support entitlement on a non-compensatory basis. It is time for the parties to move on with their lives, independently of each other. Both will face challenges as they try to get their financial houses in order by the time of their retirement. Each has a solid financial basis to work from though admittedly Mr. Soucy is likely to recover and enjoy a few lucrative earning years before he retires.

Conclusion

[66] The issue of termination of child support was resolved by oral decision at the hearing of this matter.

[67] On the second issue, I find that the respondent is no longer entitled to spousal support. If I am wrong in this conclusion, I conclude that the applicant has no ability to pay spousal support at this time.

[68] The order directing the applicant to pay the respondent spousal support is varied by terminating the order effective December 31, 2012. I direct counsel for the applicant to prepare the Order.

[69] If the parties are unable to agree as to costs I will hear them upon request.

J.

