

**SUPREME COURT OF NOVA SCOTIA**  
**Citation:** Marcus v. Marcus, 2004 NSSC 203

**Date:** 20040928  
**Docket:** S.K. 1209-000955  
**Registry:** Kentville

**Between:**

Mary Marcus

Petitioner

vs.

Philip Marcus

Respondent

---

**LIBRARY HEADING**

---

**Judge:** The Honourable Justice Walter R. E. Goodfellow

**Heard:** September 27 and 28, 2004, in Kentville, N. S.

**Written Decision:** October 12, 2004

**Subject:** DIVORCE-JOINT CUSTODY-DISPOSAL COSTS ON MATRIMONIAL HOME

**Summary:** Parties blessed with three daughters, 15, 10 and 7. Separated July 10, 2003 after approximately 12 years cohabitation. Mother followed father as he was transferred several times in his military career. Mother now 31 was R.N. at time of marriage, needs retraining program to return to profession. Mother dominant care-giver during cohabitation and although joint interim custody, childrens' primary residence with her in matrimonial home with liberal access. Father sought shared custody, etc.

**Issues and Results:** (1) Spousal support - *Bray-Long v. Long* (2000), 181 N.S.R. (2d) 327 analysis clear entitlement. Both lump sum and periodic awarded to permit mother to reinstate R.N. status. Termination date after 15 month period for reestablishment course and three months grace period for reintroduction into work force. Termination date subject to statutory entitlement to apply to vary under s.17 of the *Divorce Act* and specifically, s.17(10).

(2) Joint Custody - Lack of communication and conduct by father such

as inundating oldest child and mother with e-mails and voice mail pleading for reconciliation, etc. within environment that provided almost no opportunity for communication as parents. Still merit in continuing a joint custody declaration provided defined and so defined as in *Loughran v. Loughran* (2000), 182 N.S.R. (2d) 143 at p. 147. The consultation process required by *Loughran* **suspended** until December 31, 2004 in the hope that it would permit the emotions to settle. Rigid schedule of liberal access defined, although consultation process suspended, mother still required throughout to provide reports from school, etc. in timely fashion.

(3) Matrimonial Home - Mr. Marcus wanted to retain the matrimonial home and have possession of it. Such a course would be destructive of the family unit and divide the family, etc. Mother to have matrimonial home and pay equalization payment to Mr. Marcus, subject to a number of adjustments. Essential that the court recognize that in almost every situation, there is an inevitability of a real estate commission and legal fees and not only would an injustice result to the parties if the court fails to recognize this, it would be disruptive of the generally accepted practice in family law bar. *Robski v. Robski* (1998). 166 N.S.R. (2d) 161.

(4) Child Support - Mother utilized funds from joint bank account from date of separation July 10, 2003, until order for child and spousal support September 1, 2003. Mr. Marcus sought return of these funds. Concluded appropriate for Mrs. Marcus to have utilized a reasonable amount of these funds during this period. *Farnell v. Farnell* (2003, 209 N.S.R. (2d) 361 at p. 370:

The obligation to support one's child arises from being a parent and not from a demand or court order enforcing the pre-existing obligation.

(5) Costs - Mr. Marcus's approach for shared custody, etc. unrealistic and impacted on inability of the matter to be resolved. Mrs. Marcus to have contribution to her costs set in the amount of \$4,500.00 to be credited to Mrs. Marcus' equalization payment.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.***

***QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.***