SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Evans v. Spicer*, 2014 NSSC 95

Date: 2014-02-25
Docket: No. 1201-062380
Registry: Halifax

Between:

Penelope Louise Evans

Applicant

V.

William Wylie Spicer

Respondent

Judge: The Honourable Justice Carole A. Beaton

Date of Hearing: February 17, 2014, in Halifax, Nova Scotia

Written Decision: March 19, 2014

Counsel: Kim Johnson for the Applicant
Bianca Krueger for the Respondent

[3]

By the Court:

DECISION:

Background

[1] The Applicant, Ms. Evans filed a Notice on May 22, 2013 seeking a review of spousal support effective June, 2013, and costs. The Applicant seeks an increase in spousal support from the current payment of $2,000.00 per month to $3,500.00 per month, to bring the payment in line with the Spousal Support Advisory Guidelines ("SSAG"). She seeks support on an indefinite basis. The Applicant's request for the review coincides with a clause in the 2009 Consent Corollary Relief Judgement (hereinafter referred to as the "CRJ") which provided for a gradual reduction of the support payment to its present level ($2,000.00 per month effective June 1, 2013).

[2] The Respondent, Mr. Spicer opposes any increase in spousal support and the application of the SSAG; he seeks to continue paying support as per the current order and asks that support terminate when the Applicant reaches age 65 (in approximately four years). The Respondent is also prepared to pay for medical coverage for the Applicant, which the Applicant reports would cost $216.52 per month but would not cover the cost of her pre-existing conditions.

[3] There is no dispute between the parties as to the following facts :

(i) The parties were in a mid-life marriage for 10.5 years and divorced on July 16, 2009. There were no children of the marriage. The Applicant, a self-employed dancer/choreographer prior to, during and after the divorce is now 61 years old and the Respondent, a lawyer prior to, during and after the marriage is now 64 years old.

(ii) The parties' respective versions of their roles in or the characterization of the marriage were matters never adjudicated upon at the time of the divorce because the parties reached a settlement and proceeded to an uncontested divorce.

(iii) In order to effect their 2009 settlement the Respondent liquidated certain assets which were used to assist in paying down matrimonial debt, and there was an equal division of assets and debts, which resulted in a transfer of $140,000.00 to the Applicant taken in the form of RRSPs and retention of the former matrimonial home by the Respondent.

(iv) In mid-2012 the Respondent relocated out of province to accept unanticipated new employment, earning more than double his former salary in the first year and a somewhat reduced amount since that time. As a result of the Respondent's new employment, the Applicant, who has "significant" health problems, lost medical insurance coverage available through the Respondent's previous employment, as provided for in the CRJ.

(v) When the CRJ was ordered, the Respondent, who for five years preceding the divorce had earned a minimum of $239,500.00 per year (Exhibit 10) was then earning $160,000.00 per year. Over the course of the marriage the Applicant reduced her work hours. During the parties' marriage the Applicant's income was considerably less than that of the Respondent.

(vi) Since divorce, the Applicant has incurred some debt and has drawn upon the RRSP's she acquired in the settlement, reducing the current balance of that asset to approximately $90,000.00. She resides with her sister and shares expenses.

(vii) Since divorce the Respondent has incurred considerable additional debt. He has remarried and resides with his wife and her child.

[4] Section 15.2 of the *Divorce Act*, R.S.C. 1985, c. 3 provides the factors and objectives to be considered by the Court in assessing and determining spousal support:

> (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
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> (*a*) the length of time the spouses cohabited;

> (*b*) the functions performed by each spouse during cohabitation; and
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> (*c*) any order, agreement or arrangement relating to support of either spouse.
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> …
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> (6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should
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> (*a*) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
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> (*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;
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> (*c*) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
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> (*d*) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[5] Although the matter was initially framed as a variation application pursuant to section 17 of the *Divorce Act*, as correctly asserted by the parties in the pre-hearing briefs and in closing argument, reviews are contemplated pursuant to section 15.2 of the *Divorce Act*, R.S.C. 1985, c.3. Authority to make a review order is found in 15.2(3):

> Terms and conditions
>
> (3) The court may make an order under subsection (1) or an interim order under subsection (2) for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order as it thinks fit and just.

[6] The parties' July 2009 CRJ provided for both a gradual reduction in spousal support and the prospect of a review hearing such as this one:

> 2. Commencing June 25, 2009 and monthly thereafter on the 25th day of each month the Respondent shall pay spousal support to the Petitioner as follows:
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> [a] The Respondent shall maintain the MC insurance for the Petitioner's benefit, and all costs of the same as set out below and paid by the Respondent shall be tax deductible third party maintenance payments paid for the Petitioner's maintenance, pursuant to Sections 56,

56.1, 60 and 60.1 of the **Income Tax Act** (or any amendments thereto).

[b] From June 25, 2009 to and including November 25, 2011, the Respondent shall pay support totalling $3500 per month. The Respondent shall pay the MC insurance cost and pay the balance of support after that cost directly to the Petitioner.

[c] From December 25, 2011 to May 25, 2013, the Respondent shall pay support totally $2750 per month. The Respondent shall pay the MC insurance cost and pay the balance of the support after that cost directly to the Petitioner.

[d] From June 25, 2013, the Respondent shall pay support totalling $2000 per month. The Respondent shall pay the MC insurance cost, deduct ½ of the MC insurance cost from spousal support, and pay the balance of the support directly to the Petitioner.

3. The support herein may be reviewed at the request of either party upon the first of the following events to occur:

[a] The Respondent's income is $125,000 or less annually, or he is forced to retire by McInnis Cooper; or he is forced to retire due to ill health, or if he becomes disabled.

[b] The Petitioner has cohabitated or remarried and that cohabitation or marriage has continued for a period of two years, in which event the Petitioner will provide the Respondent with financial information with respect to her new household that is sufficient to allow the Respondent to assess whether he wishes to review her support.

[c] At any time on or after June 25, 2013, whether or not there has been a change in circumstances of either party, which may include a request for termination by the Respondent.

[7] Both parties agree the purpose of a review of spousal support is as enunciated in *Schmidt v. Schmidt* 1999 BCCA 701:

> 9. …They are considered particularly useful in circumstances where there is some doubt as to whether spousal maintenance should be continued and, if so, in what amount. Rather than force the parties to go through a variation proceeding with its strict threshold test of change in circumstances, the court provides that maintenance shall be reviewed.
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> …
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> 11. I should note that a review order is not to be confused with an order for limited time maintenance or an order for the payment of maintenance until the happening of a specific event. The following passage from Payne on Divorce (4th ed.; 1996) at p. 326 clarifies that distinction as follows:
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> > "Where an order for periodic spousal support is declared subject to review after one year, the word "review" does not imply termination of the order. A change of circumstances need not be proved where the original order provided for a review after a fixed time. In such a case, any necessary modification is triggered by the direction of the court, not by a change of circumstances. An order for spousal support that is declared "reviewable" after a designated period of time is not an order "for support for a definite period or until the happening of a specified event" such as triggers the severe restrictions on variation that are imposed by section 17(1) of the Divorce Act [or under the Family Relations Act]. A spousal support order that was declared subject to review may be continued where the obligee has not achieved self-sufficiency but is striving to do so and in other circumstances." (emphasis added)

[8] In *L. (R.) v. L. (N.)*, 2012 NBQB 123, Walsh, J., after determining that the wording of the review clauses then before the Court limited the analysis to the question under s. 15.2 (6) (d) of the *Act* (supra) (the economic self-sufficiency of each spouse) discussed the role of the reviewing court:

> [12] … it is important to stress that I am bound by the findings the learned justice explicitly or implicitly made, subject to any evidence of events subsequent as they might pertain to the issue. It is not the Court's role on review to sit on some form of appeal or to decide spousal support de novo (See recently *: Westergard v. Buttress*, 2012 BCCA 38). (emphasis added).

[9] In my view it would be improper to ignore what these parties already agreed to in their settlement, even in a review situation. The Applicant urged the Court to "start fresh" in considering quantum. Any further support award should not be borne out of a wholesale fresh inquiry, which might ignore what these parties have already committed to in structuring the support payments. While this review might determine that a different amount of spousal support, upwards or downwards from the current payment is appropriate, in reaching any conclusion it is necessary to consider the parties' settlement and their circumstances since that time, while having regard to s. 15.2 (4) and (6) of the *Act* (supra).

[10] These parties contemplated in their CRJ that there were uncertainties about their respective financial futures that might necessitate future consideration. The CRJ identifies in paragraph 3(a) to (c) inclusive, as set out above, the events that could trigger a review. The first relates to the potential for income reduction by the Respondent (his means). The second goes to the potential for re-partnering or re-marriage by the Applicant (her needs). The third goes to timing: any time after June 25, 2013, which is this case, or if the Respondent sought a termination. Clause 3(c), worded as broadly as it is, recognized the possibility either party would want a review after a certain length of time, or that the Respondent might wish to bring the question of self-sufficiency under scrutiny.

[11] The lack of specifics as to the intention of the parties in inserting clause 3(c) in their settlement should not allow a party to re-litigate this case (*Leskun v. Leskun* [2006] 1 S.C.R. 920; *L.E.S. v. M.J.S.*, 2014 NSSC 34). It is reasonable for this Court, sitting in review, to start from the assumption that the settlement properly took into account the relevant provisions of section 15.2 of the *Act* (supra) under all of the circumstances of the parties as they then existed, and that the CRJ as approved was appropriate and sufficiently considered their circumstances.

Issues

[12] The questions to be answered are:

1. What if any, is the appropriate amount of support payable by the Respondent to the Applicant going forward, and if support is payable, should the SSAG calculation be applied?
2. What, if any, is the appropriate termination date for payment of spousal support?

Issue No. 1 – What, if any, support should be paid and should the SSAG calculation be applied?

The Parties' Financial Circumstances

[13] The Applicant filed copies of income tax information reporting previous years income as follows:

(a) 2012 - $53,495.61
(b) 2011 - $69,965.00
(c) 2010 - $37,060.00

[14] I am satisfied on the evidence before me that the Applicant's present total annual earnings of $28,788.00 ($2,399 per month) consists of:

(a) Employment income of $708.22 per month
(b) CPP benefits of $290.78 per month
(c) Investment income of $1,400.00 per month

[15] I note the figures provided in Exhibit 3 (Statement of Income) did not include the spousal support of $2,000.00 per month ($24,000.00 per year) presently being paid to the Applicant pursuant to the CRJ. Therefore, the monies available to the Applicant from all sources is currently $52,788.00 per year.

[16] The Applicant's sworn Statement of Expenses dated May 21, 2013 (Exhibit 4) reported a deficit of $5,144.00 per month. The Applicant was not cross examined on the Statement and while certain items therein might, on their face, seem unrealistic given she is clearly not in a position to afford them (e.g. "miscellaneous" expenses of $200.00 per month; "savings" of $500.00 per month; "entertainment" of $500.00 per month; "holidays" of $200.00 per month). The deficit can also be further discounted by the $2,000.00 per month in spousal support received by the Applicant. Nevertheless, the Applicant would appear to be in a monthly deficit position, which I calculate to be in the range of approximately $1,750.00.

[17] The Respondent filed copies of income tax information reporting previous years income as follows:

(a) 2012 - $309,486.02
(b) 2011 - $166.843.00
(c) 2010 - $105,762.00

[18] I am satisfied on the evidence before me that the Respondent's present annual income of $318,356.28 per year ($26,529.00 per months) consists of:

(a) Employment income of $25,000.00 per month;
(b) Pension income of $729.69 per month;
(c) Rental income of $800.00 per month

[19] The Respondent reported there is a "possibility" he might be eligible for a 2014 bonus, which would only be decided at the end of the year and if due, payable in early 2015. It is clear from the Respondent's evidence that his employment is tenuous to the extent it is on a year-to-year basis.

[20] The Respondent filed a sworn Statement of Expenses dated February 4, 2014 (Exhibit 6) identifying total expenses of $30,716.97 per month, resulting in a deficit of $4,187.97 per month. Those expenses include $250.00 for home repairs each month although the last time repairs were made was 2013. On re-direct the Respondent indicated the amount for repairs was a budgeted amount. The Respondent also emphasised during cross-examination that his current budget does not "permit" any provision for holidays or entertainment. It was not clear from the evidence what if any portion of the expenses were being contributed to or offset by his wife who recently secured employment in January, 2014 earning an annual income of $82,000.00.

[21] One may safely understand from the Respondent's answers during cross examination that the enumerated expenses shown in his Statement of Income were family expenses (e.g. rent of $3100.00 per month) as opposed to his individual expenses. Cross examination and re-direct examination established the Respondent had mistakenly recorded his annual instead of monthly expenses for CPP and EI deductions, although the proper mathematical correction would serve only to reduce the monthly deficit. I add to that the caveat that the corrected deficit figure still would not appear to account for the wife's income stream.

[22] The total monthly income available to the household must be adjusted to include the wife's income in order to properly compare it to the total monthly expenses identified by the Respondent. Adding the wife's income ($6,833.00 per month) increases the Respondent's household income to $32,362.00 per month, which effectively puts his household in a surplus position of approximately $1,645.03 per month.

[23] The pre-trial brief provided by the Applicant commented that the post-divorce debt incurred by the Respondent may suggest, in light of the amount of debt being serviced, that there is "no reason why there should not be thousands of dollars in savings somewhere". The whole of the evidence before me does not support such a suggestion, much less any conclusion, that the Respondent has either hidden or failed to disclose income. Instead, it assists in understanding, as acknowledged by the Respondent, that he has been a rather poor financial manager.

[24] The Respondent testified he rents the family home in which he currently resides and also bears the costs associated with an encumbered home he owns in Nova Scotia (representing the Respondent's equal share of the assets in the divorce) which has periodically been listed for sale several times since February, 2012 and which, to date, has not sold. In January 2014 the Respondent began renting the house for $800.00 per month including utilities, which he reported is far below market value but necessary in order to have the home occupied during winter months.

[25] The Applicant asserted that owing to the Respondent's evidence regarding his failure to lease his Nova Scotia home for an amount concurrent with market values, income should be imputed to the Respondent for his "failure to generate a reasonable amount of income from this asset, or the expenses disregarded in determining Mr. Spicer's ability to pay support". There was no evidence provided to the court, expert or otherwise, to conflict with or challenge, much less impeach, the Respondent's evidence concerning his inability to rent that property for more than is presently the case. There was no evidence as to what might be a more accurate market rent or constitute "a reasonable amount of income". While it is clear some of the expenses for the Nova Scotia home are only projections, I have considered that as referenced earlier above. Therefore, I decline to impute any such income to the Respondent.

[26] The Applicant argued the standard of living the Respondent is able to achieve at his present income level matches his income level in the later years of the marriage (2004-2008, per Exhibit 10) and therefore his reduced income as reflected in the Consent CRJ should be seen as merely an anomaly. With respect, I cannot agree. There is no basis upon which to reject the Respondent's evidence that his income reduction in the year of the divorce was his then reality, with no intention or prospect of an increased income on the horizon at that time. I accept the Respondent's evidence that the opportunity to accept new employment was unexpected when it presented itself in mid-2012. His after-acquired higher income, because it is new, did not disadvantage the Applicant when their settlement was reached. Clause 3 (as above) clearly did not consider the possibility the Respondent might earn more, but now that he does, it does not, in and of itself, justify an automatic increase in the quantum of spousal support. As noted above, *all* of the parties' respective circumstances should be considered

[27] The Respondent argued he should not be responsible for "the consequences of the way in which the Applicant has mismanaged both the support payments and the RRSP funds provided to her by the order". There was no evidence of any such mismanagement before me; indeed during cross-examination the Respondent agreed he was unable to comment on the Applicant's circumstances.

Argument

[28] The Applicant testified she is unable to save for the future, nor is she able to earn sufficient income from her current employment. Although the evidence as to her specific efforts at increasing her employment post-divorce was somewhat vague, she reported trying to earn additional income selling cosmetics, but could not afford the inventory, and she has "looked into" working retail but does not "anticipate much interest from employers" given her age and health. The implication is that she has not actually tested that job market, but has made assumptions about it. I note this evidence was not challenged during cross examination.

[29] The Applicant's evidence was that at the time of settlement the Respondent reported he planned to retire at age 65, and she was uncertain he would actually do so, and therefore agreed to the adjusted support with a review when the parties' financial circumstances would be better known. The Respondent strongly disputed

that at the time of the settlement he identified any intention to retire at age 65 or to earn more income with another employer. His evidence was that the adjusted support provisions were designed to avoid him having to provide support to the Applicant "for life". The parties conflicting versions (and neither was cross-examined on them) could possibly have more to do with their respective perception of their positions in hindsight, some 4.5 years after their agreement was reached. Regardless of their motivations at that time, as discussed earlier, this review has as its starting point a broadly worded review clause, predicated on an assumption the agreement was sufficient to address the parties' circumstances at the time it was made.

[30] The Applicant testified that during the marriage she "dedicated increasing amounts of time" to "taking care of the Respondent" and to "…the design and improvement of the home, organizing the house, groceries, cooking, entertaining clients, gardening, doing laundry, household shopping, etc." (per Exhibit 1). By contrast, the evidence of the Respondent was that the parties employed people to provide services such as gardening and housekeeping and that few meals were consumed at home given the Applicant's work kept her out during weeknights. On cross examination the Applicant agreed but clarified that it was she who oversaw and organized the home and the personnel employed to assist with it. In the end the parties' versions were not that different. I can be satisfied this was a mid-life marriage of more than short term but less than medium-term duration. While not, strictly speaking, non-traditional as the concept of each party "paying their own way" has been applied to that notion in many cases, it was definitely not a traditional marriage.

[31] In his evidence the Respondent acknowledged he has mismanaged his own finances post-divorce. While his current income stream puts him in a "better position" to cope with the consequences of post-divorce debt than the Applicant, he argued he is not in a "better position to pay debt" and at present he sees himself in a "pretty hopeless situation". The Respondent, having apparently reached the limit of his debt load, does not require that his obligation to the Applicant as a result of the economic consequences to her of the marriage breakdown now take less priority. Indeed, the Respondent is not arguing that it should, as he is prepared to continue support at the present rate, albeit for a limited time.

[32] The Applicant also submitted that the choices the Respondent's current family has made cannot be at her expense, and so the spousal support payment

should not reflect the Respondent's post-divorce financial difficulties. In circumstances where both parties have incurred post-divorce debt, it would seem the Respondent is not asking the Applicant do so, as he proposes to continue the support payments at the current amount (but terminating when the she turns 65). The Respondent is not proposing the Applicant receive less than the current rate of support, or no support.

[33] I conclude that the Applicant is not able, at this time, to overcome the consequences of the divorce to the extent that she has been unable to achieve full independence and self-sufficiency. She is clearly reliant on the current support arrangement to assist in meeting her needs. It is reasonable to expect that permitting the contribution to the cost of health insurance and the continuation of spousal support at its current rate, as the Respondent suggests, will provide assistance to the Applicant as she continues to transition from any impact the marriage breakdown has had on her standard of living.

[34] I see no basis upon which to justify now applying the *discretionary* SSAG calculations (*Smith v. Smith*, 2011 NBCA 66) when the parties did not, for whatever reason, apply that tool in their settlement calculations as to the appropriate quantum of support. The CRJ was obviously approved by the Court without the application of SSAG. In my view, the Applicant should not now be entitled to achieve a higher amount of support simply on the basis that by applying the SSAG she could achieve a higher quantum.

Issue No. 2- What, if any, is the appropriate termination date?

[35] The Applicant argued there are more pronounced consequences for her than the Respondent post-divorce because they had a higher standard of living during the marriage than she now enjoys and she cannot come close to realizing an income that would permit that same standard of living. The Applicant conceded that while she should not expect the very same standard of living she had, she is nonetheless entitled to indefinite support. I cannot agree as there is no evidence that any economic disadvantages to the Applicant as a result of the end of the marriage resulted from the Applicant having made sacrifices or assumed a pattern of labour and/or responsibilities that enhanced the income earning power of the Respondent while concurrently detracting from her income earning power. The

parties had the same respective careers prior to, during and after their marriage to one another. It is reasonable to assume (although not specifically stated in the CRJ) that the support scheme set out in the CRJ was the starting point to addressing the respective disparities in the parties' incomes at separation (Bracklow v. Bracklow, [1999] 1 S.C.R. 420), and provided for a gradual reduction over time to its present rate to contemplate the same.

[36] It is clear the Applicant continues to be in need of support, as she suffered a loss of lifestyle as a result of the end of the marriage, but that need must be balanced against the recognition that she has now been in receipt of support for almost five years after a 10.5 year mid-life marriage, which the Respondent proposes to see continued for another four years until the Applicant is 65. By then the Applicant will have received over eight years of support in recognition of the 10.5 year marriage, which should be sufficient to address her transition from her economic status pre-divorce to post-divorce. As stated by the Court in Fisher v. Fisher, 2008 ONCA 11:

> 53. Self-sufficiency, with its connotation of economic independence, is a relative concept. It is not achieved simply because a former spouse can meet basic expenses on a particular amount of income; rather, self-sufficiency relates to the ability to support a reasonable standard of living. It is to be assessed in relation to the economic partnership the parties enjoyed and could sustain during cohabitation, and that they can reasonably anticipate after separation. See *Linton v. Linton* (1990), 1 O.R. (3d) 1 (C.A.) at 27-28. Thus, a determination of self-sufficiency requires consideration of the parties' present and potential incomes, their standard of living during marriage, the efficacy of any suggested steps to increase a party's means, the parties' likely post-separation circumstances (including the impact of equalization of their property), the duration of their cohabitation and any other relevant factors.
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> 54. Self-sufficiency is often more attainable in short-term marriages, particularly ones without children, where the lower-income spouse has not become entrenched in a particular lifestyle, or compromised career aspirations. In such circumstances, the lower-income spouse is expected either to have the tools to become financially independent or to adjust his or her standard of living.
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> 55. In contrast, in most long-term marriages, particularly in traditional long-term ones, the parties' merger of economic lifestyles creates a joint standard of living that the lower-income spouse cannot hope to replicate,

> but upon which he or she has become dependent. In such circumstances, the spousal support analysis typically will not give priority to self-sufficiency because it is an objective that simply cannot be attained. See *Linton* at 27. (emphasis added)

[37] As noted above, these parties were married for 10.5 years, they entered and exited the marriage with the same respective careers, there were no children and no displacement of either's income earning power in that respect. The CRJ specifically contemplated in clause 3(c) the potential for the issue of termination to be raised at a future date. The Applicant's health challenges are recognized by the spousal support which was and continues to be provided. While the Applicant may have become more "entrenched" in her pre-divorce lifestyle than spouses in a short term marriage, I am satisfied the Respondent's request for a termination date is reasonable and appropriate taking into account section 15.2(4) and (6) of the *Act* (supra) and the parties' circumstances.

[38] It is reasonable that the Applicant's continued reliance on the Respondent to transition her lifestyle should not exceed, under the circumstances of this particular marriage, a time frame greater than the length of the marriage. It is in my view reasonable for the Respondent to seek the termination date he proposes, and to expect that the Applicant will have overcome the consequences of the end of the marriage, which did not displace her career but affected her lifestyle, by the time she is 65 years of age. The Applicant will have several years remaining in which to organize her affairs accordingly.

[39] The Respondent argues that the CRJ does not contemplate indefinite spousal support to the Applicant and he should be able to plan for his future with a view to retirement, which a fixed termination date would permit him to do. *In Rondeau v. Rondeau*, 2011 NSCA 5, the Nova Scotia Court of Appeal, on an application to vary, rejected planning for retirement as the justification for a reduction in support in the face of an increase in the payor's income since divorce. To be clear, in determining a fixed date for termination to be appropriate, I am not considering the Respondent's argument in this regard.

CONCLUSION:

[40] The Respondent shall continue to pay support in the amount of $2,220.00 per month on the 25th day of each month, representing a base amount of $2,000.00 per month and a contribution of $220.00 per month intended to represent a contribution to health insurance for the benefit of the Applicant. That calculation is made outside of the SSAG for the reasons set out herein.

[41] Spousal support shall continue at the present rate of $2,220.00 per month, unless otherwise varied in quantum, until and including a final payment on the 25th day of the month immediately following the Applicant's 65th birthday.

[42] Counsel for the Applicant shall prepare the Order giving effect to this decision, to be consented to as to form only by counsel for the Respondent.

[43] In the event the parties are unable to resolve as between them any question on the issue of costs, counsel may contact the Devonshire Scheduling Office no later than April 25, 2014 to request a one hour hearing on my docket. In preparation for the same, counsel for the Applicant shall file a written submission on costs due six days in advance of the hearing and counsel for the Respondent shall file a written submission on costs due three days in advance of the hearing.

Beaton, Carole A., J.

[2]