IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: C.A.J. v. R.G.J., 2005 NSSC 114

Date: 20050513
Docket: 1201-58492
SFHD-15353
Registry: Halifax

Between:

C. A. J.

Plaintiff

v.

R. G. J.

Respondent

Editorial Notice

Identifying information has been removed from this electronic version of the judgment.

Judge: The Honourable Justice Leslie J. Dellapinna

Heard: April 25, 26, 2005, in Halifax, Nova Scotia

Counsel: Vanessa L. Tynes, for the Petitioner
C. LouAnn Chiasson, for the Respondent

By the Court:

INTRODUCTION

[1] C. and R. J. were married on May [...], 1990. They have four children namely, C. L. J., born January [...], 1991, R. N. J., born May [...], 1992, L. G. H. J. born August [...], 1994 and J. E. J. born December [...], 1998.

[2] The parties separated in May 2002. Ms. J. and the children continued to live in what was then the matrimonial home. Mr. J. moved to an apartment.

[3] Ms. J. applied for relief pursuant to the *Maintenance and Custody Act* and as a result two interim consent orders were issued by the Court on September 10, 2002 and May 9, 2003. The effect of those orders was to grant to Ms. J. the "interim care and control" of the children with Mr. J. having reasonable access upon reasonable notice to Ms. J., Ms. J. received exclusive possession of the matrimonial home and Mr. J. was required to pay interim spousal support to Ms. J. of $2,200.00 per month. There was no provision in either order for child support.

[4] The parties attended a settlement conference in September 2004. According to Mr. J.'s affidavit evidence an agreement was reached on all of the corollary issues but no attempt was made during the course of these proceedings to ratify any agreement. Having heard the oral testimony of the parties I am not satisfied that an agreement was reached.

[5] In September 2004 Mr. J. attempted to unilaterally reduce the support payments relying on what he contended was an agreement reached during the settlement conference. The reduced sum was rejected by Ms. J. and also by the Director of Maintenance Enforcement who then proceeded to garnish Mr. J.'s income.

[6] Also in September, 2004 Ms. J. relocated with the children to [...]. She has a sister who lives in the same community. Since moving to [...] Ms. J. obtained employment. Ms. J. did not tell her husband that she and the children were moving to [...] but in previous discussions she did tell him that was what she wanted to do and

I am satisfied that her move did not come as a complete surprise to him. Mr. J. is not seeking the return of the children.

THE DIVORCE

[7] I find that there has been a permanent breakdown of the parties' marriage. The parties separated in May 2002 and have remained separate and apart. There is no possibility of a reconciliation. The divorce is granted.

ISSUES

[8] At issue in this proceeding are the following:

1. Should Ms. J. be granted custody of the children or should joint custody be granted to the parties with primary care remaining with Ms. J.?

2. What provision for access should be ordered?

3. The distribution of a number of assets and debts between the parties.

4. Child support.

5. Spousal support.

6. Costs.

CUSTODY AND ACCESS

[9] Ms. J. is seeking custody of the children. It is her position that the parties are unable to communicate and that Mr. J. cannot be trusted to make decisions that are in the children's best interests.

[10] According to Ms. J. her husband drinks excessively, was abusive in his treatment of her and was essentially an uninvolved parent.

[11] According to Mr. J., Ms. J. was, prior to their separation, a good mother. He agrees that she was primarily responsible for the care of the children while his role was as the family's chief breadwinner. He is employed as a crew chief for [...] and historically worked a considerable amount of overtime. When an aircraft needed repairs he and his crew could be called out at any time and often their work required them to be flown to Toronto or Boston or elsewhere in order to work on an aircraft. Mr. J. said that during his days off he was involved in the care of the children and he and the children have a close relationship. He attended parent-teacher meetings, school concerts and other activities relating to the children when his work schedule permitted.

[12] Mr. J. claimed that since the parties' separation Ms. J. has not been informing him of the children's activities and has told the children's school principal and teachers that he is not to have access to information concerning the children. As a result he has missed a number of parent-teacher meetings.

[13] It was also Mr. J.'s evidence that obtaining access to the children has been extremely difficult. He believes that his wife has been going out of her way to keep him from the children. Ms. J. on the other hand said that she has repeatedly asked her husband to give her an access schedule which would provide her and the children with a predictable arrangement and had he done so she would have tried to accommodate his requests.

[14] Mr. J. believes that if he is not granted joint custody Ms. J. will alienate him from the children. If granted joint custody he believes that he will at least have input into major decisions affecting the upbringing of the children and will have access to information relating to the children which Ms. J. might otherwise keep from him.

[15] There is considerable discord between the parties and both have allowed their acrimony to cloud their judgement. Ms. J. should not have moved from the jurisdiction without prior notice to her husband. Moving the children from the province as she did and without having previously agreed on Mr. J.'s access only added to her husband's suspicions. She was also unreasonable stringent in her demands for an access schedule. She seems to have disregarded the fact that access benefits the children and not just Mr. J.. She has also referred to her husband in derogatory terms in the presence of the children.

[16] Mr. J., on the other hand, has also acted inappropriately. He was verbally and emotionally abusive to Ms. J. and I accept that on at least one occasion he threatened suicide. His actions were designed to cause Ms. J. to fear not only for his safety but also for her own and the welfare of their children.

[17] Subsequent to the parties' separation Mr. J. could have tried harder to provide his wife with a long-range access schedule.

[18] Both parties were guilty of involving their children, and in particular their oldest child, in the divorce proceedings. Because one did it the other felt the best course of action was to do the same. Both should have insulated the children as much as possible from the divorce proceedings rather than make them a party to it.

[19] Subsection 16(8) of the *Divorce Act* provides that in making an order for custody the court "shall take into consideration only the best interests of the child of the marriage as determined by reference to the condition, means, needs and other circumstances of the child." I believe the interests of the parties' children would be best served by them having a healthy relationship with both of their parents and by having as much contact with both parties as is practical under the circumstances. It is my hope and expectation that with the conclusion of their divorce both of the parties will refrain from denigrating the other.

[20] Prior to the parties' separation Ms. J. proved herself to be a capable and loving mother to the children. Mr. J. acknowledges that. It would be in the children's best interests for them to remain in their mother's primary care. Mr. J. too has shown himself to be a good father to the children. While his primary role during the marriage may have been to provide financially for the family I accept that he was also involved in the care of the children.

[21] Unfortunately, since the parties separated, they have not been able to communicate constructively with each other. They lack the necessary degree of cooperation for a true joint custody arrangement to be viable. While I understand Mr. J.'s fears I do not believe merely labelling their parenting arrangement as "joint custody" will eliminate those fears or guarantee Ms. J.'s cooperation. What is required is a specified access arrangement with conditions.

[22] Custody of the children is therefore granted to Ms. J.. Mr. J. will have reasonable access to the children including access at the following times:

1. One week during the children's Christmas vacation from school each year. Beginning in the year 2005 and in every odd numbered year thereafter such access by Mr. J. shall include Christmas Eve and Christmas Day. Beginning in December 2006 and every even numbered year thereafter such access shall not include Christmas Eve or Christmas Day;

2. For the duration of the children's spring break (i.e. "March Break") each year;

3. Three weeks of block access during Mr. J.'s and the children's summer vacation which three weeks may be consecutive, and;

4. Such other times as the parties are able to agree to from time to time.

[23] The foregoing access times contemplate for the most part Mr. J. exercising access to the children in Nova Scotia. He may, if he chooses, exercise his access in [...] or in the province of [...] where his parents reside. Either party may take the children outside [...] and Nova Scotia for vacation purposes provided that if they do so they are first to notify the other party of their intention and supply the other, in writing, details of their date of departure, their date of expected return and where they will be and how they and the children may be contacted in the event of an emergency.

[24] Mr. J. is entitled to five weeks vacation each year. It is assumed that he will take advantage of his vacation time when exercising his block access with the children during Christmas, March Break and the summer.

[25] Ms. J. will consult with Mr. J. on all major decisions affecting the children and in particular those that affect the children's education and health. The Corollary Relief Judgement will also include a provision that specifically states that Ms. J. will provide to Mr. J., as soon as she receives the information or documentation, copies of the children's school performance records, any medical reports relating to the children, the details of any forthcoming parent-teacher meetings, prior notice of appointments for the children with their physicians, dentists or other such professionals, prior notice of school functions such as concerts, fundraising events

and the like, as well as prior notice of recreational, sporting or other similar events involving the children. Mr. J. will also have the right to receive directly from the children's schools and physicians information relating to the children.

[26] Mr. J. will have the right to attend all meetings and other functions that parents are normally entitled to attend in relation to their children including parent-teacher meetings, medical and dental appointments relating to the children, school concerts, recreational and/or sporting events involving the children and other similar events.

[27] If Ms. J. should ever decide to relocate the residence of the children she will provide to Mr. J., in writing and at least sixty days in advance, notice of her intended move including details of where she intends to relocate the residence of the children.

[28] I will deal with the topic of access costs after I have addressed the issue of child support.

PROPERTY

[29] The following assets and debts remain to be divided between the parties:

1. The proceeds from the sale of the former matrimonial home which was sold in April 2004. The net sale proceeds, after the payout of the mortgage, real estate fees and other disbursements, came to $23,874.70. Out of those proceeds was paid a loan owned to the Royal Bank in the sum of $10,300.00, being the balance of a loan taken out to purchase a van. Mr. J. also authorized the release of seven hundred dollars ($700.00) to Ms. J. to compensate her for a missed support payment in September 2004. There now remains in trust $12,874.70. Both parties acknowledge this sum to be a matrimonial asset.

   Mr. J. agrees that Ms. J. was entitled to the support payment and either the trust fund should be replenished the original $700.00 before a division or Ms. J. should be compensated for her half of that $700.00 which she otherwise would have received had the support payment not been taken out of the sale proceeds.

There is a dispute over how the Royal Bank debt should be shared between the parties. Mr. J. argues that it was a matrimonial debt and therefore should be divided equally. Ms. J. seeks an unequal division of that debt such that Mr. J. would be responsible for two thirds of the debt and she would be responsible for one third. It is her position that an unequal division of that debt is justified for a number of reasons. Firstly, after separation Mr. J. had the use of the van the majority of the time. Secondly, after separation Mr. J. was involved in an accident which caused damage to the van which Ms. J. says reduced the value of the van. Thirdly, she said that after separation it was Mr. J.'s responsibility to keep the loan payments current but because he didn't the van was repossessed, sold at an auction at a price below its actual worth and out of the sale proceeds were paid various costs including costs of storage. Finally, she said that there had been an agreement between the parties to divide that debt unequally because of the aforementioned reasons.

2. At the time of separation Mr. J. had a Registered Retirement Savings Plan account having a balance as of $15,217.00 which the parties agree is a matrimonial asset. After separation Mr. J. attempted to continue contributing to that account but eventually it became impossible for him to manage his support payments to his wife, the various bill payments as well as his living expenses. He found it necessary to deregister the funds in the account and he applied the money to his various financial obligations. There is no money left in that account now. It is Mr. J.'s position that Ms. J. is entitled to one half of the value of that account as of the date of their separation after taking into account the actual income tax liability that he incurred as a result of deregistering the funds. According to his evidence he was taxed at the rate of approximately 45%. Ms. J.'s position is that she is entitled to one half of the gross value of that account as of the date of separation without any reduction for tax. On her behalf it was argued that had the account remained intact Ms. J. would have had the option of retaining her share of the account and, if and when she decided to deregister funds, to withdraw money in smaller amounts and at her tax bracket thus resulting in less being paid to income tax.

3. There were various items of furniture and other household effects on the date of separation. With just a few exceptions Ms. J. retained the majority of those items. Mr. J. estimated the value of the household contents kept by Ms. J. to be worth $6,000.00 and the value of the items that he took (a computer and monitor) $300.00. Neither party had the household contents appraised.

4. The parties agree that in addition to the Royal Bank debt referred to above, there are four other matrimonial debts. There is a Toronto Dominion consolidation loan having a balance outstanding at the present time of approximately $9,200.00. It is worth noting that in or about September 2004, after it was referred to collection, Mr. J. was able to negotiate with the collection agency a reduced payout of this debt. Had the debt been paid at that time it could have been retired for a total sum of $6,300.00. However, Ms. J. was not prepared to allow that debt to be paid from the house proceeds and Mr. J. had no other means of paying this debt. Therefore, the agreement for the reduced payout fell through and the collection agency is now insisting on the full balance of this loan, including interest. There is also a joint Visa account which the parties agree has an outstanding balance of approximately $2,000.00, a Sears account which has an outstanding balance of approximately $1,500.00 and a debt owing to the Atlantic Credit Union having a balance outstanding of $1,830.00.

[30] The responsibility for the various matrimonial debts, including the Royal Bank loan, should be shared equally by the parties. Once a debt is clarified as "matrimonial" there is a presumption in favour of an equal division. The onus is on the party seeking an unequal division to satisfy the court that an equal division would be unfair or unconscionable. Ms. J. has not met that burden. Although Mr. J. did damage the van after the separation the damages were repaired and paid for by the parties' car insurance company prior to its sale. There is no evidence that the van's sale price was reduced because it had once been damaged in an accident. Although the van was repossessed while in the possession of Mr. J., it would not be entirely fair to say that Mr. J. was solely responsible for the van's repossession. I am satisfied that with the money available to him and with two households to maintain it was not possible for him to keep all of the debt payments current. The costs that resulted from the van's repossession, including the storage costs, were therefore not entirely his fault.

[31] While it is true that Mr. J. had the use of the van the majority of the time after the parties separated, that factor is more than offset by the unreasonable position taken by Ms. J. in refusing to allow the Toronto Dominion loan to be paid from the house proceeds. Her position cost the parties an additional $2,900.00. The debt

could have been paid at the reduced amount negotiated by Mr. J. on the understanding that Ms. J. reserved the right to argue for an unequal division of that debt at trial.

[32] Finally, I am not satisfied that there was an agreement to divide the responsibility for this debt unequally.

[33] The debts that remain outstanding shall be retired, to the extent that it is possible, from the house sale proceeds. I direct that the Credit Union loan will be the last of the debts paid and, according to my calculations, there will be an unpaid balance of approximately $1,655.30 for which Mr. J. will be responsible. Ms. J. will receive credit for one half of the $700.00 that was taken from the proceeds to replace the missed support payment.

[34] The RRSP is a taxable asset and tax has to be taken into account in its valuation. I am however not prepared to discount the gross value of this asset by the actual tax incurred by Mr. J.. A more appropriate discount rate would be an estimate of the expected overall rate of tax payable by Mr. J. at retirement when RRSP savings are normally taken into income. In Ms. J.'s case, I estimate that her overall rate of tax at retirement will be approximately 30%. If it was likely that Ms. J. would have deregistered her RRSP's prior to retirement, I still believe 30% would be a reasonable discount rate to apply taking into account the modest levels of employment income earned by Ms. J. in the past, her current marginal tax bracket and how that would have been effected had RRSP income been added to her employment income. Therefore, the gross value of the RRSP will be discounted by 30% to account for income tax resulting in a next value of that asset of $10,651.90.

[35] The evidence regarding the value of the household contents was inadequate. Generally the court is not prepared to rely on a layman's opinion of the resale value of used furniture and appliances. It is not disputed however that Ms. J. did retain the majority of the household contents. She has not provided an accounting of those items or evidence of their value. The court bases its decisions on the best evidence that is available. Unfortunately, the only evidence available to the court is Mr. J.'s opinion. Ms. J. had the opportunity to provide rebuttal evidence on this issue but did not do so. That being the case, with reluctance, I am prepared to accept the values put forward by Mr. J..

[36] The division of the remaining assets and debts will therefore be as follows:

ASSET/DEBT	**MR. J.**	**MS. J.**
RRSP (net)	$10,651.90	
House contents	300.00	$ 6,000.00
Remaining portion of Credit Union debt	(1,655.30)*	
Subtotal	**$ 9,296.60**	**$ 6,000.00**
Equalization Payment	(1,648.30)	1,648.30
Total after equalization payment	**$ 7,648.30**	**$ 7,648.30**
Adjustment for $700.00 support payment	($350.00)	$ 350.00

* Remaining portion of Credit Union loan calculated as follows:

Net sale proceeds	$12,874.70
less: Toronto Dominion loan	9,200.00
Visa Account	2,000.00
Sears	1,500.00
Credit Union	1,830.00
Remaining Portion of Credit Union debt	**($ 1,655.30)**

[37] In summary, after the house proceeds have been applied to the various debts, Mr. J. will pay to Ms. J. the sum of $1,998.30 ($1,648.30 + $350.00) and he will be solely responsible for the remaining balance of the Credit Union loan.

[38] Ms. J. is also seeking reimbursement of one half of the mortgage installments that she paid from July 2002 until the matrimonial home was sold in April 2004. The mortgage installments were in the sum of $467.00 every two weeks. Between July 2002 and April 2004 she made 43 payments for a total of $20,081.00. She is seeking a refund from Mr. J. of one half of that amount, i.e. $10,040.50. She also seeks a further $2,200.00 representing $100.00 per month “for maintenance to the property

for the duration of the 22 months". No receipts were provided to indicate that she actually incurred a maintenance expense of $2,200.00 during that period of time.

[39] I am not prepared to grant Ms. J.'s request for a reimbursement of one half of the mortgage payments paid. During the period July 2002 to April 2004 Ms. J. and the children had exclusive use of the house. During that same time Mr. J. had to pay for his own accommodation. For several months the accommodation that Mr. J. occupied was substandard. Mr. J. was prepared to endure unsuitable living arrangements in order to minimize his rent and maximize the money available to maintain his wife and children and service their various debts. Mr. J. paid support to the Petitioner and, although the interim order did not specifically say so, it is reasonable to assume that Ms. J. was expected to pay the mortgage out of her support payment. The level of support paid by Mr. J. was reasonable under the circumstances. It represented approximately 45% of his gross income. Even though he owes arrears, Ms. J. was still able to save money earmarked as a down payment on a house.

[40] I also deny Ms. J.'s request for a further payment of $2,200.00 representing "maintenance to the property". Again there was no evidence of any maintenance costs incurred by Ms. J.. If there were, such costs would presumably have been taken into account in the setting of the interim support figure agreed to by the parties.

CHILD SUPPORT AND ACCESS COSTS

[41] Ms. J. seeks an order for spousal support and child support. When considering applications for both spousal and child support the court is to give priority to child support (see section 15.3(1) of *Divorce Act*).

[42] With respect to child support Ms. J. is seeking the table amount pursuant to the Child Support Guidelines based on her husband's employment income for the year 2004 as well as an equal sharing of the uninsured portion of their daughter C.'s orthodontic expenses. She also asks that Mr. J. maintain the children on his medical, dental and drug insurance plan through his employment. She also requested that the court include in its order a requirement that Mr. J. share, proportionate to the parties'

incomes, the cost of any future child care expense that Ms. J. might incur. Finally, she seeks a contribution of a further $400.00 per year, each August, to "help pay for the children's school supplies" for the following school year.

[43] Mr. J. is prepared to pay the table amount based on his previous year's income, to provide coverage for the children on his medical/dental plan through his employment and to pay one half of their daughter's orthodontic expenses.

[44] In 2004 Mr. J. earned $58,318.43. His employment has not changed this year but at the present time he is on short-term disability and thus is receiving a lower level of income. Nevertheless he is still prepared to pay the table amount based on his 2004 income. Schedule III of the Guidelines provides for certain adjustments where the payor spouse is an employee. Union dues is one such adjustment. In 2004 Mr. J. paid union dues of $738.40 leaving him with an income for child support purposes of $57,580.03. For the support of his four children he shall therefore pay the table amount sum of $1,208.00 per month commencing the 1st day of May, 2005 and continuing on the 1st day of each month thereafter until otherwise ordered.

[45] Mr. J. asked that the court give retroactive effect to the child support order such that it would take effect as of September, 2004. I am not prepared to give the order retroactive affect. The parties consented to an interim order (albeit under the *Maintenance and Custody Act*) in January, 2003 which set out the amount of support to be paid by Mr. J. to Ms. J. commencing August, 2002. When an order is made pursuant to section 15.1 (1) and/or 15.2 (1) of the *Divorce Act* it is open to the court to give that order a retroactive effect even though as a consequence the new order may have the effect of varying the terms of an interim order. I suggest, however, that is something that should be done only if after hearing all of the evidence the court concludes that the interim order resulted in a significant inequity that should be rectified. Interim orders are intended to last until the final disposition. Both parties should be able to rely on the interim order without fear of having to pay more support than was required or having to repay a portion of the support that they received on an interim basis. The court recognizes that interim orders are frequently based on incomplete and imperfect information. That is a consequence of the summary nature of interim applications. It is also in recognition of that fact that interim orders are not binding on the trial judge.

[46] I have not been satisfied that the interim order resulted in any significant inequity to either party or to the children and therefore my order, as it relates to the

table amount, is to have prospective effect only. Therefore, any arrears owed pursuant to the interim order shall be paid by Mr. J..

[47] The portion of C.'s orthodontic expense that is not reimbursed by insurance, is an expense contemplated by section 7(1)(c) of the guidelines and therefore ordinarily would be subject to proportionate sharing based on the parties' respective incomes. However both parties have agreed to share this expense equally. Ms. J. wants Mr. J. to pay the money to her so that she in turn can be sure that the full amount is paid to the orthodontist. Ms. J. would prefer to pay his one half share directly to the orthodontist so that he can claim his portion of the expense for tax purposes.

[48] Section 7(3) of the Child Support Guidelines provides that in determining the amount of an expense referred to in subsection (1), the court must take into account any income tax deductions or credits relating to the expense and it is the net expense that is shared by the parties.

[49] According to Ms. J.'s evidence the orthodontic expense, after insurance, was $2,700.00. Ms. J. was required to make a down payment of $300.00 and is now paying the balance at the rate of $100.00 per month over a twenty-four month period. At her level of income there is only a very modest tax saving. Assuming she claims $1,200.00 a year for this expense on her tax return her total tax saving will be approximately $110.00. It is the net amount of the expense that will be shared equally by the parties. Mr. J. is therefore ordered to pay to Ms. J. the sum of $45.42 per month representing his half share of the net after tax cost of C.'s orthodontic treatment calculated as follows: $1,200.00 - $110.00 = $1,090.00 ÷ 12 = $ 90.83 ÷ 2 = $ 45.415 rounded to $45.42. Ms. J. will be responsible for paying the orthodontist and she will be entitled to claim the full amount in calculating her income tax payable. Mr. J. shall also reimburse to Ms. J. 45.42% of the initial down payment of $300.00 (i.e. $136.26) and any monthly payments she has paid to date.

[50] There is no authority in the *Divorce Act* or the Child Support Guidelines for the $400.00 annual contribution to the children's school supply expense as requested by Ms. J. and therefore that request is denied.

[51] At the present time Ms. J. is not incurring any child care expense so there will be no provision in the Court's order requiring any such future expense to be shared by the parties. If Ms. J. incurs a child care expense in the future she may be entitled

to apply to vary the child support order based on a change in her circumstances. Whether the child care expense is to be shared and to what extent will depend on the circumstances of the parties at the time, including whether the expense is incurred as a result of Ms. J.'s employment, illness, disability or education/training for employment.

[52] Both parties shall provide coverage for the children on their respective medical/dental plans through their employment for so long as such coverage is possible under the terms of their plans or until this provision is varied by further court order.

[53] The Corollary Relief Judgement will contain the usual provision for the exchange of tax returns on an annual basis. Both parties will provide the other with a copy of their tax return including copies of all schedules and attachments as well as their Notice of Assessment for each taxation year no later than June 1st of the following year beginning with their tax returns for 2005 which are to be exchanged no later than June 1 of 2006.

[54] The child support shall be paid to Ms. J. through the offices of the Director of Maintenance Enforcement.

[55] There will be expenses in relation to Mr. J.'s access to the children. Those expenses may be significant particularly when access is exercised in Nova Scotia. The court can address access costs under section 10 of the Guidelines or alternatively as a term or condition of a custody order (see section 16 (6) of the *Divorce Act*) or a term or condition of a child support order (see section 15.1 (4)). In the circumstances of this case I believe the most equitable method would be to deal with the sharing of the access costs as a condition to Ms. J.'s custody order.

[56] Mr. J.'s employment entitles him to purchase airfare tickets for himself and the children at a price significantly less than is offered to the general public. However, Mr. J.'s ability to secure seats on any given flight is based on his seniority with his employer and the availability of seats on any given flight. The possibility of all four children being able to fly on the flight of their choice is not good and therefore it may necessitate the purchase of full price tickets. To fly the children from Nova Scotia to [...] may cost in the vicinity of $400.00 to $500.00, return, each. Whether Mr. J. flies the children to Nova Scotia or whether he flies to [...] to visit with the children

there, he is to make reasonable efforts to minimize the airfare costs incurred for the purpose of access. Any airfare costs that are incurred will be shared by the parties.

[57] Prior to any child support order, Mr. J.'s gross income is approximately $58,300.00 per year compared to Ms. J.'s $35,300.00 (including the Child Tax Benefit and the Goods and Services Tax Credit). After the payment of child support Mr. J.'s net annual disposable income will be approximately $23,647.00 whereas Ms. J.'s will be approximately $46,493.00. While her disposable income will be considerably higher than her husband's, out of that income she must support herself and the children the majority of the time. Nevertheless if Mr. J. has to incur the full price of the airline tickets, he could not afford to see the children more than once or twice a year. Whereas access is intended primarily for the benefit of the children Ms. J. shall, as a condition of the custody order, reimburse Mr. J. one half of all his airfare costs incurred for the purpose of exercising access to the children within thirty days of him presenting to her his proof of payment provided however that the maximum amount that Ms. J. will be required to repay to Mr. J., in any twelve month period (commencing June 1, 2005), shall not exceed $3,000.00.

[58] Mr. J. may choose to exercise access to the children in [...] rather than in Nova Scotia or [...]. Mr. J.'s parents live in [...]. Both of his parents are in ill health and may not be able to travel to see the children. Should he choose to exercise access in [...] it would be reasonable for Ms. J. to transport the children to [...] with Mr. J. meeting them there. If she does, then she too would be obliged to try to minimize her travel costs. Her costs would be offset against the costs incurred by Mr. J. with the difference divided equally between them.

SPOUSAL SUPPORT

[59] The authority for a spousal support order is found in section 15.2 of the *Divorce Act.* Subsection (4) states that 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.

[60] Subsection (6) lists four objectives of any spousal support order. They are:

(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.

[61] No one objective is more important than the other. All must be considered. As stated by Cromwell, J.A. in Fisher v. Fisher (2001), 190 N.S.R. (2d) 144 (C.A.) at para. 82:

> "The fundamental principles in spousal support cases are balance and fairness. All of the statutory objectives and factors must be considered. The goal is an order that is equitable having regard to all other relevant considerations. As was stated in Bracklow, *supra*, at [paragraph] 36:
>
> > "....There is no hard and fast rule. The judge must look at all the factors in light of the stipulated objectives of support, and exercise his or her discretion in a manner that equitably alleviates the adverse consequences of the marriage breakdown."

[62] According to the Supreme Court of Canada decision in Bracklow v. Bracklow (1999), 44 R.F.L. (4th) 1 there are three rationales for spousal support: compensatory support, non-compensatory support and contractual support. Counsel for Ms. J. argued that in this case spousal support should be awarded on compensatory

principles. In Larue v. Larue (2001), 195 N.S.R. (2d) 336 (S.C. Family Division) Campbell, J. stated the rationale for compensatory support is founded "on the theory that the role assumed in the marriage by the claimant spouse caused that spouse to incur an economic disadvantage which should be remedied by compensation in the form of support." (para. 49)

[63] There was little evidence offered in support of a claim for support based on compensatory principles. In her affidavit dated April 11, 2005 Ms. J. stated:

> "9. I have been employed full time at [...] since September 2004. As per my filed Statement of Guideline Income I earn approximately $2,118.00 per month at my job (gross). My updated Statement of Expenses filed with the Court shows my deficit in my income with the table amount child support (sic) included.
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> 10. I have always been a stay at home mother to our children. I did work part time babysitting neighborhood children in the matrimonial home, but the money earned was not enough to sustain the family. The money earned from the babysitting was merely a help to the family's financial well being. After the separation I was forced to sell the home due to the financial hardship that I was facing and I sold the matrimonial home in April 2004 with no help from the Respondent.
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> 12. Since I was raising the children full time in the home, I have been unable to attend school or train for a new career after the marriage breakdown or even during the marriage. My youngest child, J. did not begin school until September 2004 and I was unable to rely on the Respondent to care for the children if I had a part time or full time job outside the home.
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> 13. Because of my limited financial means and my limited education and training as a result of the role I had in our marriage, and the financial hardship that I have experienced as a result of our marriage breakdown, I am seeking $200.00 per month continued spousal support payments commencing May 1, 2005."

[64] Other than these assertions there is no evidence that the Petitioner ever wanted to return to school or train for a career and there is no evidence that her career prospects now are worse than they were prior to the marriage in 1990. It is not

something the court is prepared to assume. She refers to the financial hardship that she has experienced as a result of the marriage breakdown but overlooks Mr. J.'s financial hardship. Both parties have suffered economically as a result of the marriage breakdown. As a consequence of the child support order Ms. J. will be receiving approximately 66% of the family's total net disposable income. Mr. J.'s net disposable income, after child support, will be only $1,970.00 a month. Out of that he will have to pay his share of the access costs.

[65] When the child support is added to Ms. J.'s employment income, her total monthly income (including Child Tax Benefit and Goods and Services Tax Credit) exceeds her monthly expenses by over $350.00.

[66] Having considered the circumstances of the parties including their income, the care arrangements for the children, the child support paid by Mr. J. and all of the factors and objectives listed in section 15.2, I am not satisfied that Ms. J. has established an entitlement to spousal support and I have determined that a provision for spousal support over and above the child support that has already been ordered would not be appropriate.

COSTS

[67] If the parties are unable to agree I would be prepared to hear them on the issue of costs. I direct that counsel for the Petitioner prepare the necessary orders.

J.