

IN THE SUPREME COURT OF NOVA SCOTIA  
(FAMILY DIVISION)

**Citation:** Morris v. Morris, 2005 NSSC 117

**Date:** 20050516

**Docket:** 1201-058383

**Registry:** Halifax

**Between:**

Jeffrey Hart Morris

Petitioner

v.

Deborah Ann Morris

Respondent

**Judge:**

The Honourable Justice Moira C. Legere-Sers

**Heard:**

April 14, 2005, in Halifax, Nova Scotia

**Counsel:**

Terrance G. Sheppard, for the Petitioner  
Deborah Ann Morris, self-represented

**By the Court:**

[1] The parties were married on September 28, 1986 and separated on September 8, 2000. This is a 14-year marriage.

[2] The Petition for Divorce was issued February 3, 2004. The Answer and Counter-Petition was dated February 27, 2004. The Respondent had the benefit of senior counsel when filing the Answer.

[3] There are two children of this union, Benjamin Patrick, born October 7, 1988 and Julianne Renee, born May 13, 1990. Both children reside with their mother in Halifax. The Respondent resides in Toronto.

[4] The Petitioner was born on September 6, 1958. He was 28 at the date of marriage, 42 at the date of separation. He practiced law in Nova Scotia and operated a family business. He is currently a non practicing lawyer and practicing mediator in Ontario. He travels to Nova Scotia frequently to visit his children and to work in his family business.

[5] The Respondent wife, born January 14, 1953, was 33 when married and 47 at separation. The most thorough account of the Respondent's educational and employment history is contained in paragraph 4 of the Petitioner's affidavit. It was *largely* uncontested.

[6] I am satisfied that there is no possibility of reconciliation. The jurisdictional elements of the Divorce have been proven. The Divorce shall be granted on the basis of one year separation.

[7] The parties wish to continue a joint custody arrangement with primary care of the children with the mother in Nova Scotia. The parties have agreed to work out reasonable access at reasonable times upon reasonable notice to maximize the contact between the parents and children.

[8] The Respondent has agreed to be responsible for the costs of access transportation.

***The Unrepresented Respondent***

[9] The Respondent was unrepresented at the final Divorce proceeding. The Court first reviewed with the parties and counsel and subsequently required evidence on a critical preliminary issue: whether the Respondent suffered prejudice by proceeding without counsel when her husband, a lawyer and mediator, was represented by counsel.

[10] The Respondent is articulate and intelligent. She brought no documentation and little disclosure to court. By way of background, she graduated from high school in Winnipeg in 1971 and took two years of university (Arts). Her strength was English. She did not wish to complete a university degree. She worked as a bartender for a while and, subsequently, as a foreign exchange trading clerk with the Bank of Montreal. She worked intermittently during the marriage in the family business, in staff supervision and payroll.

[11] The Respondent is 52 years old. She is obviously competent to retain and instruct counsel.

[12] The Petitioner had travelled from Toronto to complete the divorce proceeding.

[13] After consulting with both parties, I proceeded to hear evidence that satisfied me that the Respondent was not prejudiced due to any systemic cause or because of any impairment (including financial) regarding her ability to retain counsel.

[14] The evidence confirmed that the Respondent had ample opportunity between the time of separation (September, 2000) and the time of the hearing (April 14, 2005) to consult with counsel. The Petitioner offered to advance monies from the assets to assist in retaining a lawyer. There were sufficient assets to do so. The Respondent also had an opportunity to instruct two senior counsel in the early disclosure stages of the proceeding.

[15] The evidence satisfied me that each of these lawyers made requests for disclosure from the Petitioner. Neither lawyer testified.

[16] The Petitioner advised the Court he provided that which was requested of him. The Respondent had access to information relating to the Petitioner's income and their mutual business activities.

[17] At the conclusion of the Divorce proceeding I was unable to conclude anything other than that the Respondent had as much disclosure as she chose to seek through the appropriate methods. The Respondent did not contest or offer any contrary information that would suggest that complete disclosure had not been made. She made allegations that the Petitioner failed to disclose everything. She tendered no contrary evidence and offered nothing to contest the documentation provided by the Petitioner.

[18] A year after separation the Respondent obtained legal advice from Ms. Rhodenizer. There were a series of four-way meetings with both parties represented by counsel. The Petitioner prepared and provided to the Respondent's counsel two thick books on disclosure. He provided additional disclosure as requested by Ms. Rhodenizer; some immediately and some information on old accounts and bank statements had to be ordered. No agreement was reached and they each discharged their lawyers.

[19] Late in 2003, the Petitioner contacted the Respondent with more information. She advised him she had no money for a lawyer. The Petitioner advised her he was prepared to take money out of the joint RRSP's to use towards legal fees to pay counsel to conclude the matter. The Respondent does not recall that this offer was made and did not recall that she refused to agree to the withdrawal of the RRSP money. I have no reason to doubt his credibility on this issue.

[20] The Petitioner contacted Ms. LaHaye. He requested information about the retainer required by her to assist and advise the Respondent in order to complete the separation. He paid the retainer as required in full on January, 2004.

[21] In the course of January, February and March, 2004, the Petitioner provided extensive disclosure directly to Ms. LaHaye, delivering a further binder and further disclosure. He provided financial information regarding the companies, the current debts, all RRSP's, the credit card and bank accounts. He believes he accounted for every dollar that came from the sale of the family home. He

testified that there wasn't anything that he was required to disclose within his control that wasn't disclosed.

[22] He discussed at length back and forth with Ms. LaHaye the possibility of settlement. He provided two revisions to the Separation Agreement incorporating changes as requested by Ms. LaHaye. He then submitted a final Separation Agreement noting that the only controversial issue was the issue of equalization payment. He heard nothing back and he concluded, as a result of his discussions, that the Respondent had no serious intent to conclude the matter.

[23] The Respondent indicates that her funds ran out for the retainer and she wasn't prepared to incur further costs.

[24] Post separation, the Respondent received an inheritance cheque of \$16,000. She testified that she received in total from her inheritance *approximately* \$90,000. This money has been spent.

[25] With the retainer exhausted and resolution stalled, the Petitioner offered, if the matter was settled, to pay all legal fees for the Respondent. This offer was not accepted and the matter had to be set down for hearing.

[26] In the interim, the Petitioner proceeded to determine and conclude the matrimonial issues, including selling the matrimonial home with the Respondent's consent; advancing funds for the Respondent to purchase a home; covering the matrimonial debt between separation and this hearing, paying both income tax bills for the Respondent and Petitioner; taking over responsibility for the joint operating line. His approach to the resolution appeared to me to be appropriate and reasonable. It is an approach one would expect of Mr. Morris, given his professional status and responsibilities.

[27] Mr. Morris indicated they would adjust the payments and the sharing of debts at a later date. This allowed the Respondent to use the cash as an advance to purchase a home for the children after the matrimonial home was sold. The Respondent retained the bulk of the furniture and household possessions for both herself and the children.

[28] My role was not to investigate what was not apparent on the record. That was the role of an advocate or, failing that, of Ms. Morris. The process that evolved before me on the record had all the marks of a professional cognizant of his role personally and professionally, and attempting to conclude the issues in dispute in a manner beyond reproach.

[29] I am satisfied that the Respondent has had an opportunity to be fully advised of all matters relating to the issues in dispute. Although she has made allegations, there is no contrary evidence before me on the division of assets and debts save for an adjustment as to an error in the statement of debts (they are slightly larger than listed in the Petitioner's documentation) and the inclusion of the costs of leasing his car prior to separation.

[30] I am satisfied there was sufficient equity in the assets to assist in the payment of counsel. The Respondent had full opportunity to obtain extensive, disclosure; the opportunity to be advised and to consult counsel with respect to the issues before the Court. She has refused to respond in a reasonable manner to efforts at resolving these issues. I am further satisfied that the Respondent frustrated efforts at finalizing the divorce proceedings, without apparent reason.

[31] The Respondent appeared well informed, notwithstanding her appearance without counsel and without her own disclosure or documentation to tender as exhibits.

[32] As a result of the above, I have only the Petitioner's book of exhibits and evidence to resolve the division of assets, spousal support, child support issues.

### ***Division of Property***

#### ***Business Interests***

[33] The parties own two companies with the Petitioner's parents. They own 48.5 percent of *Venda Wash* on a 50/50 basis. The Petitioner estimates the value of these shares at \$850,000.

[34] They own 50 percent of the common shares of *Appliance Maritime Sales and Service Limited* he values at \$100,000. They also equally own a holding company, *Exchange Realty Limited*.

[35] With respect to valuation and the debts at the date of separation as well as any investment values, I have no verification of contrary information from the Respondent.

[36] These are business assets.

[37] As it relates to the issue of spousal support, the Respondent seeks to receive disclosure of the financial circumstances of these companies. There appears to be no objection to the suggestion by Mr. Morris that Ms. Morris retain ownership in the common shares registered in her name.

[38] Ms. Morris insists on regular and timely information concerning the status of the company as is her right as a shareholder. **The Petitioner shall keep her informed by providing on a quarterly basis full particulars of the financial operations of the company as a shareholder.**

[39] In 1999 the parties opened a retail store, related to, but not legally or financially part of the family business operation. Mr. Morris negotiated the agreement with major suppliers and arranged for banking and financing; organizing and supervising the construction and leasehold improvements; hiring of employees; designing and setup of stock and accounting system and organizing the promotion and advertising campaign.

[40] Ms. Morris became the store manager, responsible for supervising staff, working on the floor, making bank deposits from sales. The store opened in May, 1999 and closed on November, 2001. Ms. Morris ceased to be an employee at the store at that time.

### *Insurance*

[41] The insurance policy is funded by the family business and is pledged to the family business lender as collateral security for the family business loans. Mr.

Morris proposes they continue to jointly own this asset and that the holding company, Exchange Realty Limited, fund child support obligations in the event of death of Mr. Morris or Ms. Morris. Mr. Morris proposes that in 2013-2014 **or such later date as they agree** the proceeds of the leverage loan be paid to Mr. Morris and Ms. Morris equally.

### *Inheritance*

[42] Ms. Morris received an inheritance post separation. She failed to provide verification of the details and disbursement of this inheritance. On the day of the trial she gave testimony as to the amount she recalls receiving. She had no verifying information supporting her testimony that she received in excess of \$90,000. These monies have been spent.

### *Matrimonial Home*

[43] In addition, the matrimonial home was sold and the net proceeds were advanced to her subject to later division, in order to assist her to purchase a non matrimonial property as a residence for her and the children. Mr. Morris stood as a guarantor to facilitate the granting of the mortgage. He then moved to rental accommodations.

### *Aeroplan Points*

[44] There is an agreement that the parties **divide the Aeroplan points cards equally** as of the date of separation.

### *RESP*

[45] Mr. Morris proposes they **maintain the children's RESP as a joint asset**. He has not included it in the asset division. In the event Ms. Morris does not disclose the details of this plan on a regular basis and maintain it for the children, the papers should be transferred to Mr. Morris for safe keeping and maintenance.

### *Debts*



[46] Mr. Morris has provided documentation verifying the debts and asset division. Ms. Morris has not provided any documentation to confirm or contest the accuracy of the statements provided by Mr. Morris.

***After the Separation:***

[47] Mr. Morris handled all financial matters throughout the course of the marriage. Ms. Morris did not oppose the continuation of this practice. Mr. Morris took responsibility for continuing to manage the debt load, pending resolution of all issues. He advises that he paid off the personal debts and left three remaining debts which he serviced until the divorce hearing. (1) He made full payment on the outstanding income tax for both parties; (2) He paid and continues to pay \$200 a month on the line of credit with Royal Trust. He is only seeking a sharing of the payment as of the date of separation; (3) There was a joint operating line which was not retired and he wishes to retire that with the equalization payment.

***Debts***

[48] The Petitioner provided verification that the Scotia Bank operating account was **\$50,144.93** at separation. The Royal Trust personal credit line at the time of separation was **\$6,665.05**. Mr. Morris owed 1999 income taxes of **\$18,512.12** and Ms. Morris owed **\$4,771.31**. The total debts shared between the parties (and there is no evidence to support an unequal division of debts) is **\$80,093.41**.

[49] Mr. Morris paid Ms. Morris' 2000 income tax at \$2,709.79. He did not have a separate receipt for this. I could not conclude on the evidence that this amount was in addition to the October, 2000 statement from Revenue Canada. He agreed to drop that debt. I have not included that debt in the division.

***RRSP's***

[50] Ms. Morris holds \$63,313.97 and Mr. Morris holds \$15,782.43. Discounting by 30 percent for taxes, Ms. Morris holds **\$44,319.78** and Mr. Morris **\$11,047.70**.

***Matrimonial Home equity***

[51] The proceeds of the matrimonial home were **\$37,775.99**. The only deduction I have not included is the cost of his car lease arranged immediately before separation but clearly in anticipation of separation. That cost is **\$3,433.88**.

***Household possessions***

[52] The parties agree that the majority of the household items and furniture were left with Ms. Morris and the children. She was provided new stainless steel appliances and an extra stainless steel fridge and freezer from the store in order to furnish her new home. She retains Mr. Morris' stamp collection worth approximately \$5,000 to **\$7,500**.

[53] No expert valuation was made for the household possessions. Mr. Morris wants the return of his stamp collection worth \$7,500. Normally, \$25,000 as a valuation for the average household would be excessive. The only evidence I have appears to justify the elevated valuation and I have no contradictory evidence.

[54] Ms. Morris has agreed to return the stamp collection and I will assign a value to Mr. Morris of **\$8,000**, and the balance of **\$17,500** to Ms. Morris.

[55] The Aeroplan points will be divided. The insurance plan will not be altered unless agreed upon in advance in writing by the parties. The RESP for the children will be held for the children and the parties will be responsible to one another for its maintenance. The stamp collection will be returned in its entirety forthwith.

[56] The equalization of *Matrimonial Assets and Matrimonial Debts* is as follows:

**EQUALIZATION CHART**

<b>ASSETS</b>		<b>Mr. Morris</b>	<b>Ms. Morris</b>
Home Equity	37,775.99		37,775.99
Furniture	25,500	8,000	17,500
RRSP's (discounted)	<u>55,367.48</u>	<u>11,047.70</u>	<u>44,319.78</u>
<b>TOTAL ASSETS</b>	118,643.47	19,047.70	99,595.77
<b>TOTAL DEBTS</b>	<u>80,093.41</u>	<u>80,093.41</u>	
<b>NET ASSETS</b>	38,550.06	(61,045.71)	99,595.77
divided by ½	19,275.03	<u>+80,320.74</u>	<u>(80,320.74)</u>
		19,275.03	19,275.03

The equalization payment will be adjusted to credit Ms. Morris one half the cost of the lease expenses (ie., \$1,716.94).

[57] Ms. Morris shall pay to Mr. Morris the sum of \$78,603.80 on or before 60 days from the date of this decision. The timing may be adjusted if agreed upon in advance in writing by the parties.

[58] Mr. Morris will ensure that Ms. Morris is provided on a quarterly basis full particulars as to the business earnings on a quarterly basis and shall pay the costs of obtaining this information if it is not forthcoming.

***Support Issues******Income: Mr. Morris***

[59] Mr. Morris expects to have a total income in 2004 of \$85,911.22. He expects to reduce that by the payment of business expenses of approximately \$15,000 for a net income for child support purposes of \$70,000.

[60] He expects to receive taxable dividends from the family business of \$36,250 (grossed up) in 2005 and he also expects to earn \$30,000 from his mediation practice for a total taxable income of approximately \$65,250. He anticipates his income will rise steadily in 2006 and 2007 as his practice becomes more fully established.

[61] I have no contrary evidence to challenge the completeness of this nor the application of an income as it relates to the selection of the appropriate table amount.

[62] Historically, his 1998 income was 56,285; 1999 was \$70,695; 2000 was \$72,717; 2001 was \$97,002; 2002 was \$107,500; 2003 was \$78,809.22.

[63] In Mr. Morris's financial statement on February 3, 2004, the guideline income for child support purposes was \$7,000 monthly (\$5,000 from employment and \$2,000 from dividends).

[64] He advised he was unemployed as of January 27, 2004, having only those consulting fees he earned from Boyne Clarke in the approximate amount of \$50,000. He moved to Toronto, opened a law office and began to build a mediation practice. He anticipates it would take six to twelve months to obtain a steady flow of income.

[65] The Petitioner has explained his involvement in the family business and the evolution of his law practice. He has in the interim earned less than his potential. He intends to increase his income from employment in a reasonable manner in the foreseeable future.

[66] Mr. Morris has become more involved in the financial management of the family business in 2004. His father is 78 years old and wishes to retire. Currently, Mr. Morris is a mediator under the Ontario Mandatory Mediation Program.

[67] I do not find the Petitioner is underemployed. He appears to have conducted his business in a manner consistent with his responsibilities to address the best interests of the children as it relates to his financial contribution and has not disadvantaged his wife unreasonably by this change in the focus of his employment.

[68] This comment is not meant to minimize the emotional consequences of divorce; rather to recognize that the Petitioner appears to have undertaken the resolution of the contentious issues of support in a responsible and reasonable manner.

[69] I have no evidence concerning the cause of the marriage breakup. It is not relevant or helpful to comment on the cause of the divorce and its effect on the parties. His absence from the children's lives while he is in Toronto is a loss to the children. I have no evidence that he has failed to absorb reasonable expenses to maintain his connection with them.

***Income: Ms. Morris***

[70] On separation, Ms. Morris received \$1,600 per month by way of child support in accordance with the Petitioner's then current salary. The current payment of \$1,050 per month is in excess of the table amount. The Petitioner is prepared to continue at this rate and anticipates and projects an increase in his annual income once his practice is established.

[71] In addition to child support, Mr. Morris paid the cost of tennis lessons for Benjamin and Benjamin's school trip totalling \$2,000. Tennis lessons are listed at two sessions per week requiring a \$587 deposit and an additional two payments of \$442.

[72] Ms. Morris worked full time in the family business when it started in the mid 1980's. She worked part time until the mid 1990's and managed the retail store from 1999 to 2001. Since November she took a job with Fabricville for \$6.50 an hour, part time.

[73] She receives from the family business a current model automobile. The lease payment for the vehicle is \$673.44 per month or \$8,081.28 per annum. The automobile she receives is inclusive of gas, maintenance and insurance valued at \$325 per month. All inclusive, Mr. Morris puts a value of \$12,000 annually on these benefits with no tax liability.

[74] She also received \$22,500 (grossed up) in dividend income.

[75] The family business provides a health plan inclusive of drug and dental benefits for her and the children.

[76] Mr. Morris estimates Ms. Morris will receive a total of \$48,000 per year without incurring tax liability, not including tax credit, the cost of the medical/dental plan, the extracurricular expenses and whatever part time income the Respondent receives.

[77] Her current income including child tax income of \$319, actual dividends of \$1,500, child support of \$1,050 is \$2,869 (\$34,428). The provision of these benefits will continue. Certainly, if it ceases it will be a change of circumstances.

[78] Since separation Ms. Morris also received an inheritance in excess of \$90,000.

### ***Spousal Support***

[79] No spousal support has been paid since separation. Ms. Morris seeks spousal support.

[80] The Petitioner failed to provide documentation regarding her inheritance and disbursements despite the requests for disclosure. The request for disclosure was reasonable in light of the request for spousal support.

[81] Since separation Ms. Morris has made little effort to obtain a full time job in accordance with her previous employment skills. She has sent out only eight applications to banks in the years between separation and this hearing. She has not displayed any interest at retraining or educational pursuits aimed at assisting her in becoming self supporting. She worked prior to the marriage and during the marriage. She worked in the family business. She proposed no strategy aimed at improving her marketability.

[82] The Respondent testified she is unemployable having been out of the job market since her children were born. This perspective does not accurately reflect her potential and skills. The Respondent indicates that she does not have sufficient skills to re-enter the workforce at this time. She is articulate,

knowledgeable of their affairs despite testifying to the contrary, and displays no physical impairment. She is 52 years old. She has not taken any responsibility to achieve partial or total self-sufficiency. It is fair to conclude she is underemployed.

[83] The Respondent's financial disclosure is far from complete. Her 2003 income line 150 shows \$28,750. Her 2001 income shows as \$30,450 including taxable dividends of \$22,500 and RRSP income of \$7,950. Her 2002 income shown as dividends is \$22,500.

[84] Ms. Morris has not satisfied the burden of proof as to entitlement or need. She has willfully failed to disclose relevant information that would assist in assessing need. The evidence I have indicates the needs of the household and her children are currently being met.

### ***Ongoing disclosure***

[85] The parties will file and exchange each year their full income tax returns, professional and personal, corporate business returns whether individually or jointly held, by May 15th each year or within 15 days of the mandatory filing date.

### ***Child Support***

[86] If we use the Petitioner's line 150 from 2004 at \$70,000, he would be obliged to pay \$927 per month for the children.

[87] He has been voluntarily paying the sum of \$1,600 per month since separation. He lowered this in July, 2004 to reflect his income for 2004 and is currently making child support payments in the amount of \$1,050 per month. He is prepared to continue that even though it is \$187 above the table amount for his income of \$65,250 as projected by him for the year 2005.

[88] In addition, the Petitioner agrees to pay the costs of tennis and school trips and to share pro rata the costs of extraordinary expenses. He agrees to keep the children and the Respondent wife covered in the business health and dental plan and that benefit will survive the divorce. I understand that the benefit evolves from a business asset.

[89] He agrees to share pro rata the costs of uninsured medical expenses in accordance with the guidelines.

[90] Respecting all other special or extraordinary expenses which they jointly agree upon, he is prepared to share proportionately.

[91] Mr. Morris shall continue to pay on a monthly basis \$1,050 for the child support, the costs of tennis and school trips and shall forthwith reimburse Ms. Morris for costs of health care over and above \$100 per year on a pro rata basis.

[92] He shall be informed immediately of the potential of any special or extraordinary expenses. If there is no agreement on the expense or the costs, failing mediation, the parties may apply to the court for resolution.

[93] Ms. Morris has not made a case for spousal support and has failed to respond to disclosure requests completely in a timely fashion. There shall be no order as to spousal support.

[94] Mr. Morris has agreed to continue joint ownership of their holding company. This company owns two insurance policies on the lives of the parties. Rather than realize the cash value of this policy, the policies will be maintained and this shall be the security for future maintenance in the event of the death of either parents. This shall remain so until agreed otherwise in writing by the parties.

[95] Each of the parties will execute the documentation necessary to effect this division. The Court reserves the jurisdiction, upon application of the parties, for an order assisting in the performance of the conditions relating to this decision.

[96] Counsel for the Petitioner shall draft the Divorce and Corollary Relief Judgment Orders.

**J.**