

**SUPREME COURT OF NOVA SCOTIA**  
**FAMILY DIVISION**

**Citation:** *Cameron v. Cameron*, 2014 NSSC 224

**Date:** 2014-06-17  
**Docket No:** 1206-6215  
**Registry:** Sydney

**Between:**

**Sandra Lynn Cameron**

**Petitioner**

**v.**

**Aubrey Gerard Cameron**

**Respondent**

**Judge:** The Honourable Justice Theresa M. Forgeron

**Heard:** November 21 and December 20, 2013 in Sydney, Nova Scotia

**Submissions:** January 10, 13, and 17, 2014

**Written Decision:** June 17, 2014

**Counsel:** Lloyd Berliner, counsel for Sandra Cameron  
Darlene MacRury, counsel for Aubrey Cameron

## **By the Court:**

### **[1] Introduction**

[2] After 21 years of marriage, Sandra and Aubrey Cameron separated. They ultimately resolved many of the financial issues surrounding their separation, including those affecting their two sons, Taylor and Aaron. Outstanding disputes concern discrete child support issues and asset division.

### **[3] Issues**

[4] The following issues will be determined in this decision:

- What consequences arise because of the failure to disclose?
- Should child support for Taylor be payable for the period between September 2012 and April 2013?
- Should section 7 expenses be awarded?
- What are the value of the matrimonial assets?
- What debt is divisible?
- What is the appropriate division?
- Should occupation rent be awarded?

### **[5] Background Information**

[6] The parties were married on September 29, 1990. They have two children - Taylor born in 1994, and Aaron born in 1996. The family lived in Glace Bay, Nova Scotia prior to their separation.

[7] During the marriage, Mr. Cameron was employed at Nova Scotia Power. Ms. Cameron was employed with Air Canada Jazz. She was stationed in Halifax. Ms. Cameron commuted to Halifax for work, usually following a four days on and four days off schedule. When she was in Halifax, the children lived with their maternal grandparents, and not with Mr. Cameron.

[8] The separation occurred on June 23, 2011. Aaron and Ms. Cameron immediately relocated to HRM. Ms. Cameron and her new partner purchased a home in Oakfield.

[9] Taylor continued to live with Mr. Cameron during his last year of high school. After graduating, Taylor moved to Halifax on August 8, 2012 and began to live with his mother.

[10] Mr. Cameron remained in the matrimonial home, and was joined by his girlfriend and her teenage daughter on December 14, 2012. The daughter has since moved out of the home.

[11] In September 2012, Taylor commenced his university studies at Saint Mary's University. Taylor was also employed at a local grocery store. He received about \$7,000 in scholarships and bursaries. During his first year, Taylor lived in residence. Mr. Cameron and Ms. Cameron contributed about \$3,800 each to Taylor's first year university expenses.

[12] Although Taylor is continuing his pursuit of a business degree at SMU, he no longer lives in residence. He resides full time with his mother. Taylor now receives bursaries and scholarships of \$2,783 per year. Taylor maintains his employment at a local grocery store, and has assumed a second job at SMU. Mr. Cameron expressed concern that Taylor was working more than he should.

[13] Aaron is graduating from high school in June 2014. He is anticipating a post-secondary education, although the details have not been finalized. A community college program is a likely option for Aaron. Aaron is also employed on a part time basis, but his hours are both sporadic and minimal.

[14] Ms. Cameron filed a divorce petition on June 27, 2011. Mr. Cameron did not file an answer until April 2, 2012. A date assignment conference was held on February 25, 2013. Disclosure obligations were itemized during this conference. Mr. Cameron failed to produce many of the required documents. A second pretrial conference was held on September 17, 2013 to address Mr. Cameron's lack of compliance.

[15] On October 21, 2013, the parties participated in a settlement conference where many of the issues were resolved. The agreements were placed on the record. The parties were also divorced.

[16] The unresolved matters were the subject of litigation during the trial held on November 21 and December 20, 2013. Only the parties testified.

Post-trial submissions were filed, with the last submission being received on January 17, 2014.

[17] **Analysis**

[18] **What consequences arise because of the failure to disclose?**

[19] In **Leskun v. Leskun**, 2006 SCC 25, the Supreme Court of Canada underscored the importance of disclosure in matrimonial property litigation at para 34, which states as follows:

34 In all of these circumstances, the appellant has a poor platform from which to launch an attack against the trial judge's conclusion regarding his assets and liabilities. As Fraser J. commented in **Cunha v. Cunha** 1994 CanLII 3195 (BC SC), (1994), 99 B.C.L.R. (2d) 93 (S.C.), at para. 9:

Non-disclosure of assets is the cancer of matrimonial property litigation. It discourages settlement or promotes settlements which are inadequate. It increases the time and expense of litigation. The prolonged stress of unnecessary battle may lead weary and drained women simply to give up and walk away with only a share of the assets they know about, taking with them the bitter aftertaste of a reasonably-based suspicion that justice was not done.

If problems of calculation exist the appellant is largely the author of his own difficulties. I would not interfere on that basis.

[20] Case law is replete with courts attempting to craft relief in the absence of full disclosure, with such relief focussing on negative inferences, deeming of income and assets, and significant cost awards: **MacLean v. MacLean** 2002 NSSC 5; **Werner v. Werner**, 2013 NSCA 6; **Bramwell v. Bramwell**, 2012 NSSC 189; **Paul v. Dennis**, 2012 NSSC 366; **Christmas v. McDonald**, 2011 NSSC 480; **Dow v. Dow**, 2011 NSSC 229; **Howley v. Howley**, 2012 NSSC 123; **Jenkins v. Jenkins**, 2012 NSSC 117; **Jon v. Jon**, 2011 NSSC 419; **Lahey v. Wright**, 2010 NSSC 339; **Lemire v. Bourque**, 2010 NSSC 192; **Slater v. Slater**, 2010 NSSC 353; and **Young v. Marshall**, 2011 NSSC 50. The potential for such consequences was drawn home to Mr. Cameron during the second pretrial conference, when each of these possibilities was specifically addressed. Despite the admonishment and encouragement of the court, Mr. Cameron elected not to provide full disclosure. He did so at his own peril. He is solely responsible for the consequences arising from this decision.

**[21] Should child support for Taylor be payable for the period between September 2012 and April 2013?**

[22] *Position of the Parties*

[23] Ms. Cameron seeks child support for Taylor from September 2012 until April 2013. She suggests that one half of the table amount is due because Taylor was both living primarily with her while attending university at SMU. Ms. Cameron is not seeking s.7 expenses for Taylor for this time period. The total amount claimed is \$5,320, less credit for any support payments made to MEP by Mr. Cameron.

[24] For his part, Mr. Cameron denies that any child support is owing to Ms. Cameron on Taylor's behalf between September 2012 and April 2013. Initially, Mr. Cameron asserted that Taylor's primary residence was in Glace Bay during his first year of university. In his post-trial submissions, however, Mr. Cameron argued that Taylor was primarily a resident of SMU. He further stated that he was maintaining his residence in Glace Bay for Taylor's use in the same manner, and with the same availability, as was Ms. Cameron. He said the *Guidelines* are not triggered because Taylor did laundry at his mother's home or used her vehicle. He urges the denial of child support in such circumstances.

[25] *Decision*

[26] Ms. Cameron proved by clear, convincing, and cogent evidence that Taylor's primary residence was with her effective August 2012, despite the fact that Taylor was staying on campus. I reach this conclusion for the following reasons:

- A number of Taylor's documents were introduced which prove his residence was in Oakfield - his driver's license dated October 5, 2012; his 2012 Notice of Assessment; his 2012 T4A from SMU; his 2012 T2202A for the three month period between September and December 2012; his voting certificate for a 2013 leadership convention; and correspondence to Taylor, dated December 21, 2012, from the Quebec English School Boards Association.
- Taylor moved to Halifax with Ms. Cameron on August 8, 2012. He had his own bedroom in her home. He set up residence in

Ms. Cameron's home. Ms. Cameron's share of the mortgage is \$685 per month, together with utilities of \$350 per month. A portion of these expenses are incurred for Taylor's benefit, even when he was staying on campus: **Lu v. Sun**, 2005 NSCA 112 para. 28, leave to appeal to the Supreme Court of Canada refused.

- Ms. Cameron incurred expenses, as custodial parents typically do when preparing their child for university life, including the purchase of a fridge, chair, computer and printer. She arranged the transportation for Taylor's move into residence, while continuing to maintain a home for his use. Ms. Cameron spent about \$400 per month on Taylor's university education as outlined in her statement of expenses.
- Taylor regularly returned to his home in Oakfield, usually every second weekend, all of spring break, and for a part of Christmas vacation. He did his laundry at home.
- Taylor frequently drove Ms. Cameron's vehicle. Eventually, Taylor retained Ms. Cameron's vehicle at SMU. Ms. Cameron's financial statement indicates a monthly car payment of \$398, together with insurance and upkeep expenses of \$300 per month. Taylor almost exclusively had the benefit and use of Ms. Cameron's vehicle.
- Taylor did not equally divide his time between the homes of Mr. Cameron and Ms. Cameron. I reject any suggestion to the contrary. Taylor spent minimal amounts of time in Glace Bay during his first year of university. The evidence does not support a shared parenting arrangement by any stretch of the imagination.

[27] Taylor remained in the primary care of Ms. Cameron during his first year of university. Child support is thus payable to Ms. Cameron for Taylor. Child support must be paid in conformity with the *Guidelines*. According to s. 3 of the *Guidelines*, the age of majority determines the manner by which child support is calculated.

[28] Taylor did not turn 19 until June, 2013, which was after he completed his first year of university. 19 is the age of majority in Nova Scotia. Taylor

is thus presumptively entitled to the full table amount pursuant to s.3(1)(a) of the *Guidelines*, which states as follows:

3. (1) Unless otherwise provided under these Guidelines, the amount of a child support order for children under the age of majority is

(a) the amount set out in the applicable table, according to the number of children under the age of majority to whom the order relates and the income of the spouse against whom the order is sought; and

(b) the amount, if any, determined under section 7.

[29] Neither party argued that any of the discretionary provisions of the *Guidelines* applied to this case. I must therefore decide whether this court can order an amount of child support that is less than the table amount, in light of s.3(1) of the *Guidelines*, s.15.1(3) of the *Divorce Act*, and the Court of Appeal ruling in **Lu v. Sun, supra**.

[30] In resolving this issue, I acknowledge that s.15.1(5) of the *Divorce Act* allows the court to award an amount that is different from the table amount, if the court is satisfied that special provisions have been made and the application of the *Guidelines* would result in an inequitable child support award, given the special provisions. Section 15.1(5) states as follows:

15.(1)(5) Notwithstanding subsection (3), a court may award an amount that is different from the amount that would be determined in accordance with the applicable guidelines if the court is satisfied

(a) that special provisions in an order, a judgment or a written agreement respecting the financial obligations of the spouses, or the division or transfer of their property, directly or indirectly benefit a child, or that special provisions have otherwise been made for the benefit of a child; and

(b) that the application of the applicable guidelines would result in an amount of child support that is inequitable given those special provisions.

[31] I have determined that this is one of the rare cases where the table amount of child support should not be granted given the unique circumstances of this case, including the following:

- Ms. Cameron, the custodial parent, is only seeking one-half of the table amount for Taylor. I infer that Ms. Cameron thereby

acknowledges that the table amount would produce an inequitable result.

- Mr. Cameron voluntarily paid \$3,800 towards Taylor's university expenses, despite Taylor having significant scholarships, bursaries, and income to assume many of his first year educational expenses. Mr. Cameron likely overpaid his proportionate share of Taylor's s.7 university expenses. This overpayment is deemed a special provision that benefitted Taylor.
- Some of Ms. Cameron's expenses were reduced because Taylor was living on campus during a portion of the disputed time period.

[32] I accept Ms. Cameron's submission on the quantification of the outstanding child support award, which is based on the following:

- Mr. Cameron earning an income of \$59,400 pursuant to the agreement of the parties;
- Mr. Cameron paying support for his two children in the care of Ms. Cameron;
- Mr. Cameron receiving credit for payments already paid through MEP;
- Mr. Cameron paying the full table amount for Aaron and  $\frac{1}{2}$  of the table amount for Taylor. Support for two children equals \$825; halving the difference between that amount, and the support required for one child, leaves a payment of \$665 per month, or \$5,320 for the eight months between September 2012 and April 2013, less any MEP payments made.

[33] Further, the quantum of child support must be adjusted as of May 2013 because Taylor returned to live with his mother on a full time basis. Therefore, commencing May 2013, Mr. Cameron must pay Ms. Cameron the full table amount of support for two children, or \$901 per month, less credit for payments already provided to MEP. This table amount must be adjusted once Mr. Cameron's 2013 income has been determined and



verified. Maintenance will continued to be paid monthly until further order of the court.

[34] All maintenance arrears must be paid forthwith, either by increasing the equalization payment to be transferred to Ms. Cameron should Mr. Cameron elect to retain the matrimonial home, or from Mr. Cameron's share of the proceeds of sale in the event the matrimonial home is sold, as will be discussed later in this decision.

[35] Mr. Cameron must also secure his prospective maintenance obligation by designating Ms. Cameron as beneficiary on his insurance policies while there is an obligation to pay Ms. Cameron child support.

[36] **DBS** factors were not analyzed in this ruling because the request for child support was contained in the divorce petition filed in 2011, which predates the contested period, September 2012 to April 2013. This ruling does not concern retroactive support.

[37] **Should section 7 expenses be awarded in addition to the table amount of child support?**

[38] *Position of the Parties*

[39] Ms. Cameron seeks a s.7 award for post-secondary educational expenses on behalf of Taylor and Aaron, hockey and tutor expenses for Aaron, and health expenses for both boys. Mr. Cameron states that he will pay one half of Taylor's tuition and his share of the health expenses.

[40] *Decision*

[41] Fees related to post-secondary education, health needs, and other activities are proper s. 7 expenses and can be appropriately awarded, in addition to the table amount as noted in ss. 3(1), 3(2)(a) and 7(c)(d)(e) and (f) of the *Guidelines*.

[42] *Absence of Evidence*

[43] I cannot entertain the request for a s.7 award for Aaron's hockey, tutoring, or post-secondary educational expenses. The minimal evidence led was insufficient to allow the court to conduct the necessary analysis in keeping with s.7 of the *Guidelines*. Further, Aaron's post-secondary educational plans were not solidified by the time of trial.

[44] The parties are encouraged to resolve the payment of the post-secondary educational expenses for Aaron once his plans are concrete. The process set out in **Lu v. Sun, *supra***, should be followed. Failing that, the court is willing to convene a settlement conference over the summer to assist the parties in reaching a resolution without the necessity of another expensive, contested hearing.

[45] *Taylor's University Expenses*

[46] The evidence supports the granting of an award for s.7 university expenses on behalf of Taylor. In deciding this issue, I will review Taylor's eligible expenses, his contribution, and the income tax credits available, before prorating the expenses between the parties.

[47] *Eligible Expenses*

[48] Mr. Cameron did not suggest that Taylor's budget was unrealistic. The only expense which I disallow is the budget for entertainment and clothing, which expenses are properly addressed in the table amount. I also note that Ms. Cameron said that Taylor may purchase a car to assist with transportation. I did not include this expense because it was only speculative at the time of trial.

[49] The allowable university expenses for the 2013-2014 academic year, and subsequent years, is thus \$13,866.41, based upon the following budget:

➤ Tuition and fees	7,566.41
➤ Books	1,000.00
➤ Gas	2,400.00
➤ MacPass	240.00
➤ Food	2,400.00
➤ Parking	<u>260.00</u>
<b>Total</b>	<b>\$13,866.41</b>

[50] *Taylor's Contribution*

[51] Section 7(2) of the *Guidelines* requires the court to deduct the child's contribution from the eligible expenses before prorating the balance between the parents. The amount of the child's contribution is based upon the factual circumstances before the court, as noted in the cases supplied by counsel. For example, in **Robertson v. Robertson** 2007 NSSC 128,

this court held that the adult child must make reasonable efforts to obtain employment, and to use a significant portion of those earnings to defray the cost of university expenses. \$4,000 was found to be an appropriate contribution from the child. In **Gillis v. Gillis** 2013 NSSC 251, Jollimore, J. required the child to contribute \$5,000 per year towards the cost of the university expenses where the child earned approximately \$13,200 from earnings and student loan proceeds.

[52] Taylor is expected to contribute to the cost of his university expenses through scholarships and employment income. Taylor's bursaries and scholarships are valued at \$2,783 per annum. Taylor earned \$14,735 in 2012. The parties expect slightly higher income in 2013 and forward. Mr. Cameron voiced a concern about the amount of time that Taylor was working. I concur. Cameron is doing well academically and his efforts should not be compromised because he is working two jobs. Hopefully, with this court's decision, Taylor will be able to reduce the time spent working while he studies on a full time basis.

[53] I set Taylor's contribution, inclusive of scholarships, bursaries, and employment earnings at \$6,700. If his scholarships and bursaries are reduced, or increased in the future, then this figure will also have to be adjusted.

[54] *Income Tax Credits*

[55] Section 7(3) of the *Guidelines* requires the court to take into account any available subsidy, benefit, or income tax credit or deduction when determining the amount of the special expense. The allowable tax credit is 23.79% in Nova Scotia; the maximum allowable education deduction is \$5,000. This equates to a tax savings of \$1,189.50 per year.

[56] *Proportional Sharing of the Expense*

[57] Subtracting these two deductions from the eligible university expenses, leaves the amount of \$5,976.91 to be prorated between the parties. In 2012, Mr. Cameron's income for child support purposes was \$59,801, while Ms. Cameron's income for child support purposes was \$53,650. Mr. Cameron is therefore responsible for 52.71% of the university expenses or \$3,150, which must be paid to MEP, in two equal installments of \$1,575.21 no later than the last day of August and the last day of

December of each year until further order from the court. The prorata division is to be updated each June based on the prior year's incomes.

[58] *Health Expenses*

[59] Mr. Cameron will also pay his proportionate share of all health related expenses that exceed insurance reimbursement by at least \$100 annually, including those items specifically designated in s.7(1)(c) of the *Guidelines*. Such payments are to be made to Ms. Cameron directly, and within 30 days, upon being presented with proof of the expense.

[60] **What are the values of the matrimonial assets?**

[61] *Matrimonial Home*

[62] The parties agree that the matrimonial home, after disposition, has a value of \$188,458.50. Mr. Cameron seeks to acquire the matrimonial home, if possible. Ms. Cameron does not dispute this claim. Ms. Cameron will execute a quit claim deed releasing her interest in the matrimonial home upon receipt of the equalization payment. The equalization payment must be transferred no later than July 31, 2014, or the matrimonial home will be listed for sale.

[63] *Beacon Street Apartments*

[64] The parties confirm that the Beacon Street property is in a negative equity position by \$4,301.42. Ms. Cameron is to retain the Beacon Street apartments. This is not contested by Mr. Cameron. Mr. Cameron must forthwith execute a quit claim deed releasing his interest in favor of Ms. Cameron.

[65] *Tracey Street Vacant Land*

[66] The Tracey Street property is owned jointly by Mr. Cameron and an unrelated third party. I assign a value of \$6,000 for Mr. Cameron's share of this property. In his Statement of Property, Mr. Cameron states that this property is valued at \$12,000. Ms. Cameron accepts this value.

[67] I reject the submission of Mr. Cameron that the property has no value unless sold. I also reject Mr. Cameron's submission to postpone the division until the property is actually sold. There was no evidence of any

sale plans. This is not acceptable. The parties' assets are to be valued and divided at the time of the corollary relief order, and not in the future.

[68] *Vehicles*

[69] The parties agree that the 2005 Chevrolet Equinox is valued at \$7,000 and will be retained by Mr. Cameron; the 2001 Honda Civic is valued at \$2,500 and will be retained by Ms. Cameron.

[70] The parties disagree on the value of the 2007 travel trailer. Mr. Cameron states that the travel trailer is worth \$15,000 based upon the email confirmation from Mr. Buffett dated February 22, 2012 together with \$2,000 to be added as representative of the value of the deck, which physically surrounds the trailer. In contrast, Ms. Cameron states that the trailer is valued at \$13,300, inclusive of the deck.

[71] I assign a value of \$15,000, inclusive of the deck, to the travel trailer as this valuation is in keeping with the date of separation. Mr. Cameron did not use the trailer after separation and Ms. Cameron will be retaining the trailer. I accept Ms. Cameron's evidence that the decking cost approximately \$800 approximately 5 or 6 years ago. I have no evidence that the decking would increase or decrease the market value of the trailer.

[72] *Household Contents*

[73] No appraisal was provided for the household contents. It is clear, however, that Mr. Cameron retained the greater portion of the household chattels. Mr. Cameron prevented Ms. Cameron from removing the household contents. Ms. Cameron was only able to remove the contents that could fit into the parties' vehicle. Ms. Cameron had no access to the contents after separation because Mr. Cameron changed the locks on the house.

[74] Ms. Cameron urges the court to ascribe Mr. Cameron with \$5,000 more in household contents than she possesses. Mr. Cameron disagrees and states that the contents were old and well used.

[75] In the absence of an appraisal, I determine that Mr. Cameron has \$3,000 more in household contents than Ms. Cameron.

[76] *Accounts*

[77] Mr. Cameron had the following bank accounts in his possession and control as of separation:

➤ Chequing account	65.80
➤ Savings account	2,212.68
➤ Other account	1,003.94
➤ Mutual Fund	964.12

[78] Contrary to what was stipulated in the Date Assignment Conference, and despite repeated requests by Ms. Cameron's counsel, Mr. Cameron elected not to disclose proof of the value of the CIBC mutual fund on the date of separation. Ms. Cameron has agreed to accept the sum of \$964.12 as the balance in the CIBC mutual fund held in Mr. Cameron's name, despite the lack of disclosure. I so find.

[79] *Canada Savings Bond*

[80] Ms. Cameron had a Canada Savings Bond valued at \$500 as of separation. She will be credited with this value.

[81] *Pensions and RRSPs*

[82] The parties have agreed to an equal source division of their employment pensions, and an equalization of all RRSPs, subject to Ms. Cameron accounting for \$5,000 in RRSPs which she removed post-separation and Mr. Cameron accounting for \$4,500 in RRSPs which he removed post-separation. This agreement is accepted.

[83] *Life Insurance*

[84] Mr. Cameron failed to produce particulars as to the cash surrender value of the life insurance policy which he owns through Canada Life, despite his legal disclosure obligation. Ms. Cameron is correctly concerned about Mr. Cameron's lack of disclosure and lack of compliance. Ms. Cameron, however, did not suggest an amount to be deemed in the absence of disclosure. The court has no evidence upon which to base an imputed amount. Therefore, the court will set a chambers date for Mr. Cameron to disclose the cash surrender value of his life insurance policy as of the date of separation, together with a statement indicating all increases in that amount by virtue of interest, cost of living, or any factors unconnected with post separation deposits. The court retains jurisdiction to

divide the cash surrender value. Costs are payable on a solicitor/client basis given Mr. Cameron's failure to disclose.

[85] **What debt is divisible?**

[86] *Law*

[87] In **Grant v. Grant** 2001 NSSF 13, Williams, J. summarized the law on so called "matrimonial debt" at para. 101, which states in part as follows:

A "matrimonial debt", the case law suggests:

(a) may include debt:

- incurred for the benefit of the family unit;
- incurred during the marriage;
- incurred for ordinary household family matters;
- incurred after separation if necessary for basic living expenses or to preserve matrimonial assets;
- reasonably incurred.

(b) must be shown to be capable of legal enforcement.

[88] This is the law I have followed in resolving the debt issues.

[89] *Mortgage*

[90] The mortgage on the matrimonial home was \$7,382.44 as of the date of separation and this was assumed by Mr. Cameron. The parties agreed that Mr. Cameron will receive credit for this debt.

[91] *Trailer Loan*

[92] The trailer loan with CIBC will be divided such that \$4,500 is assigned to Mr. Cameron and \$18,014.54 to Ms. Cameron.

[93] I also note that since separation, Ms. Cameron paid the expenses associated with the travel trailer, although she has not personally used the trailer. Ms. Cameron appropriately set off some of the expenses associated with the maintenance and storage of the trailer by renting it out during various weeks in the summer. I accept that the income which she received from the rentals did not cover the expenses. To the contrary, Ms. Cameron incurred \$1,756.25 in carrying costs for the trailer and this will be included as a divisible debt.

[94] I reject the evidence of Mr. Cameron wherein he stated that he was prevented from using the trailer, or that he was in any way excluded from the use of the trailer. Ms. Cameron did not maintain the key for the trailer, rather it was left at the office in Ben Eion.

[95] *Apartment Losses*

[96] Ms. Cameron proved that she incurred a loss while managing the Beacon Street apartments by presenting clear, convincing, and cogent evidence. This loss is appropriately divided between the parties as they are joint owners of the building. The loss included overdue accounts which should have been paid by Mr. Cameron, from the rental proceeds, when he was managing the apartments. Ms. Cameron is to be credited with the loss of \$783.96.

[97] Mr. Cameron did not prove, by clear, convincing and cogent evidence, that he incurred a loss during the period when he managed the apartment units. Mr. Cameron did not produce an accounting of the rental proceeds as he was ordered to do. I therefore draw a negative inference against Mr. Cameron for his failure to produce an accounting. All rental information was in the control of Mr. Cameron. Despite his possession of the information, and despite his legal obligation to provide the accounting, Mr. Cameron elected not to do so. Mr. Cameron must face the consequences associated with his decision not to produce and disclose.

[98] In summary, Mr. Cameron did not prove his allegation that Ms. Cameron retained a profit from the rental property, nor did he prove that he incurred a loss.

[99] *Line of Credit*

[100] The joint line of credit stood at \$4,900 at the date of separation. Post separation, both parties drew on the line of credit. Ms. Cameron is responsible for the removal of \$10,000 and Mr. Cameron is responsible for the removal of \$10,531.57. The post-separation removal of funds was approximately equal. Since the line of credit was frozen, this debt has been steadily reduced from the Beacon Street rental income. The current balance outstanding is approximately \$13,817.40. Given these circumstances, the current balance of the line of credit will be divided equally between the parties.



[101] *Car Loan*

[102] Ms. Cameron's car loan of \$4,671.33 is appropriately ascribed to her as a debt in the equalization payment schedule.

[103] *CIBC Visa*

[104] This was a joint account with a balance of \$3,318.57 at separation. This was paid by Mr. Cameron drawing on the CIBC joint line of credit. Mr. Cameron will be credited with this balance given my ruling on the line of credit.

[105] *Mastercard*

[106] Mr. Cameron did not prove that the Mastercard debt was reasonably incurred for the family. Mr. Cameron only produced a Mastercard bill showing a "previous balance" of \$3,603.55. No statement was produced to show how the previous balance came to be. Mr. Cameron's oral statement that this debt was incurred to pay for a trip to Florida is insufficient proof: **Mullins v. Mullins**, 2012 NSSC 143.

[107] *M&H Hardware and Cameron's Building Supplies Accounts*

[108] Mr. Cameron failed to prove that these accounts should be divided between the parties. These stores were, from time to time, used to purchase supplies for the repair and maintenance of the Beacon Street apartments. Ordinarily the rental income would cover the cost of such repairs. I infer that Mr. Cameron had sufficient rental income to cover these expenses in the absence of an accounting of the rental income and expenses to prove the contrary.

[109] *Bell Aliant Account*

[110] The Bell Aliant account, which was incurred prior to separation, should not be included in the equalization schedule. The evidence proved that Ms. Cameron transferred money to Mr. Cameron post separation, notwithstanding the fact that he had exclusive possession of the matrimonial home. The money which Ms. Cameron transferred would have been sufficient to pay the Bell Aliant account.

[111] *Nova Scotia Power Account*

[112] The Nova Scotia Power account of \$436.38 was an account for the Beacon Street property and will not be considered as a divisible debt because I infer that Mr. Cameron had sufficient rental income to cover the power account in the absence of an accounting of the rental income and expenses.

[113] **What is the appropriate division of the assets and debts?**

[114] The following equalization schedule is adopted:

<b>I.</b>	<b>Asset</b>	<b>Value</b>	<b>Husband</b>	<b>Wife</b>
1.	Matrimonial home	\$ 188,458.50	\$ 188,458.50	
2.	Tracey St. property	\$ 6,000.00	\$ 6,000.00	
3.	2005 Chevrolet Equinox	\$ 7,000.00	\$ 7,000.00	
4.	2001 Honda Civic	\$ 2,500.00		\$ 2,500.00
5.	2007 Travel trailer	\$ 15,000.00		\$ 15,000.00
6.	Household contents	\$ 3,000.00	\$ 3,000.00	
7.	Chequing account	\$ 65.80	\$ 65.80	
8.	Savings account	\$ 2,212.68	\$ 2,212.68	
9.	Other	\$ 1,003.94	\$ 1,003.94	
10.	Mutual fund	\$ 964.12	\$ 964.12	
11.	Canada Savings Bond	\$ 500.00		\$ 500.00
	<b>TOTALS</b>	<b>\$ 226,705.04</b>	<b>\$ 208,705.04</b>	<b>\$ 18,000.00</b>
<b>II.</b>	<b>Debts</b>	<b>Balance</b>	<b>Husband</b>	<b>Wife</b>
1.	Mortgage	\$ 7,382.44	\$ 7,382.44	
2.	Beacon St. Apartment	\$ 4,301.42		\$ 4,301.42
3.	CIBC trailer loan	\$ 22,514.54	\$ 4,500.00	\$ 18,014.54
4.	Trailer expenses	\$ 1,756.25		\$ 1,756.25
5.	Line of credit	\$ 13,817.40		\$ 13,817.40
6.	Apartment losses	\$ 783.96		\$ 783.96
7.	Car loan	\$ 4,671.33		\$ 4,671.33
8.	Joint CIBC Visa	\$ 3,318.57	\$ 3,318.57	
	<b>TOTALS</b>	<b>\$ 58,545.91</b>	<b>\$ 15,201.01</b>	<b>\$ 43,344.90</b>
<b>III.</b>	<b>Equity of Husband</b>		<b>Equity of Wife</b>	
	Assets	\$ 208,705.04	Assets	\$ 18,000.00
	Less: Debts	\$ 15,201.01	Less: Debts	\$ 43,344.90
	<b>Net Equity of Husband</b>	<b>\$ 193,504.03</b>	<b>Net Equity of W</b>	<b>\$ (25,344.90)</b>
<b>IV.</b>	<b>Equalization Payment to:</b>	<b>0</b>		<b>\$ 109,424.47</b>

[115] Mr. Cameron must transfer to Ms. Cameron an equalization payment of \$109,424.47, together with all maintenance arrears outstanding, by July

31, 2014. The quit claim deeds for the three properties will be exchanged when the equalization payment is transferred. In addition, the court's previous ruling on the division of the parties' RRSPs and pensions, and the cash surrender value of Mr. Cameron's life insurance policy also applies.

[116] If Mr. Cameron is unable to finance the equalization payment, the matrimonial home must forthwith be listed for sale and sold. The court retains jurisdiction to determine all issues, and provide any necessary directions, on any matter associated with the listing and sale of the matrimonial home, in the event that Mr. Cameron does not buy out Ms. Cameron's interest.

[117] **Should occupation rent be awarded?**

[118] *Position of the Parties*

[119] Ms. Cameron claims occupation rent. Mr. Cameron opposes the granting of this relief because of a lack of evidence and because he claims he was not provided with advance notice of the claim.

[120] *Decision*

[121] In **Carmichael v. Carmichael**, 2005 NSSC 318, at paras. 50-55, this court reviewed the law on occupation rent in the family law setting and concluded that such relief was necessary and appropriate in certain circumstances. I have applied this law, and I have also reviewed the law provided by counsel.

[122] I find that Ms. Cameron proved, on a balance of probabilities, by clear, convincing, and cogent evidence, that occupation rent should be awarded. I order occupation rent in the amount of \$250 per month, from the month following separation until the month that Ms. Cameron receives her equalization payment. I reach this conclusion for the following reasons:

- The two children were in the split custody of the parties, such that Taylor resided with his father and Aaron with his mother, until August 2012, at which time both children were in the primary residence of Ms. Cameron. Mr. Cameron thus did not enjoy a priority claim for the home because of the custodial arrangements.

- Mr. Cameron shared the matrimonial home with his common-law spouse and, for a period of time, her daughter, from December 14, 2012 onward.
- The mortgage balance was minimal at separation. Mr. Cameron has been assigned a credit in the equalization schedule for the payout of the mortgage.
- Ms. Cameron was required to take out a mortgage, with a sizeable monthly payment, on the home which she and her partner acquired post separation. The mortgage could have been reduced had Ms. Cameron had access to her share of the equity in the matrimonial home.
- Ms. Cameron has been deprived of her share of the equity in the matrimonial home for a significant period of time. The parties separated in June, 2011. Ms. Cameron has yet to receive her equity, approximately 36 months post separation. In contrast, Mr. Cameron had significantly reduced shelter expenses because he retained Ms. Cameron's share of the equity. Indeed, there has been no mortgage on the matrimonial home for some time. This was a financial result which Ms. Cameron could ill afford.
- Mr. Cameron made minimal improvements to the matrimonial home post separation. The court does recognize that Mr. Cameron paid the taxes and other ongoing utilities, although not the house insurance. Ms. Cameron was required to pay similar expenses on the home, which she purchased post-separation, in the Halifax area.
- Mr. Cameron forcibly prevented Ms. Cameron from re-entering the home. He changed the locks; he called the police. Ms. Cameron's ouster was orchestrated by Mr. Cameron. It was not consensual.
- I accept Ms. Cameron's evidence when she stated that she discussed the issue of occupation rent with Mr. Cameron.
- \$250 per month is a reasonable occupation rent. The Beacon Street apartments are located in Glace Bay and are far inferior to the matrimonial home. They rent out for about \$500 per month. Ms. Cameron's request is more than reasonable.

[123] Mr. Cameron owes Ms. Cameron the sum of \$9,000 as occupation rent from the date of separation to the date of this decision. He will continue to pay Ms. Cameron the sum of \$250 per month thereafter, until the home is sold or Ms. Cameron receives the equalization payment. The outstanding occupation rent is to be added the equalization payment, or in the event the home is sold, from Mr. Cameron's share of the sale proceeds.

[124] Until the equalization payment is transferred to Ms. Cameron, or until the matrimonial home is sold, Mr. Cameron is solely responsible for the cost of the insurance, taxes, utilities, and all ongoing maintenance associated with the matrimonial home.

[125] **Conclusion**

[126] The following claims are granted:

- Ms. Cameron's claim for child support for the period between September 2012 and April 2013;
- Ms. Cameron's claim for the payment of Taylor's ongoing post-secondary educational expenses, and the health expenses of the children;
- Ms. Cameron's claim for a division of the matrimonial assets and debts; and
- Ms. Cameron's claim for occupation rent.

[127] The following claims are denied:

- Ms. Cameron's claim for Aaron's tutoring, hockey and post-secondary educational expenses.

[128] The rulings contained in this decision, together with the agreements reached during the settlement conference, will form the provisions of the corollary relief order. Mr. Berliner is to draft and circulate the order. Costs submissions are to be filed within 30 days.

---

Forgeron, J.