SUPREME COURT OF NOVA SCOTIA
Citation: Thompson v. St.Croix, 2014 NSSC 275

Date: 20140715
Docket: No. 1204-005732
SKD-082305
Registry: Kentville

Between:

Karen Thompson

Petitioner

v.

Ronald St. Croix

Respondent

Revised Decision:	The text of the original decision has been corrected according to the attached erratum dated August 1, 2014 and this replaces the previously released decision.
Judge:	The Honourable Justice James L. Chipman
Heard:	June 9-13, 2014, in Kentville, Nova Scotia
Counsel:	Julia E. Cornish, Q.C., Jennifer M. Kooren , and Katharine A. Lovett (law student) for the Petitioner Ronald St. Croix, on his own behalf

By the Court:

Introduction

[1] This is a divorce proceeding involving a couple originally from Newfoundland and Labrador. Ronald St. Croix and Karen Thompson began living together in August, 2000. Two years later they married and remained together for approximately nine years. There is one child of the marriage, David Carl St. Croix, ("David") born January 10, 2006.

[2] At the time of separation in late summer of 2011, the couple owned a matrimonial home located at 48 Lanark Drive, Paradise (a community on the outskirts of St. John's).

[3] Mr. St. Croix is an environmental technologist and Ms. Thompson is a medical doctor who became a fully qualified psychiatrist in the spring of 2011. In July, 2011 she accepted a position as an adult general psychiatrist with Annapolis Valley District Health Authority ("A.V.D.H.A.") where she continues to practice. Mr. St. Croix worked for Nalcor Energy for several years until taking an education leave in the late summer of 2013.

[4] Shortly after accepting her position with A.V.D.H.A., Dr. Thompson and David moved to a rental home in Port Williams, Kings County, Nova Scotia. Mr. St. Croix remained in the matrimonial home in Paradise until commencing his education leave. In August, 2013, he moved to the Annapolis Valley as he enrolled as a full time Bachelor of Business Administration student at Acadia University for the 2013-14 academic year.

[5] At the time of trial Mr. St. Croix took time off from work with Nalcor as shortly after finishing exams at Acadia in April he returned to his former position. When he returned to Newfoundland, he resumed living in the matrimonial home, which was unoccupied while he was away at university.

History of the Proceedings

[6] Mr. St. Croix started divorce proceedings in Newfoundland in June, 2012, which Dr. Thompson became aware of on November 1, 2012, when she was served. Dr. Thompson started her divorce proceeding in Nova Scotia in August, 2012. In the days preceding the trial Mr. St. Croix filed an Answer in Nova Scotia.

[7] In November, 2012, Dr. Thompson brought an Application within the Newfoundland proceeding, requesting, among other things, transfer of the proceeding to Nova Scotia.

[8] Pursuant to an Order of the Supreme Court of Newfoundland and Labrador Trial Division (Family), issued November 28, 2012, the divorce proceeding was transferred to Nova Scotia. One of the requirements of the Order was that Dr. Thompson file a Motion regarding interim parenting issues. Dr. Thompson brought an Interim Motion on December 6, 2012, which was resolved by an Interim Consent Order issued December 20, 2012.

[9] On April 25, 2013, Mr. St. Croix filed a Notice of Motion seeking interim spousal support (retroactive and prospective), summer parenting time, and interim shared parenting. As Mr. St. Croix's Motion did not address child support, Dr. Thompson brought a separate Motion seeking interim child support (prospective and retroactive to the extent that Mr. St. Croix was seeking interim spousal support), as well as an Order that Mr. St. Croix continue to be responsible for line of credit payments relating to the matrimonial home where he was residing.

[10] The Motion was converted to a settlement conference, which was held on June 19, 2013. The settlement conference only resolved 2013 summer parenting.

[11] On October 28, 2013, Dr. Thompson filed an Emergency Motion concerning interim parenting issues. This Motion was heard by the Honourable Justice Gerald R.P. Moir on November 7, 2013, and resulted in an Interim Order issued December 20, 2013.

[12] On September 16, 2013, Dr. Thompson filed a Request for Date Assignment Conference. Mr. St. Croix objected to this Request and a conference was held on November 21, 2013. Following this, a Date Assignment Conference was heard by the Honourable Justice Pierre L. Muise on December 19, 2013.

[13] In advance of the trial I conducted a Trial Readiness conference on April 11, and pretrial conferences on April 23 and June 3, 2014.

[14] At the commencement of trial I heard a Motion from Mr. St. Croix who objected to the granting of a divorce on the basis that there was a prospect for reconciliation. Having heard Dr. Thompson's counsel's reply, I made the determination that the Motion should be denied.

[15] The Petitioner then led evidence – which was ultimately uncontroverted – confirming the Divorce Judgment should be granted. That is to say, given the totality of the evidence I was satisfied that all procedural and jurisdictional requirements were met. The grounds for divorce were established based on a breakdown of the marriage as evidenced by the fact that the parties lived separate and apart for at least one year immediately proceeding the determination of the divorce and were living separate and apart at the commencement of the proceeding. Accordingly, by Order issued June 18, 2014 (Appendix I), I granted Divorce Judgment.

[16] On the same date, June 18, 2014, I granted a Partial Corollary Relief Order (Appendix II) referable to 2014 summer parenting and the matrimonial home. In all of the circumstances I felt it was critical to make a timely decision on these issues.

Issues

[17] There are a number of remaining issues to be resolved: date of separation, custody (and David's living arrangements and the decision-making arrangement for him), property division, retroactive and prospective child and spousal support. Costs have been pleaded but the parties have deferred costs arguments until this decision.

Approach to Issues

[18] Where there are multiple issues, they must be approached in a sequence which places them in the appropriate and logical order. Once the date of separation is sorted out, this involves beginning with David's parenting. In addition to the obvious importance of this issue, the parenting arrangement provides the context for determining other issues. A parenting arrangement may be relevant to the division of assets, pursuant to s. 13(h) of the *Matrimonial Property Act*, R.S.N.S. 1989, c.275 ("*M.P.A.*").

[19] Mr. St. Croix seeks a shared custody arrangement and the expenses of each parent are relevant under s. 9(b) and (c) of the *Federal Child Support Guidelines*, SOR 97-175. ("*Child Support Guidelines*"). Possession of the home and responsibility for debts have an impact on expenses that are relevant to child support. In dealing with support applications under the *Divorce Act*, R.S.C. 1985

(2nd Supp.), c.3, (*"Divorce Act")* s. 15.3(1) child support must be addressed before spousal support.

Date of Separation

[20] Dr. Thompson maintains the parties separated in mid-August, 2011, when she and David moved to Nova Scotia. Mr. St. Croix says the separation occurred in early February, 2012. The breakdown of a marriage is addressed in s. 8 of the *Divorce Act*.

> 8. (1) A court of competent jurisdiction may, on application by either or both spouses, grant a divorce to the spouse or spouses on the ground that there has been a breakdown of their marriage.
>
> (2) Breakdown of a marriage is established only if
>
> (a) the spouses have lived separate and apart for at least one year immediately preceding the determination of the divorce proceeding and were living separate and apart at the commencement of the proceeding; or
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> (b) the spouse against whom the divorce proceeding is brought has, since celebration of the marriage,
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> (i) committed adultery, or
>
> (ii) treated the other spouse with physical or mental cruelty of such a kind as to render intolerable the continued cohabitation of the spouses.
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> (3) For the purposes of paragraph (2)(a),
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> (a) spouses shall be deemed to have lived separate and apart for any period during which they lived apart and either of them had the intention to live separate and apart from the other;

[21] Concerning the determination of a separation date, Justice Beaton noted as follows in *Volcko v. Volcko*, 2013 NSSC 342 at para. 8:

> In determining the date of separation, each case must be examined on its own facts; while a certain factor or combination of factors might lead to a particular determination in one case, it does not necessarily follow that the presence of the same factor(s) would always lead to a similar determination in another case: *Dupere v. Dupere* (1974) 9 N.B.R. (2d) 554 (QB); *French v. French* 1997 CanLII 4543 (NSSC), (1997) 162 N.S.R. (2d) 104 (SC); *Gardner v. Gardner* 2005 NSSF 17 (CanLII), (2005) 232 N.S.R. (2d) 68 (SC).

[22] In this case the background to Dr. Thompson's move provides context for a number of issues including the date of separation. The Petitioner cited four main reasons for wanting to move from the St. John's area to Nova Scotia:

1. To be closer to her brothers (resident in the HRM), particularly since the death of their mother (albeit this was about two years earlier);
2. Due to the "stressful" work situation in St. John's which involved locums and no permanent job guarantee as well as a strenuous on-call schedule;
3. Her view that the Nova Scotia public education system was somewhat superior to the Newfoundland education system, particularly in respect of the enrichment program for David, who by all accounts is a very intelligent child; and
4. Mr. St. Croix's car hobby, as Nova Scotia would offer a closer (therefore cheaper) transit point for car parts shipped from other areas of North America and that the Shubenacadie race track would be nearby.

[23] Dr. Thompson went on to explain that by the summer of 2011 she and Mr. St. Croix were having "a lot of trouble in our marriage largely leading to the separation issue". She elaborated that the two were in conflict as to what Mr. St. Croix would do in their new environment. Dr. Thompson testified Mr. St. Croix wanted to pursue a hobby racing business whereas she wanted him to obtain a job in Nova Scotia. To this end, when she was speaking with recruiters, she was receptive to their offers to attempt to place Mr. St. Croix. She testified that Mr. St. Croix was resistant to these efforts (to the point where he would not furnish his resume) adding that he was not "on board" with selling their house as he wanted to

keep it as a rental property. Dr. Thompson regarded this as a "nightmare situation" given that the family would be residing in another province.

[24] Dr. Thompson said that after a June, 2011 recruiting trip to Nova Scotia she narrowed her choice to the Annapolis Valley over other rural Nova Scotia communities. She testified that Mr. St. Croix was "not interested" in the final decision and left the matter up to her. During a second recruiting trip in July, 2011, Dr. Thompson signed a contract with A.V.D.H.A. She did not qualify for a $20,000.00 signing bonus as it was contingent on being on call, something she did not want to agree to, "given it was just me and David". She also opened up her own bank account in Nova Scotia during this time as she stated she was growing concerned about Mr. St. Croix's expenditures toward his car hobby and potential car business.

[25] Dr. Thompson then went about securing housing in Port Williams, as through her research, she determined the Port Williams Elementary School would be optimum for David. Dr. Thompson said that Mr. St. Croix did not play a role in looking for a home. Her evidence was that because their marriage was in significant trouble and they were leading separate lives, "Ron was aware I was relocating with David and he was perfectly content with it". She went on to say, "he felt good as he would have more time to work on his vehicles".

[26] The above is to be contrasted with the evidence of Mr. St. Croix.

[27] For his part, Mr. St. Croix said there was a specific plan discussed with his wife. This would involve him staying in the matrimonial home in Paradise and continuing to work at Nalcor for a six month period. He testified this plan was agreed upon so that the family would continue to have health benefits (through Mr. St. Croix's employer) until Dr. Thompson's new position would provide for such benefits (six month waiting period with A.V.D.H.A.). During this half year away from his family, Mr. St. Croix would also oversee required uncompleted renovations to their 48 Lanark Dr. home in Paradise.

[28] Mr. St. Croix added that the agreed upon plan did not involve a search for employment. According to him, the couple discussed how he would upgrade his education once he joined his family in Nova Scotia.

[29] Irrespective of the background leading up to Dr. Thompson's departure, it is uncontroverted that the two have not lived together since their separation in mid-August, 2011. While there were visits by Mr. St. Croix to Nova Scotia in

September, November and December of 2011, I find from the evidence of both parties that their visits were not harmonious. Returning to *Volcko*, *supra*, Justice Beaton, beginning at para. 7 and continuing to para. 28, provides a thorough review of the authorities regarding determination of a separation date. In finding Mr. and Mrs. Volcko separated on the earlier date in that case, the judge noted points which are applicable here:

> [17] The Wife relied on Miller v. Miller 2000 NSCA 64 in support of her position that while the parties may have lived in separate residences after 2006, the nature and frequency of their interaction and their continued counselling meant they were not separated. In Miller (supra), Bateman, J.A. described the parties' circumstances as follows:
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> > [4] The trial judge aptly described the circumstances of the parties' separation as unique. The Wife testified that on October 24, 1995 she moved into a friend's home, she and Mr. Miller having agreed to live in different residences while they worked on their marital problems. From that time forward they spent the majority of weekends together, had regular sexual relations, shopped, dined and attended social functions together as they had always done. She testified that although the parties were living in separate accommodations it was with a view to working out their differences, not ending their marriage. During the months preceding Christmas of 1997 they began to spend less time together and were arguing frequently. In March of 1998 the Wife initiated divorce proceedings. The Wife's evidence in this regard was uncontradicted. Justice Haliburton found that January 1, 1998 was the date of separation. Counsel for Mr. Miller submits that the trial judge should have choose October 24, 1995 or, alternatively, some date between then and January 1, 1998. We are not persuaded that Justice Haliburton erred in law in fixing the separation date as he did on these unusual facts...
>
> [18] There is a sharp distinction to be drawn between the factual circumstances in Miller (supra) and this case. Here, the parties did not spend the majority of their free time together, they did not engage in regular sexual relations, they did not shop together, and they did not attend social functions together as they had previously done. Rather, their contact centred around their children, with the exception of their attendance at marriage counselling. Each had a different motivation for participating in counselling, with the Wife seeking to repair the marriage and the Husband looking to finalize its end. In Miller, both parties, while living in separate residences, were mutually intending to resolve their marital problems.

[30] Finally, Justice Beaton's comments at para. 24 are particularly of assistance on the facts of the within case:

> [24] Section 8 of the Divorce Act does not require a mutual intention to end the marriage, as discussed in O'Brien v. O'Brien 2013 ONSC 5750, per McDermot, J. at paragraph 50:
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> Unlike the decision marry, the decision to separate is not a mutual one. It is a decision which is often made by one party over the objections of the other. Those protestations matter not: once one party has decided to permanently separate and has acted on it, the other party has no ability to stop the process or object to it. This is confirmed by section 8(3)(a) of the Divorce Act, which states that "spouses shall be deemed to have lived separate and apart for any period during which they lived separate and apart and either of them had the intention to live separate and apart from the other" (emphasis). As stated by D.L. Corbett J. in Strobele v. Strobele, [2005] OJ 6312 (S.C.J.), the separation occurs when "the parties knew or acting reasonably, ought to have known that their relationship was over and would not resume"[paragraph 29].

[31] In the result I find that the date of separation is at the end of August, 2011. Before leaving this section, however, I feel compelled to make a finding which will have important consequences for my subsequent determinations on child and spousal support. At the same time, I will explain my rationale for determining August 31, 2011as the date of separation.

[32] I have carefully reviewed the *viva voce* and documentary evidence in an effort to sort through the conflicting testimony concerning the parties' decision to move to Nova Scotia. I have also reflected on the demeanor of both witnesses as they gave their evidence in this area. On balance, I find as a fact that neither version is correct but rather something in between.

[33] I find that Dr. Thompson and Mr. St. Croix came to the collective decision to move from Newfoundland to Nova Scotia. By June, 2011 Mr. St. Croix agreed with Dr. Thompson's selection of a position with the A.V.D.H.A. By July, he agreed with her decision to sign the contract. He consented with her leaving with David because he was of the honest belief that he would rejoin his wife and son in six months' time. In this area I completely accept Mr. St. Croix's evidence as I do

not believe he would have agreed to permit his son to leave without a battle. After all, this is the same man who has (albeit recently with the backdrop of all the litigation) contacted the RCMP with regard to charging Dr. Thompson with kidnapping David.

[34] Where I depart with Mr. St. Croix's version of events and accept Dr. Thompson's, is regarding the employment plan. I do not believe their agreement (developed when they were a couple in the summer of 2011) involved Mr. St. Croix not doing a job search. Rather, given the testimony, I find that the plan was for Mr. St. Croix to follow his wife and son to Nova Scotia six months hence. He would then pursue job opportunities while at the same time explore turning his auto racing hobby into a for profit business.

[35] As things unfolded, Mr. St. Croix and Dr. Thompson did not see the plan through as by the end of August Dr. Thompson made the determination (which she articulated to Mr. St. Croix) that their relationship was over. This decision was further communicated when the two saw one another during Mr. St. Croix's summer, fall and early winter 2011 visit to Nova Scotia. They were anything but harmonious visits and involved bickering and Mr. St. Croix staying in a separate room in Dr. Thompson's residence.

What parenting arrangement would be in David's best interest?

[36] As a Petition for Divorce has been issued, the appropriate starting point in determining the parenting arrangement is s. 16(1) of the *Divorce Act*:

> 16(1) A court of competent jurisdiction may, on application by either or both spouses or by any other person, make an order respecting the custody of or the access to, or the custody of an access to, any or all children of the marriage.

[37] In determining the appropriate parenting arrangement, the *Divorce Act* mandates that the best interests of the children is paramount:

> 16(8) In making an order under this section 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.

[38] In *D.(C.H.F.) v. H.(C.R.)*, 2006 NSSC 230, Justice B. MacDonald, quoting from *Dixon v. Hinsley*, (2001), 22 R.F.L. (5th) 55 (Ont. C.J.), noted that a broad view must be taken to determine what is truly in the best interests of a child in any given circumstances:

> "the best interests" of the child is regarded as an all embracing concept. It encompasses the physical, emotional, intellectual and moral well being of the child. The court must look not only at the child's day-to-day needs but also to his or her longer term growth and development…What is in the child's best interest must be examined by the perspective of the child's need with an examination of the ability and willingness of each parent to meet those needs. Each parent's plan for the child must be examined carefully in light of the children's needs. Custody is not always awarded to the parent who has "cooked the most meals, driven the most miles, attended the most concerts or cheered the loudest of their achievement."

[39] Further, in *Young v. Young*, [1993] 4 S.C.R. 3 the Supreme Court noted that the test of the best interest of the child is the only consideration in determining parenting arrangements:

> First, the "best interests of the child" test is the only test. The express wording of s. 16(8) of the *Divorce Act* requires the court to look only at the best interests of the child in making orders of custody and access. This means that parental preferences and "rights" play no role.
>
> Second, the test is broad. Parliament has recognized that the variety of circumstances which may arise in disputes over custody and access is so diverse that predetermined rules, designed to resolve certain types of disputes in advance, may not be useful. Rather, it has been left to the judge to decide what is in the "best interests of the child", by reference to the "condition, means, needs and other circumstances" of the child. Nevertheless, the judicial task is not one of pure discretion. By embodying the "best interests" test in legislation and by setting out general factors to be considered, Parliament has established a legal test, albeit a flexible one. Like all legal tests, it is to be applied according to the evidence in the case, viewed objectively. There is no room for the judge's personal predilections and prejudices. The judge's duty is to apply the law. He or she must not do what he or she wants to do but what he or she ought to do.

[40] Commencing in late August, 2013, Mr. St. Croix began living in Nova Scotia for the balance of 2013 and his plan involves living here for in the order of three quarters of each successive year. In the result, he seeks a shared parenting

arrangement. On the other hand, Dr. Thompson asks the Court to continue the parenting arrangement set out in the Interim Order of December 20, 2013. Pursuant to the Order, David primarily resides with his mother, while Mr. St. Croix has parenting time every other weekend from Friday after school until Monday morning, and every week from Wednesday after school until Thursday morning.

[41] Dr. Thompson and Mr. St. Croix have a similar proposal for David for the summer holidays. This is contained within the Partial Corollary Relief Order (Appendix II).

[42] The evidence discloses that Dr. Thompson has been David's primary caregiver throughout much of his life. Since birth she has taken him to the vast majority of his medical appointments. David has lived with Dr. Thompson in Port Williams since August, 2011. Mr. St. Croix has had regular, in person, access with David since the parties' separation. Since Mr. St. Croix relocated to Nova Scotia in August, 2013, he has continued to have regular access with David (since November 7, 2013, that access has been as set out in the Interim Order).

[43] Although Dr. Thompson agrees Mr. St. Croix should have regular parenting time with David, she does not agree that a shared parenting arrangement would be in David's best interests. It is the Petitioner's position that a constant and predictable routine and environment is what is best for David.

[44] As I remarked more than once over the trial, it is my view that both parents equally love their son. His best interests are to be considered above all other considerations. This requires that, where possible, each parent have a strong presence in his life.

[45] Through the course of the trial there was consistent evidence from both parties that David is a very intelligent eight year old. He has been provided an individualized education plan as a gifted student in his grade two class at Port Williams Elementary. He is involved in extracurricular activities ranging from karate to music lessons. He has friends but is somewhat solitary in his approach and was investigated as possibly being on the autism spectrum, but this was ruled out.

[46] Unfortunately, David's parents, especially since their separation, have had a significantly strained relationship. This has resulted in poor communication (acknowledged by both sides) and overall conflict. In addition to the R.C.M.P. complaint there have been episodes between the parents causing heightened

anxiety centering around David's schooling, after school program and karate lessons. With the December 20, 2013 Interim Order in place the situation has somewhat improved, but there still exists considerable tension and difficult communication.

[47] For the past two and one half years, there have been numerous plane trips with David flying from Halifax to St. John's and return to facilitate liberal access with his father. This has manifested itself as another issue between the parents as Mr. St. Croix is of the view his son can travel unaccompanied, whereas Dr. Thompson feels otherwise.

[48] Considerable trial time was spent on this issue, inclusive of Mr. St. Croix introducing an exhibit of the various airlines' policies regarding unaccompanied minors. Having considered all of the evidence, I am of the emphatic view that Dr. Thompson's position on this issue is reasonable and must prevail. It is clearly in the best interest of this particular eight year old that he has a travel companion for the foreseeable future, perhaps until he reaches the higher elementary grades.

[49] The cost of airline travel for the 2014 summer was specifically addressed in the Interim Order (Appendix II). After the summer the cost of having David travel accompanied shall be borne by the parent travelling with him. If a parent is not travelling with David, then the cost (of flying a mutually acceptable relative or close friend) shall be shared equally.

[50] Before leaving this area I wish to add that there were a number of email exchanges introduced as exhibits which touched on this topic and other parenting decisions. Unfortunately, Mr. St. Croix's emails were often far from diplomatic, deploying derogatory adjectives to characterize Dr. Thompson and her actions. I do not wish to dwell on this other than to make the point that the emails are part of the evidence which convinces me that the appropriate decision making arrangement for David must rest with one or the other parent and that – for the reasons indicated and further developed below – the parent should be Karen Thompson. Some of the other evidence relates to disagreements between the parties regarding a flu shot (Karen, yes/Ron, no), dirt bike (Ron, yes/Karen, no) and production of a travel letter pursuant to the December 20, 2013 Order (Mr. St. Croix belatedly producing the letter with his initial refusal due to a typographical error in the Order).

[51] The culminating effect of these disagreements has been to cause tension and stress between the parties. Furthermore, and of even greater concern, is the

“spillover” effect the upset has undoubtedly had on David. There was evidence from both parents of several times when David has been told by one parent about the other’s faults. This, of course, is harmful to David and the best decision making arrangement for him must seek to minimize/eliminate this.

[52] In *Lockerby v. Lockerby*, 2010 NSSC 282, Justice Jollimore had cause to review a volatile relationship and ultimately decided it was best for the children to reside primarily with their father and for him to have the final decision making authority over the children. At paras. 70-72 Justice Jollimore set the background, which offers assistance with my determination:

> 70 As long ago as 1998, the court distinguished between an "inability" to cooperate and an "unwillingness" to cooperate in determining parenting arrangements in Godfrey-Smith, 1998 CanLII 1857 (N.S.S.C.) at paragraph 20. In that case, then-Justice Michael MacDonald relied on the parties' past cooperative relationship to determine that a joint custody relationship was appropriate. I distinguish the circumstances before me from those which existed in Godfrey-Smith, 1998 CanLII 1857 (N.S.S.C.). The Lockerbys have experienced a prolonged period of high conflict. This is not a situation where once cooperative parents now restrict their communications to curt emails. This is a situation where children have experienced more than one and one-half years of allegations that their father has consciously made decisions designed to hurt them, whether by failing to return items they take to his home or by sabotaging the hot water system in their home. After the experiences of the past years, the children cannot expect that their parents will cooperate in decision-making. It is in the children's best interests that decisions about them do not become an opportunity for conflict between their parents and that the children do not have to worry that their decisions will be buried under their parents' conflict. For the children to have the security of knowing that important decisions will not fall victim to their parents' conflict means there must be a sole decision-maker. A sole decision-maker will also ensure that decisions do not become a battlefield.
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> 71 Between the parents, Mr. Lockerby has done more to shield the children from the conflict. He says this has meant not responding to comments the children relay from their mother and not explaining his side of the story. He says that the consequence of this is that he is either left to let it go (leaving the children with the impression he has done something wrong) or explaining the adult situation to the children and thereby speaking negatively of their mother. He appreciates that silence has unfortunate consequences for him, but knows this is necessary, if the children are to be kept out of their parents' conflict. Between the parents, I rely on Mr. Lockerby to make decisions for the children without using the situation to perpetuate the parents' conflict. Mr. Lockerby shall have sole custody of the

> children. When important decisions are to be made, he shall advise Ms. Lockerby of the decision he intends to make and make the final decision.
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> 72 To ensure the children's relationships with their parents are not challenged by involving them in the separation and to ensure that their contact with each parent is maximized, the children should have their primary residence with their father beginning immediately. Any access arrangements the parents have already made for this summer will be followed.

[53] In this case I find Dr. Thompson has done the most to shield David from the conflict. Between the parents, I rely on Dr. Thompson to make decisions for David. When she makes an important decision about David, she shall advise Mr. St. Croix on a timely basis.

[54] In *Hammond v. Nelson*, 2012 NSSC 27, Dellapinna J. did a thorough review of recent cases regarding shared parenting (including Associate Chief Justice O'Neil's decisions in *Murphy v. Hancock*, 2011 NSSC 197; and *Gibney v. Conohan*, 2011 NSSC 268). In doing so, Justice Dellapinna developed a non-exhaustive list of eight considerations (para. 68) for the Court to review when one parent is seeking shared parenting. I have bourne these considerations in mind in making my determination that David should primarily reside with Dr. Thompson and that she should have the final decision making authority.

[55] In *Hammond* the parties dated for approximately three months. They had one child together, who was about two and a half years old at the time of the hearing. Both parents were involved with their child from the time of birth, although they have had difficulties communicating with each other. Justice Dellapinna found that both parents were able to be their child's primary parent. However the Court ultimately found that imposing a shared parenting arrangement over the mother's objections would have an adverse effect on the parents' relationship, and an adverse effect on the child. As well, Justice Dellapinna found that the child required stability, and that was found in leaving the child in the primary care of her mother with the father having generous parenting time (at para. 90-91).

[56] Nova Scotia Courts have determined shared custody arrangements require an even greater level of cooperation and communication between the parents than joint custody arrangements. Parents must not only foster and encourage meaningful, regular and frequent contact between the children and the other parent

they must also cooperate in providing similar routines and value systems in each household for the children.

[57] In *F.F.R. v. K.F.*, 2013 NLCA 8, White J.A. found that the trial judge did not err in ordering "qualified joint custody" that granted the mother final decision-making authority (at para. 49).

[58] The trial judge found that:

> I have, as indicated, concluded that there is ongoing animosity between Mr. R. and Ms. F. I have also concluded that there is an abundance of evidence which proves a lingering lack of cooperation and effective communication. I have therefore, following the principles set out in the foregoing jurisprudence, also concluded that K.'s best interests will be better served with one parent having final decision-making authority concerning major issues that affect her; this is because I am firmly convinced, based on the evidence, that both of K.'s parents will not be able to consistently agree on issues which affect K.; this includes extra-curricular and recreational pursuits. As stated in Lamont-Daneault v. Daneault, [2003] M.J. No. 318, supra, and Sawatzky v. Sherris, [2002] M.J. No. 429, 2002 CarswellMan 465 (Man. C.A.), supra, ordinarily this is the parent with primary care and control. Because I cannot find a valid reason for departing from that which is ordinarily ordered, the ensuing order will provide for joint custody but with Ms. F. having final decision making authority if she and Mr. R. cannot agree on major decisions which affect K.

[59] White J.A. held that:

> Assigning one parent final decision making authority may be appropriate where there is evidence of an inability to resolve matters because of a high degree of conflict existing between the parents: see Carnell v. Follett, 2010 NLTD(F) 25, 300 Nfld. & P.E.I.R. 133; Snook v. Lane (2006), 255 Nfld. & P.E.I.R. 339 (NLUFC). While parents should strive to come to an agreement and rationally and fairly deal with issues as they arise, it must be recognized that this is not always possible and that, as a result, the child of the relationship may be caught in the conflict.

[60] Justice B. MacDonald considered this issue in *C.(J.R.) v. C.(S.J.)*, 2010 NSSC 85. MacDonald J. goes into detail considering the distinction between sole custody, and joint custody when one parent has the final decision-making authority (at para 26-30). Ultimately she notes that "…joint custody must not be granted as

a form of wishful thinking. The nature and extent of the conflict between the parties must be analyzed to determine if joint custody is in a child's best interest" (at para. 30).

[61] Having regard to the evidence, I am of the view that the optimal parenting arrangement for David involves the parenting plan proposed by Dr. Thompson and (but for changes in respect of phone calls, which I will address below) attached to my decision as Appendix III. With this plan in place, David will continue to have the stability of living in his primary home in Port Williams. This will afford him proximity to his school, friends and extracurriculars. When his father is resident in the Port Williams vicinity (which by his evidence will likely be for the regular Acadia University school year or an extended one involving spring and/or summer courses), David will live with Mr. St. Croix over every Wednesday and every other weekend (as more particularly set out at Appendix III).

[62] As for the aforementioned phone calls, I have modified the parenting plan so that they occur less often and for a shorter duration. In this regard, I am mindful of David's school and extracurricular schedule along with his bedtime routine, as addressed by both parents in testimony.

[63] In my view, the parenting plan I have set out allows for both parents to continue to have a strong presence in David's life but with less likelihood of conflict, and therefore in their child's best interest.

Property Division Application

(a) Principles

[64] Under the *M.P.A.*, I must first identify the assets and then classify them as matrimonial or non-matrimonial. Identifying assets simply involves listing them. Classifying assets requires determining whether they are excluded under s. 4(1) of the *M.P.A.* Once items are identified and classified, they must be valued. The *M.P.A.* provides that matrimonial assets are to be divided equally. In limited circumstances the *M.P.A.* allows for an unequal division of matrimonial assets and a division of non-matrimonial assets.

[65] As Justice Smith (as she then was) noted in *Abbott v. Abbott* 2002 Carswell NS 395, at para. 14:

> An interest in matrimonial property is generally not determined based on a party's contribution to the asset (financial or otherwise) during the marriage. The starting point under the Nova Scotia Matrimonial Property Act is the presumption that all property acquired by either or both spouses before or during the marriage is matrimonial property with certain exceptions as set out in s. 4(1) of the Act. The Act allows the Court to grant an unequal division of matrimonial assets taking into account the date and manner of acquisition of the assets (see s. 13(e)), however, it is not necessary, nor is it desirable, for the parties to focus on who spent what on the property during the marriage. In many marriages one spouse is significantly or completely responsible for the expenses relating to the matrimonial assets such as the matrimonial home. Nevertheless, the law provides for a presumption of an equal division of these assets.

[66] Further, at para. 19, Justice Smith stated the following concerning valuation dates for matrimonial assets:

> The Matrimonial Property Act does not specify a date that should be used for the valuation of matrimonial assets. The case law that has developed in Nova Scotia establishes that there is no requirement on the Court to assign a single valuation date for all matrimonial assets (see: Reardon v. Smith (1999), 1 R.F.L. (5th) 83 (N.S.C.A.)). The Court has the discretion to decide what is fair and equitable in the circumstances of each case (see: Simmons v. Simmons (2001), 196 N.S.R. (2d) 140 (N.S.S.C.)).

(b) Division of Matrimonial Home

[67] In *Simmons* (referenced by Justice Smith in the above quote) Justice D. Campbell provided principles for the valuation of assets, which continue to be accepted by the Courts in Nova Scotia. With respect to the matrimonial home, Campbell, J. held that it should be valued as of the date of division.

[68] The parties' home at 48 Lanark Dr. in Paradise was appraised by William G. Balsom of Kirkland, Balsom & Associates on May 2, 2014. Mr. Balsom's report was introduced in evidence and he gave *viva voce* evidence from St. John's via a video/audio link. On the basis of his report and testimony I find the matrimonial home has an appraised value of $364,900.00 "as is". In this regard, the original report valued the house at $359,900.00 but through cross-examination it was developed that Mr. Balsom erroneously considered the lot of the smaller next door properly (46 Lanark Drive) when he prepared his opinion. The "as is" designation

refers to the fact that there are fairly significant uncompleted renovations which need to be done to the property.

[69] Since the property is in Newfoundland, the Court does not have jurisdiction to make an Order with respect to the property itself. However, I am able to make an Order that the parties do something with respect to the property, or that the value of the property be taken into account for a division of assets. In this respect, I refer to *M.P.A.* s. 22(2) and (3):

> **Immovable property**
>
> (2) The ownership of immoveable [immovable] property as between spouses is governed by the law of the place where that property is situated.
>
> **Consideration of value of immovable property**
>
> (3) Notwithstanding subsection (2), where the law of the Province governs the division of assets, the value of the immoveable [immovable] property wherever situated may be taken into consideration for the purposes of a division of assets. R.S., c. 275, s. 22.

[70] At the conclusion of the trial I ordered that the parties sell the home and the Order (also addressing 2014 summer access) is found at Appendix II.

[71] I recognize that it may take considerable time for the house to be sold. With this in mind, I am cognizant of the history involving Mr. St. Croix not realistically attempting to rent the house out when he lived in Nova Scotia from late August, 2013 until late April, 2014. I am also mindful of how Dr. Thompson was forced to step in to pay the couple's line of credit mortgage when Mr. St. Croix defaulted on the monthly obligation. In the result, I order that in the event the home does not sell on or before October 31, 2014, that a rental agency be commissioned to rent the house. I further order that if Mr. St. Croix should somehow change plans and remain in the house, that he be responsible for all line of credit, mortgage, utility, tax and associated expenses referable to 48 Lanark Drive for as long as he lives there.

(c) Remaining Matrimonial Assets and Debts

[72] With respect to the remainder of the matrimonial property and debts, there was considerable evidence regarding various bank accounts and lines of credit. Dr. Thompson argued that the bulk of the assets be equally divided but that some of the debts should not be divided equally. As for Mr. St. Croix, his position was set out in his pretrial brief as follows:

> Matrimonial assets and debt should be unequally divided. The couple had intertwined finances throughout the marriage. Significant investment decisions, capital expenditure and debt accruals were assumed by the couple based on the future earning potential of Ms. Thompson.
>
> Based on long term effects an equal division of assets and debts will have on the financial health of Ron, it is proposed that Karen absorb the outstanding debt associated with the CIBC line of credit and the National Bank line of credit. Karen should also be responsible for payment of her student loan. These amounts, while not insignificant, are much more manageable for Karen on a cash flow basis within a long term personal debt consolidation plan. The opposite effect unto Ron would challenge his ability to be a parent to David and potentially lead to personal bankruptcy proceedings.
>
> Karen should also provide an equalization payment to Ron in the form of lost capital as her actions have resulted in the renovation in the home remaining unfurnished. Any appreciation in value associated with the sale of the matrimonial home as it should have been completed is now lost. Potentially, there will also have to be restorative work on the exterior to repair weather damaged materials. These costs should also be directed unto Karen.
>
> An additional effect is in the long term security of Ron's financial health and his path toward self-sufficiency upon the breakdown of the marriage. Significant decisions in the couple's marital arrangement were made respecting the fact that Karen would be earning a significant income upon completion of her medical program. Of paramount importance in the relationship was the decision to move to Nova Scotia as a family to support Karen in her career endeavour.
>
> As a result of the breakdown of the marriage, Ron's future financial security is completely unknown. The couple agreed to move as a family to Nova Scotia. Karen's unilateral decision to end the marriage does not belie her responsibilities and obligations of the matrimonial arrangement. The current situation has in effect usurped Ron's ability to be an equal parent in David's life and also jeopardized Ron's financial future.

> An unequal division in Ron's favour would accelerate Ron's path toward self-sufficiency at the same time preserving the standard of living that each spouse experienced and planned for in their future together.

[73] Once again, the *M.P.A* allows for an unequal division of property only in limited circumstances. As for debts, as Jollimore J. noted in *Lockerby*, supra, at para 146:

> Section 12(1) of the Matrimonial Property Act provides that matrimonial assets are divided equally notwithstanding the ownership of the assets. There is no similar treatment of debts. In Cameron, 1995 CanLII 4433 (N.S.S.C.), affirmed by Cameron, 1996 CanLII 5598 (N.S.C.A.), Justice Goodfellow noted, at paragraph 26, that a debt is not automatically shared simply because the debt may be labeled as matrimonial indebtedness. Whether the debt will be shared depends on whether the division of matrimonial assets in equal shares would be unfair or unconscionable. His Lordship did comment, again at paragraph 26, that "In most conceivable situations fairness and conscience dictate a sharing of matrimonial indebtedness."

[74] In *Cogswell v. Wright*, 2014 NSSC 173, Justice Legere Sers noted as follows at paras. 209-215 concerning debts:

> 209 Our Court of Appeal has directed courts to ask certain questions when addressing the issue whether debts are matrimonial (Ellis v. Ellis (1999), 175 NSR (2d) 268; see also Bailey v. Bailey (1990), 98 NSR (2d) 9 (paragraph 23)).
>
> 210 These questions include:
>
> 1. Were the debts incurred for the benefit of the family unit?
>
> 2. Were they ordinary household debts and if incurred after separation (as the orthodontic debts were) were they necessary to meet basic living expenses or preserve matrimonial assets? and
>
> 3. Were they reasonably incurred?
>
> 211 While knowledge of a debt is not essential to its classification as matrimonial, in Selbstaedt v. Selbstaedt, 2004 NSSF 110, Dellapinna, J. at paragraph 45 noted "the non-disclosure of a significant debt by one of the parties may make the task of meeting the burden of proof more difficult to achieve."

> 212 The Matrimonial Property Act does not specifically deal with a division of debts. There is not a legislated presumption, as with assets, that debts are divided equally; therefore, each debt must be considered individually.
>
> 213 A Court may consider, among other factors, the amount of the debt, the liability of the spouse, and the current balance.
>
> 214 In order to consider whether there may need to be an unequal division of these debts, the Court also has to consider in this case section 13 of the Matrimonial Property Act, whether there was unreasonable impoverishment of the matrimonial assets by a spouse.
>
> 215 The Court must also reflect on whether this debt was incurred solely for the benefit of one spouse.

[75] In *Simmons*, *supra*, Justice Campbell outlined the general principles for the valuation date of an asset, noting at para. 33:

> 33 In conclusion, fairness in the valuation process is achieved by applying separation date values to those assets which tend to be consumed by actual usage or whose value has been earned or accrued by reference to the passage of time and corresponding years of employment service or other earned basis. Other assets should be valued as of the date of division which is the date when an accounting occurs between the spouses.

[76] These principles have been cited in numerous subsequent decisions and approved of by the Nova Scotia Court of Appeal (see *Moore*, 2003 N.S.C.A. 116 at para. 24; *Morash*, 2004 NSCA 20 at para. 20).

[77] In *Simmons*, *supra*, the Court also discussed the division of bank accounts (see para. 21) stating that an operating bank account should be valued at the point when the spouses separate their finances.

[78] According to *Clarke v. Clarke*, 2004 NSSF 43 and *Shurson v. Shurson*, 2007 NSSC 101, both spouses are entitled to the benefit of a mortgage payout.

[79] With respect to pensions, *Morash*, *supra* establishes that the date for division of a regulated pension such as Mr. St. Croix's will be at the date of the couples'

separation. At para. 32 the Court of Appeal held that, "pension credits earned before and during the marriage (subject to valuation dates) are a matrimonial asset and subject to equal division". Accordingly, Mr. St. Croix's pension with Nalcor (effective approximately August, 2005 and up until August 31, 2011 with an estimated present value of $80,000.00) shall be divided equally between the parties.

[80] I am mindful of the positions of both parties in coming to my determination of the division of their assets and liabilities. I must say I have some sympathy with the approach suggested by Mr. St. Croix but on balance, I believe this may be better addressed (and properly in law) thorough my ultimate disposition with respect to spousal support.

[81] In the result I have reviewed the oral and documentary evidence in this area and determined that the table handed up in closing submissions by the Petitioner offers, for the most part, an equitable division of matrimonial property and debts. Accordingly, I have appended the table as Appendix IV and order that it be followed. It is identical to what the Petitioner proposed with five exceptions where I have:

1. increased the value of the appraised value of the matrimonial home from $359,900 to $364,900 for the aforementioned reason.
2. reduced the value of the Respondent's "3 Datsuns" from $20,000.00 to $9,000.00 to reflect the evidence that two of the three vehicles are not operating and used for extra parts;
3. factored in the aforementioned pension estimate;
4. not provided any credit to the Petitioner for allegedly crediting ($1,630.00 estimate) the parties' joint VISA as I found the evidence here to be imprecise; and
5. factored in the Petitioner's student loan current balance ($33,096.00) to be divided on account of my decision to award spousal support.

[82] In coming to my determination of a division of the parties' assets and debts I have gone over the entirety of the evidence along with the aforementioned authorities. At the end of the day, I am satisfied the Appendix IV chart represents a fair and equitable distribution of the matrimonial assets and debts.

Retrospective and Prospective Child Support

[83] Since the date of separation, David has lived primarily with his mother. This will go on as I have continued the existing parenting plan into the future. In determining child support I must consider the parents' income and where appropriate, impute income to one or both parents. Once this is done, I must apply the *Child Support Guidelines* to establish David's support. I have accordingly, followed this approach in making this determination.

Retrospective and Prospective Spousal Support

[84] As mentioned at para. 81, *supra*, for reasons that will be fully developed, it is my decision to award spousal support. Unlike the mandatory requirement to follow the *Child Support Guidelines*, the law does not oblige me to apply the *Spousal Support Advisory Guidelines ("S.S.A.G.")* (see *Strecko v.* Strecko, 2014 NSCA 66, at para. 50, per Oland J.A., Beveridge and Farrar J.J.A., concurring). Nevertheless, as fully developed herein, I have consulted the *S.S.A.G.* and found them to be of guidance in determining the award for spousal support.

(a) Background

[85] The parties had what I would describe as a contemporary marriage. After living together for nearly two years, they married on August 3, 2002. They lived together as a married couple for slightly in excess of nine years. During this time, there were periods of separation on account of Mr. St. Croix's work and due to marital discord. These times apart – when one examines the parties' timelines and considers their evidence (albeit somewhat conflicting on the number of times apart and duration) – are not of a magnitude that causes me to qualify the finding that it was a nine year marriage. In the midst of the marriage, their only child, David was born January 10, 2006.

[86] During their time together, the parties' incomes were as follows:

Year	Dr. Thompson*	Mr. St. Croix
2000**	$4,339.00	$16,214.00

2001	$281.00	$26,631.00
2002	$2,557.00	$41,757.00
2003	$2,038.00	$27,981.00
2004	$22,889.00	$28,619.00
2005	$44,103.00	$45,579.00
2006	$19,752.00	$60,847.00
2007	$61,200.00	$75,803.00
2008	$58,521.00	$77,885.00
2009	$17,559.00 plus $36,000.00 (tax free disability)	$77,310.00
2010	$56,805.00	$85,619.00
2011 (January-August)	$67,690.00	$55,318.00
Total	$393,734.00	$619,563.00

*Not including a combination of student loans, scholarships, grants and savings.

**The parties were only together for 5 months of 2000.

[87] Given the totals, Mr. St. Croix's earnings over these eleven years were $619,563.00 and Dr. Thompson's $393,734.00. This amounts to a ratio of roughly 60/40 (Mr. St. Croix over Dr. Thompson). Apart from the income differential, as might be expected, the parties did not carry out identical household functions. I will refrain from comparing their respective contributions in this area other than to say that on the totality of the evidence I believe Mr. St. Croix did the majority of the household tasks.

[88] I say this with reference to the fact that Dr. Thompson understandably devoted much of her time to studying. By contrast, Mr. St. Croix had jobs which he testified he could "leave at the gate" when he left in the afternoon.

[89] Additionally, there were times over their nine years together when Dr. Thompson's personal circumstances required Mr. St. Croix to do more to support his wife. In this regard, the evidence discloses Dr. Thompson had significant health difficulties beginning in June, 2003, which required six months away from her studies. Approximately six years later, Dr. Thompson's mother was diagnosed with terminal cancer and she died on September 14, 2009. During both of these time periods I find Mr. St. Croix increased his household contribution along with providing support to his spouse.

[90] I therefore find that the evidence warrants spousal support to be paid by Dr. Thompson to Mr. St. Croix. The questions now arise as to in what amount and for what length of time?

(b) Income and Expenses

[91] To answer the above questions I will first examine income and expenses. I will also consider as paramount David's child support as I consider his parents' spousal support obligations/entitlement.

[92] In advance of trial both parties completed Statements of Income as well as Statements of Expenses. In the case of Mr. St. Croix they were filed late and unsworn. Of perhaps greater concern to the Court was the fact that Mr. St. Croix showed monthly budgeted expenses that were excessive involving among other items, housecleaning of $175.00 and "professional service arrears" of $400.00. Through cross-examination it was developed that Mr. St. Croix felt he owed in the order of $45,000.00 in legal fees related to the litigation in the matter, yet he did not follow up with the Court's invitation to produce documentation backing up this figure.

[93] On account of the above and other examples of inflated items, Mr. St. Croix showed total monthly expenses of $14,000.00. Accordingly, when his income was factored in there was a net deficit of in excess of $8,800.00 per month.

[94] As for Dr. Thompson, her total monthly expenses (shown in her Statement of Expenses filed May 5, 2014) were shown to be $15,386.09.

[95] While not as overstated as Mr. St. Croix's, I found some of the items to be on the high side. For example, given Dr. Thompson's $30,000.00 annual RRSP/TFSA contribution, she showed a $2,500.00 monthly amount. She also listed monthly professional conference fees of nearly $500.00. In the result, after factoring in her income, Dr. Thompson showed an overall monthly deficit of just over $4,500.00.

[96] In addition to my view that both parties' expenses are overstated, I am of the view that their incomes are less than what they can and should be for their sakes and for David. Accordingly, I will now address imputation of income.

(c) Imputation of Income

[97] In *Saunders v. Saunders*, 2011 NSCA 81, Farrar J.A. (Fichaud and Bryson JJA concurring) considered the issue of spousal support and imputing income. At paras 40-42, the court of Appeal provided the statutory and jurisprudential backdrop:

> 40 Section 15.2(4) of the Divorce Act requires that certain factors are to be taken into consideration when making an award of spousal support pursuant to the Divorce Act. Section 15.2(4) directs that the Court:
>
> a. ... shall take into consideration the condition, means,
>
> needs and other circumstances of each spouse, including
>
> b. (a) the length of time the spouses cohabited;
>
> c. (b) the functions performed by each spouse during cohabitation; and
>
> d. (c) any order, agreement or arrangement relating to support of either spouse.

41 The Court is mandated to take into consideration the means, needs and other circumstances of each spouse. Bracklow v. Bracklow, [1999] 1 S.C.R. 420 analyzed the respective obligations of husbands and wives. The trial judge, here, accurately summarized this decision as follows:

a. [58] In Bracklow v. Bracklow, [1999] 1 S.C.R. 420, 44 R.F.L. (4th) 1, The Supreme Court of Canada analysed the respective obligations of husbands and wives and stated at pps. 439-440 (S.C.R.):

b. ... a matter of applying the relevant factors and striking the balance that best achieves justice in the particular case before the court.

c. ...

d. 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.

42 Section 15.2(6) of the Divorce Act outlines the objectives of an order for spousal support and directs that an order:

a. ... for the support of a spouse should

b. (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;

c. (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;

d. (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and

e. (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[98] Later at paras 53-59, Justice Farrar discussed how to determine the appropriate amount of support:

53 In Read v. Read, 2000 NSCA 33, Freeman, J.A. quoting Justice Goodfellow in Mosher v. Mosher (1999), 177 N.S.R. (2d) 236 (S.C.) at 238 to the effect that the duty of support is on the payor to provide reasonable support. The key question in this case is what is reasonable support having regard to all the circumstances. As I have previously set out, I found that the trial judge erred in

two ways: (i) by failing to impute more income to Ms. Saunders; and (ii) by misapprehending or failing to take into account her actual needs. What then is the appropriate amount of support?

54 In Shurson v. Shurson, 2008 NSSC 264, Justice MacDonald of the Family Division was considering an application to vary the spousal support provisions of the parties' corollary relief judgment. She held:

a. [13] Examples of circumstances that may lead to a decision that a spouse is entitled to compensatory support are:

b. a)a spouse's education, career development or earning potential have been impeded as a result of the marriage because, for example:

c. -- a spouse has withdrawn from the workforce, delays entry into the workforce, or otherwise defers pursuing a career or economic independence to provide care for children and/or a spouse;

d. -- a spouse's education or career development has been negatively affected by frequent moves to permit the other spouse to pursue these opportunities;

e. -- a spouse has an actual loss of seniority, promotion, training, or pension benefits resulting from an absence from the workforce for family reasons.

f. b)a spouse has contributed financially either directly or indirectly to assist the other spouse in his or her education or career development.

g. [14] Non-compensatory support incorporates an analysis based upon need and ability to pay. If spouses have lived fully integrated lives, so that the marriage creates a pattern of dependence, the higher-income spouse is to be considered to have assumed financial responsibility for the lower-income spouse. In such cases a court may award support to reflect the pattern of dependence created by the marriage and to prevent hardship arising from marriage breakdown. L'Heureux-Dubé, J. wrote in Moge v. Moge, supra, at p. 390:

h. Although the doctrine of spousal support which focuses on equitable sharing does not guarantee to either party the standard of living enjoyed during the marriage, this standard is far from irrelevant to support entitlement (see Mullin v. Mullin, [1991] P.E.I.J. No. 128, supra, and Linton v. Linton, [1990] O.J. No. 2267, supra). Furthermore, great disparities in the standard of living that would be experienced by spouses in the absence of support are often a revealing indication of the economic disadvantages inherent in the role assumed by one party. As marriage should be regarded as a joint endeavour, the longer the relationship endures, the closer the economic union, the greater will be the presumptive claim to equal standards of living upon its dissolution (see Rogerson,

"Judicial Interpretation of the Spousal and Child Support Provisions of the Divorce Act, 1985 (Part I)", supra, at pp. 174-75). (emphasis added)

i. [15] It is not clear from Justice L'Heureux-Dubé's, decision whether entitlement arising from a "pattern of dependence" is compensatory or non-compensatory. A pattern of dependence may create a compensatory claim because it can justify an entitlement even though a spouse has sufficient income to cover reasonable expenses and might be considered to be self-supporting. This often is described as the "lifestyle argument" -- that the spouse should have a lifestyle upon separation somewhat similar to that enjoyed during marriage. (Linton v. Linton, 1990 CarswellOnt 316 (Ont. C.A.) A lengthy marriage generally leads to a pooling of resources and an interdependency even when both parties are working. Usually the recipient spouse will never be able to earn sufficient income to independently provide the previous lifestyle. This would form the basis of a compensatory claim but does not necessarily entitle a spouse to lifetime spousal support. The essence of a compensatory claim is that eventually it may be paid out. This leads to a discussion about the quantum and duration of the claim.

j. [16] Once it is decided that a spouse is entitled to spousal support, the quantum (amount and duration) is to be determined by considering the length of the relationship, the goal of the support (is it compensatory, non-compensatory or both), the goal of self-sufficiency, and the condition, means, needs and other circumstances of each spouse. In considering the condition, means, needs and other circumstances of each spouse one may examine the division of matrimonial property and consider the extent to which that division has adequately compensated for the economic dislocation caused to a spouse flowing from the marriage and its breakdown and any continuing need the spouse may have for support arising from other factors and other objectives set forth in s. 15(2). (Tatham v. Tatham, [2005] B.C.J. No. 2186, 2005 CarswellBC 2346 (B.C.C.A.)

55 The spousal support to be awarded in this case contains both compensatory and non-compensatory elements. It is compensatory in the sense that the parties were married in excess of 30 years and worked as a team in Dr. Saunders' medical practice. Ms. Saunders acted as the office manager as well as his registered nurse. Undoubtedly she contributed directly and indirectly in his career development. The non-compensatory aspect of it is based on Ms. Saunders' needs and Dr. Saunders' ability to pay.

56 However, I also have to take into consideration that Ms. Saunders has the ability to earn a greater income than she is presently earning. Even though she has the ability to earn a higher amount, I am satisfied that she still requires spousal support to assist her in her lifestyle and Dr. Saunders has an ability to pay spousal support.

> 57 Taking into account that the amount of income Ms. Saunders is able to earn is greater than what she is presently earning, the fact that the expenses are overstated by a considerable amount, leaving her with a deficit of much less than set forth in her statement of expenses, the compensatory aspect of the spousal support, and Dr. Saunders' income, I would award $7,500 per month for spousal support. This is approximately $4,100 more than her actual needs (see para. 49) and addresses both the compensatory and non-compensatory elements of spousal support. This is still a significant award which is in excess of her actual needs which would allow her to maintain her "comfortable lifestyle" referred to by the trial judge.
>
> 58 The amount of spousal support overpaid by Dr. Saunders, by my calculation, is $22,400 (14 months X $1,600, August 2010 to September 2011). Dr. Saunders may recover this amount by reducing his spousal support payments for the next 23 months by $1,000 per month for the first 22 months and $400 for the final month.

[99] In imputing income I am mindful of the authorities cited by Justice Farrar and also derive guidance from *Drysgala v. Paul*, [2002] W.D.F.L. a decision of the Ontario Court of Appeal. After reviewing the Child Support Guidelines and in particular s. 19(1)(a), Justice Gillese stated as follows at paras. 24-26:

> [24] The meaning of the word "intentionally" in s. 19(1)(a) has received inconsistent application in the courts. On the one hand, there are the so-called bad faith cases in which the word "intentionally" has been interpreted as meaning a deliberate course of conduct for the purpose of undermining or avoiding the parent's support obligation. These cases act on the explicit assumption that a court should not impute income in the absence of such a motive, as to do so results in an onerous financial obligation on a parent who chooses to make a career change. Williams v. Williams (1997), 32 R.F.L. (4th) 23, [1997] N.W.T.R. 303 (S.C.); Hall v. Hall, [1997] O.J. No. 453 (Quicklaw) (Gen. Div.); Hunt v. Smolis-Hunt, [2001] A.J. No. 1170 (Quicklaw) (C.A.); Yaremchuk v. Yaremchuk (1998), 38 R.F.L. (4th) 312, 158 D.L.R. (4th) 180 (Alta. Q.B.); Goudie v. Buchanan, [2001] N.J. No. 187 (Quicklaw) (Nfld. S.C.); Ronan v. Douglas-Walsh (1994), 5 R.F.L. (4th) 235 (Ont. Prov. Div.); Woloshyn v. Woloshyn (1996), 22 R.F.L. (4th) 129, 109 Man. R. (2d) 35 (Man. Q.B.), affd (1997), 28 R.F.L. (4th) 70, 115 Man. R. (2d) 225 (C.A.).
>
> [25] On the other hand, there are a number of conflicting cases in which the courts have held that there is no need to find a specific intent to evade child support obligations before income can be imputed. See, for example,

> Montgomery v. Montgomery (2000), 181 D.L.R. (4th) 415, 3 R.F.L. (5th) 126 (N.S.C.A.); Donovan v. Donovan (2000), 190 D.L.R. (4th) 696 (Man. C.A.); Hanson v. Hanson, 1999 CarswellBC 2545 (eC) (S.C.).
>
> [26] In my view, the latter approach is correct.

[100] The Ontario Court of Appeal went on to discuss "reasonable educational need" at paras. 38-41:

> [38] There is a duty to seek employment in a case where a parent is healthy. As a general rule, a parent cannot avoid child support obligations by a self-induced reduction of income. Thus, once it has been established that a spouse is intentionally unemployed or under-employed, the burden shifts to that spouse to establish what is required by virtue of his or her reasonable educational needs.
>
> [39] There are two aspects to this stage of inquiry. The trial judge must first determine whether the educational needs are reasonable. This involves a consideration of the course of study. A spouse is not to be excused from his or her child support obligations in furtherance of unrealistic or unproductive career aspirations.
>
> [40] But, s. 19(1)(a) speaks not only to the reasonableness of the spouse's educational needs. It also dictates that the trial judge determine what is required by virtue of those educational needs. The spouse has the burden of demonstrating that unemployment or under-employment is required by virtue of his or her reasonable educational needs. How many courses must be taken and when? How much time must be devoted in and out of the classroom to ensure continuation in the program? Are the academic demands such that the spouse is excused from pursuing part-time work? Could the program be completed over a longer period with the spouse taking fewer courses so that the spouse could obtain part-time employment? If the rigours of the program preclude part-time employment during the regular academic school year, is summer employment reasonably expected? Can the spouse take co-operative courses as part of the program and earn some income in that way? These are the types of considerations that go into determining what level of under-employment is required by the reasonable educational needs of a spouse.
>
> [41] The burden of proof is upon the spouse pursuing education as he or she is the person with access to the requisite information. The spouse is in the best position to know the particular requirements and demands of his or her

> educational program. He [page721] or she will have information about the hours of study necessary to fulfill such requirements, including the appropriate preparation time. He or she is in the best position to show whether part-time employment can be reasonably obtained in light of these educational requirements.

[101] As for quantum of income, Gillese J.A. said at paras. 45 and 46:

> [45] When imputing income based on intentional under-employment or unemployment, a court must consider what is reasonable in the circumstances. The factors to be considered have been stated in a number of cases as age, education, experience, skills and health of the parent. See, for example, Hanson, supra, and Cholodniuk v. Sears (2001), 14 R.F.L. (5th) 9, 204 Sask. R. 268 (Q.B.). I accept those factors as appropriate and relevant considerations and would add such matters as the availability of job opportunities, the number of hours that could be worked in light of the parent's overall obligations including educational demands and the hourly rate that the parent could reasonably be expected to obtain.
>
> [46] When imputing income, the court must consider the amount that can be earned if a person is working to capacity while pursuing a reasonable educational objective. How is a court to decide that when, typically, there is little information provided on what the parent could earn by way of part-time or summer employment? If the parent does not provide the court with adequate information on the types of jobs available, the hourly rates for such jobs and the number of hours that could be worked, the court can consider the parent's previous earning history and impute an appropriate percentage thereof. [page722]

[102] *Saunders*, *supra* and *Drysgala*, *supra* offer important principles which require consideration in the case at hand. Accordingly, I have assessed the evidence and made my findings bearing these authorities in mind.

(d) Imputation of Income to Mr. St. Croix

[103] Within the *Drysgala, supra* decision (from the above quote at para. 25) the Nova Scotia Court of Appeal decision of *Montgomery* is referenced. This case was extensively addressed by Dr. Thompson's counsel in her pretrial brief:

> As well, in his affidavit of November 5, 2013, Ron testifies that attending Acadia University allowed him to pursue a path towards self-sufficiency". It is

respectfully submitted that Ron was self-sufficient when he was working full-time in Newfoundland.

In ***Montgomery v. Montgomery*, 2000 NSCA 2,** the Nova Scotia Court of Appeal considered a situation where a divorced father of four worked for the Department of Environment earning $60,000 per year. The father returned to law school part-time and then left his job to article, earning $20,000 per year. The father sought a variation of child and spousal support. He argued that no income should be imputed to him because he was not attempting to avoid support, but rather secure a more satisfying job, and increase his income in the long-term.

Pugsley, J.A. held that:

> 35 Section 19 does not establish any restriction on the Court to imputing income only in those situations where the applicant intended to evade child support obligations, or alternatively, recklessly disregarded the needs of his children in furtherance of his own career aspirations (at para. 35)

The Court considered the word "reasonable" is the most critical to consider, and that it is necessary to consider not just the circumstances of the payor, but all of the circumstances including the financial circumstances of the children (at para. 36-37).

In ***Montgomery***, *supra*, Pugsley J.A. noted that the chambers judge determined the father's choice was not a "reasonable educational need" (at para. 39). The father acknowledged that it might take at least ten years to earn a similar income to what he was earning with the government (at para. 40).

Based on that, the Court of Appeal agreed with the Chambers judge and there was no variation of support.

It is submitted that, similarly in this case Ron's choice to take a leave of absence from work and return to school was not for a reasonable educational need. Ron just finished his first year of a four year program. It is unclear if Ron intends to continue at Acadia for the balance of the four years, and whether his employer will allow him to do so. Ron previously testified that he is required to apply for a leave from his work each year.

It is also unclear how this program will affect Ron's job prospects in Nova Scotia or Newfoundland if he completes the program.

[104] In my view this argument does not stand up when one considers the evidence at trial. Unlike Mr. Montgomery, Mr. St. Croix's decision to leave his job at Nalcor is (partially) motivated by the fact that his position will in all likelihood, be eliminated with the next few years. Whereas Mr. Montgomery left a

senior position in government with a guaranteed income stream into the future, the same cannot be said for Mr. St. Croix.

[105] Another distinguishing feature between Mr. Montgomery and Mr. St. Croix relates to geography. The *Montgomery* case did not involve his spouse relocating to another province with the child (children with Mr. Montgomery) of the marriage. Considering this factor, I must say that I have considerable sympathy with Mr. St. Croix's stated wish to live closer to David so he can be a bigger part of his life. In the result, I find the facts of the within case to be clearly distinguishable from what our Court of Appeal considered.

[106] Mr. St. Croix gave evidence that the couple's initial decision to relocate to Nova Scotia was both motivated by his wife's situation in Newfoundland along with his employment. Concerning the former, he testified that Dr. Thompson was not happy in their Lanark Dr. neighborhood. He added that while she decided the hospital psychiatric service in St. John's was not satisfactory, she did not really explore private practice options in the area because she had essentially decided to move on. In speaking of his wife's employment potential, Mr. St. Croix offered, "she's great at what she does…she could write her own ticket".

[107] With respect to his employment circumstance, Mr. St. Croix, with the aid of exhibits concerning Nalcor, explained that the plant in Holyrood is to be retired and decommissioned. He noted his environmental technologist job function will be eliminated by 2017 or 2018. In the result, referring to himself and Dr. Thompson, "We made a significant consideration to my job and future when we moved". While emphasizing his uncertain future with Nalcor, Mr. St. Croix said, "I wasn't going to tell her where to work – whatever she decided, I would make the opportunity".

[108] As things unfolded, Mr. St. Croix remained in the matrimonial home for approximately two years after his wife and child left. During this time he continued working for Nalcor and earned approximately $85,000.00 per annum.

[109] In the late summer of 2013 the situation markedly changed when Mr. St. Croix embarked upon an educational leave from Nalcor to enroll in the Bachelor of Business Administration program at Acadia University. He became a full-time student in September, 2013 and remained so until the completion of his exams on April 21, 2014.

[110] Upon completion of year one of his studies (in which he earned a 3.0 grade point average), Mr. St. Croix resumed work at Nalcor at his old job at his former rate of pay. His plan is to remain with Nalcor until late August when he will return to Acadia for the 2014-15 academic year. In this regard, Nalcor has granted him another educational leave.

[111] During his direct testimony the Respondent explained his plan may involve extending the academic year into the spring and/or summer of 2015 and perhaps 2016 so as to possibly graduate with a B.B.A. prior to his scheduled graduation date of April 2017.

[112] Mr. St. Croix offered an explanation as to why he was in the B.B.A. program to the effect that he may want to open a business and/or have a position combining his environmental technology education/background with his Business degree.

[113] Given the evidence, I queried the witness about other potential education programs of shorter duration and also about his job search. The latter was especially followed up on cross-examination. It emerged that Mr. St. Croix had only made in the order of five actual job applications and that he restricted his search to the Annapolis Valley. He confirmed he was not prepared to commute to the HRM (Halifax Shipyard, example) or the South Shore (Michelin, example). It was further developed on cross-examination that Mr. St. Croix has not taken on any part time employment while at Acadia.

[114] The above is highly relevant evidence as I embark upon income assessment for Mr. St. Croix from the date of separation to the present and into the future. This exercise has ramifications for child support obligations (and spousal support entitlement).

[115] For the first couple of years it is a straightforward exercise as we have Mr. St. Croix's Nalcor income of approximately $85,000.00 per annum. From the time Mr. St. Croix commences at Acadia in September, 2013, this is a far less certain calculation. Below, I will explain with examples.

[116] If Mr. St. Croix stays at Acadia (as he did in 2013-14) for the traditional university academic year, he has in the order of four months to go back at work at Nalcor (as he began doing this past late April and plans on continuing into late August). In this scenario, he will earn approximately one third of his former income; i.e., $27,500.00. The figure is halved (to $13,750.00) if he stays at Acadia through the spring session and only returns to Nalcor for a couple of months. Of

course, there would be zero Nalcor employment income if Mr. St. Croix were to (say as early as the 2014-15 academic year) decide to stay on for spring and summer course sessions.

[117] Just as this exercise can take Mr. St. Croix's income down to zero, the scenarios may be altered to heighten his yearly income. For example, he could continue to take courses during the traditional academic year and maintain the four months at Nalcor along with taking on part time employment while at Acadia.

[118] More fundamentally, there is the overriding question as to whether Mr. St. Croix's current plan (with its potential to expand or contract yearly income) is reasonable. Without belabouring the point there remains the option for the Respondent to take on another course of studies (of shorter duration and more aligned to his current environmental technologist education, training and experience) and/or find suitable employment in his chosen field within the Annapolis Valley or within a reasonable commute of the Valley.

[119] With all of the above in mind I find that it would be unreasonable to hold Mr. St. Croix's income within the realm of $85,000.00 per annum. At the same time, I make the finding that it would be unreasonable to take his income down to an annual amount contemplated by the above scenarios involving working at Nalcor for abbreviated or non-existent durations, with no other income sources. In the result, I have imputed Mr. St. Croix's income at $50,000.00 per annum commencing in 2014 and continuing at this level for 2015, 2016 and 2017.

(e) Imputation of Income to Dr. Thompson

[120] The other part of this analysis requires me to examine Dr. Thompson's actual earnings along with what projected earnings may reasonably be attributed to her over the same time period. The evidence is clear Dr. Thompson's earnings with A.V.D.H.A. are approximately $200,000.00 per annum.

[121] The question arises as to whether these earnings were reasonable and what is a fair projection of her income. Accordingly, the Court must scrutinize the evidence here just as has been done in the case of Mr. St. Croix.

[122] At the outset of this discussion it bears mention that Mr. St Croix brought into evidence exhibits inclusive of a survey "National Physician Survey, 2013. Results for Nova Scotia", to attempt to demonstrate Dr. Thompson has vast earning potential – upwards of $500,000.00 per annum. Just as I did not rely on

generalized statistics for environmental technologists and/or Business program graduates when imputing Mr. St. Croix's income, I chose not to follow generalized surveys concerning psychiatry. Instead, I will focus on the tangible evidence realistically applied to the Petitioner.

[123] Having regard to Dr. Thompson's employment contract (exhibit 18) with A.V.D.H.A. and the testimony of Dr. Thompson, I find that there is considerable latitude respecting her potential hours of work. As she acknowledged, when she began employment with A.V.D.H.A. she was working full time, 37.5 hours per week. She later – in consultation with her employer – reduced her hours to the current 30 hours per week. As for the hourly rate, this is currently in the realm of $147.00 per hour with a possible increase, albeit this is by no means a certainty as government may hold the line in these challenging economic times.

[124] There is also overtime income to be factored into the equation. Dr. Thompson explained there is a premium for overtime between 5:00 p.m. and 8:00 a.m. on weekdays and on Saturdays at time plus 35%. On Sundays the premium is time plus 50%. Overtime pay is generated once the call comes to a psychiatrist who has agreed to be on call.

[125] Dr. Thompson said that she made the decision to reduce her working hours from 37.5 to 30 on account of her son's medical appointments and snow days. She explained the day off, Friday, became a "buffer" which she could use to reschedule patients at minimal disruption. As for overtime, Dr. Thompson acknowledged on cross-examination that after Mr. St. Croix moved to Nova Scotia, she placed herself on call with more frequency than before.

[126] In closing submissions, I queried Ms. Cornish on her client's reduction of work hours. In addition to making the point that Dr. Thompson's decrease in work hours was on account of David's needs, she emphasized that as a professional, Dr. Thompson utilized many of her non-paid work hours to prepare and generally for professional endeavors. With respect to the former, I do not find that David's ongoing medical needs are such that they warrant Dr. Thompson reducing her hours by approximately twenty percent. As for the latter, with respect to Ms. Cornish, I do not find the argument very compelling. Even if Dr. Thompson requires several non-paid hours to generate 30 paid hours per week, with the arrival of Mr. St. Croix as a full-time resident of Nova Scotia (and thus utilizing his access on a regular basis), Dr. Thompson has had (and will continue to have) more time to prepare.

[127] Applying the jurisprudence to the facts of this case, I find a reasonable imputation of income to Dr. Thompson to be $225,000.00. This figure is derived from her hourly rate approaching $150.00 and based on a full-time week of 37.5 hours. It also allows for reasonable overtime on occasion.

[128] With respect to the application of this figure, I have decided not to impute this level of income retroactively until the beginning of this year (2014). I have decided to proceed in this fashion for a number of reasons, including:

1. Dr. Thompson was a single parent to David for much of the time since separation until the end of August, 2013;
2. David experienced more medical appointments in these years on account of his eye issues and possible autism spectrum diagnosis; and
3. There was a period of adjustment during this time for Dr. Thompson in respect of her new job and surroundings.

[129] In the result, I make the finding that there is to be an imputation of $225,000.00 per annum income for Dr. Thompson for 2014, 2015, 2016 and 2017; i.e., the same four years I have imputed $50,000.00 income to Mr. St. Croix.

(f) Calculations For Retrospective and Prospective Child and Spousal Support

[130] I have considered the financial implications of imputing $225,000.00 as annual earnings for Dr. Thompson and $50,000.00 for Mr. St. Croix. I have done this with reference to the *S.S.A.G.* which, when these figures are plugged in (having regard to one child with annual child care expenses of $5,000.00 and medical/dental premium in the order of $700.00, rounded up to take into account potential future medical expenses) yield monthly spousal support with a range from approximately $1,850.00 to $2,480.00. Recognizing the *S.S.A.G.* are advisory only, I have chosen to take an approximate low to mid-range figure of $2,169.00 as the monthly amount Dr. Thompson shall pay to Mr. St. Croix, retroactive to January 1, 2014 and continuing for each of the years 2014, 2015, 2016 and six months of 2017; i.e., until June 30, 2017. In my view this amount, $2,169.00 per month, for 3.5 years is reasonable. It provides Mr. St. Croix with an appropriate amount for a reasonable length of time, providing what some of the cases have characterized as a “cushion” for him as he transitions away from his employment in Newfoundland to appropriate schooling/remuneration in Nova Scotia.

[131] Taking into account that the amount of income Mr. St. Croix is able to earn is greater than what he is presently earning, the fact that his expenses are overstated by a considerable amount (leaving him with a deficit of much less than set out in his Statement of Expenses), the compensatory aspect of the spousal support, and Dr. Thompson's income, I am of the view $2,169.00 per month for spousal support is appropriate. This will address Mr. St. Croix's need and both the compensatory and non-compensatory elements of spousal support.

[132] I have also considered the financial implications of my imputation of income in the context of child support flowing from Mr. St. Croix to Dr. Thompson. Given these figures (and factoring in the aforementioned s. 3 and s. 7 amounts) the mandatory *Child Support Guideline* amount is $476.00 and it shall be paid on a monthly basis by Mr. St. Croix to Dr. Thompson beginning January 1, 2014 and into the future (dependent upon David's choices at age 19 and beyond). For the first seven months of 2014, this amounts to $3,332 owing from Mr. St. Croix to Dr. Thompson. I hasten to add that given Mr. St. Croix's stated intention to relocate to Nova Scotia, I have utilized the Nova Scotia Child Support Table in this calculation.

[133] I have also considered retroactive child and spousal support prior to 2014. Dr. Thompson requested child support from Mr. St. Croix on March 2, 2012. It did not come out in Mr. St. Croix's testimony when he requested spousal support from Dr. Thompson and it is not entirely clear from the documentation when this may have been. In any case, I have reviewed the evidence and make the observation that the parties' incomes were much closer to one another in 2011 and 2012, given that Mr. St. Croix was then full-time at Nalcor.

[134] Furthermore, I am mindful of the consequences of the *Income Tax Act*. For spousal support, those tax consequences can only reach back to January 1 of the tax year before the year in which it is ordered. Accordingly, an order made for 2014 (such as here) will attract tax treatment for payments ordered to January 1, 2013. Of course, I could go back further but any amounts ordered would be tax free to Mr. St. Croix and Dr. Thompson would not receive any deductions for making any such payments.

[135] In the final analysis, I believe it is fair and reasonable to award support dating back to January 1, 2013. In so doing, I have not imputed any income to the parties as the reasons for my 2014 and prospective imputation of income do not apply to 2013.

[136] In 2013 Dr. Thompson's income (net of professional fees) was $199,106 and Mr. St. Croix's (net of union dues) was $63,551. I have consulted the *S.S.A.G.* to calculate the amounts owing, having regard to the factors set out, *supra*. For 2013, the tables show net monthly spousal support payable from Dr. Thompson to Mr. St. Croix in the amounts of $1,181. (low), $1,382 (medium) and $1,584 (high).

[137] Consistent with my approach for the beginning of 2014 and prospectively, I have in my discretion chosen the low to medium of these figures; i.e., $1,300 per month. For 2013 this amounts to $15,600. As for the first seven months of 2014, given the earlier referenced $2,169.00 monthly, the retroactive amount owing is $15,183. Accordingly, by this decision Dr. Thompson shall pay Mr. St. Croix $30,783.00 as a retroactive lump sum amount for spousal support.

[138] With respect to retroactive 2013 child support, I have again drawn upon the mandatory *Child Support Guidelines*. Since Mr. St. Croix was a resident of Newfoundland and Labrador (and paid taxes as a resident of this Province during 2013), I have consulted the Newfoundland and Labrador Child Support Table. Given the aforementioned 2013 salary figures, the monthly child support (inclusive of consideration of appropriate Section 3 and 7 expenses) is $632. In the result, Mr. St. Croix's 2013 child support owing to Dr. Thompson is $7,584.

Conclusion

[139] As part of this decision I require the parties to annually exchange income tax returns by May 15 and copies of their Notices of Assessment or Re-Assessment within fourteen days of receipt.

[140] Having projected the child and spousal amounts payable into mid-2017, I wish to add a significant caveat. It is appropriate that the parties actual incomes be determined commencing May 15, 2015, and that the support payments be adjusted upward effective July 1 if their incomes turn out to be higher than what I have imputed. Accordingly, child support shall be payable by Mr. St. Croix pursuant to the *Child Support Guidelines*, based upon an annual income of $50,000 effective January 1, 2014 and continuing on the first day of each month thereafter, with the appropriate exchange of financial information each May 15 of each year and upward adjustment to the Table amount accordingly. Section 7 *Guideline* expenses, unless otherwise agreed by the parties, shall be shared proportionate to their income.

[141] The same disclosure/obligation shall flow to Dr. Thompson with respect to spousal support.

[142] Within fifteen days of this decision, I would ask Mr. Cornish to draft an Order reflective of the disposition.

[143] With respect to costs, in the event the parties cannot come to terms, I will receive written submissions within thirty days of this decision.

Chipman, J.

SUPREME COURT OF NOVA SCOTIA
Citation: Thompson v. St. Croix, 2014 NSSC 275

Date: 20140715
Docket: No. 1204-005732
SKD-082305
Registry: Kentville

Between:

Karen Thompson

Petitioner

v.

Ronald St. Croix

espondent

***ERRATA* TO DECISION DATED JULY 15, 2014**

Before: The Honourable Justice James L. Chipman

Heard: June 9-13, 2014, in Kentville, Nova Scotia

Date of Errata to

Decision: August 1, 2014

PLEASE NOTE

The attached revised pages 39, 40 and 41 should be substituted in the decision previously forwarded.

On Page 39, at para.130 (*in line 7*), the figures "$4,500.00 to $6,000.00" should be changed to "$1,850.00 to $2,480.00."

The next sentence (*in line 9*), the figure "$5,000.00" should be changed to "$2,169.00."

The next sentence (*in line 12*), the figure "$5,000.00" should be changed to "$2,169.00."

On Page 40, para.131 (*in line 5*), the figure "$5,000.00" should be changed to "$2,169.00."

On Page 41, para.137 (*in line 4*), the figure "$5,000." should be changed to "$2,169.00"; the figure "$35,000" (*in line 5*), should be changed to "$15,183"; and the figure "50,600" (*in line 6*) should be changed to "$30,783.00.

Appendix I

Form 62.23

2012 No. 1204-005732 (082305)

Supreme Court of Nova Scotia

Between:

KAREN THOMPSON

PETITIONER

- and -

RONALD ST. CROIX

RESPONDENT

DIVORCE ORDER

Before the Honourable Justice James L. Chipman:

On motion of Julia E. Cornish, Q.C., counsel for the Petitioner, the following is ordered:

Divorce

1. Karen Thompson and Ronald St. Croix, who were married at Corner Brook, in the Province of Newfoundland, on August 3, 2002, are divorced.

Effective date

2. As no order is made under subsection 12(2) of the *Divorce Act,* it is declared that the effective date of the divorce is as provided in the *Divorce Act*, namely thirty-one days within the meaning of the *Act* after the date of this order unless an appeal is started.

Copies to parties

3. The prothonotary must mail a certified copy of this order, and any corollary relief order issued with it, to each party.

Certificate of divorce

4. The prothonotary must issue a certificate of divorce when the prothonotary is satisfied that a copy of this order is mailed to both parties, the order becomes effective, and no appeal is started.

Canada Pension Plan

5. Neither this divorce order, nor a corollary relief order issued with it, is intended to affect a statutory entitlement to seek a division of credits or benefits under the *Canada Pension Act*.

Issued June 18th, 2014

Prothonotary

Carol Morton
Prothonotary

Appendix II

2012 **No. 1204-005732**
SKD 082305

SUPREME COURT OF NOVA SCOTIA

BETWEEN:

KAREN THOMPSON

PETITIONER

- and -

RONALD ST. CROIX

RESPONDENT

Partial Corollary Relief Order

Before the Honourable Justice James L. Chipman:

WHEREAS the parties appeared before the Court for a divorce trial on June 9, 2014 to June 13, 2014;

AND WHEREAS the evidence presented has been considered;

AND WHEREAS the parties were divorced by a Divorce Order dated June 18, 2014;

AND WHEREAS the Court determined that it was necessary to make a decision regarding issues about the summer parenting schedule and the treatment of the matrimonial home pending a written decision of all corollary matters;

AND UPON IT APPEARING the parties have the following child:

Name of Child	Date of Birth
David Carl St. Croix ("David")	January 10, 2006

NOW UPON MOTION of Julia E. Cornish, Q.C., counsel for the Petitioner, Karen Thompson;

IT IS HEREBY ORDERED THAT, pursuant to the *Divorce Act* (Canada) and the Nova Scotia *Matrimonial Property Act*:

1. The terms of the Interim Order from the Supreme Court of Nova Scotia dated December 20, 2013 shall continue except as varied herein.

Summer Parenting

2. The summer parenting schedule shall be as follows:

   a. David shall travel to St. John's, Newfoundland on June 29, 2014, and he shall be in Ronald St. Croix's care from June 29 until July 13, 2014, on which date David shall be returned to Halifax;

   b. David shall travel to St. John's with Karen Thompson on or about July 30, 2014. David shall be in Ronald St. Croix's care from August 3rd at 6 pm until August 17, on which date David shall return to Halifax;

   c. At all other times, David shall be in the care of Karen Thompson.

3. Ronald St. Croix shall purchase David's ticket and tickets for a companion to travel with David for June 29 and July 13. Karen Thompson shall reimburse Ronald St. Croix for the cost of the companion tickets for this period within two weeks of receiving the receipt.

4. Karen Thompson shall purchase David's ticket to Newfoundland for travel on July 30. Ronald St. Croix shall purchase David's ticket and tickets for a companion to travel with David to Halifax on August 17. Karen Thompson shall reimburse Ronald St. Croix for the cost of the companion tickets within two weeks of receiving the receipt.

Matrimonial Home

5. If Ronald St. Croix wishes to retain the matrimonial home located at 48 Lanark Drive, Paradise, Newfoundland, within thirty days of the date of this Order, he shall provide confirmation through Karen Thompson's counsel that he is approved to re-finance of the National Bank mortgage, National Bank line of credit, and CIBC line of credit, so as to remove Karen Thompson's name from those debts. The value assigned to the home for this purpose is $364,900 less disposition costs of $21,616.85 for a net value of $343,283.15 before the above-noted debts are taken into account.

6. If Ronald St. Croix provides confirmation within thirty days that he is approved to refinance the above-noted debts, the debts shall be refinanced within thirty days of Ronald St. Croix providing confirmation of his approval, so as to remove Karen Thompson's name from those debts.

7. Pending refinancing of the aforesaid debts, Ronald St. Croix shall immediately resume responsibility for all expenses associated with the home, including but not limited to, the mortgage, utilities, property taxes, property insurance, CIBC line of credit, and National Bank line of credit.

8. If Ronald St. Croix does not provide confirmation within thirty days that he is approved to refinance the debts, or if the refinancing does not take place thirty days after Ronald St. Croix confirms his approval, or if Ronald St. Croix does not wish to retain the matrimonial home, then the home shall be listed for sale as is as soon as practicable.

9. If the home is listed for sale, pending its sale, Ronald St. Croix may remain living in the home for as long as he resides in Newfoundland. For as long as Ronald St. Croix is living in the home, he shall be responsible for the mortgage, utilities, property taxes, property insurance, CIBC line of credit, and National Bank line of credit. If Ronald St. Croix moves out of the home, the parties shall each pay one-half of those expenses. Upon the sale of the home, the aforesaid debts shall be paid out (mortgage, CIBC line of credit, National Bank line of credit) and the remaining proceeds of sale, after disposition costs, shall be paid into Court pending the decision on the remaining corollary matters by this Honourable Court.

10. Any routine repairs or maintenance required on the home pending sale shall be mutually agreed upon and jointly shared.

11. The house shall be listed for sale at $364,900, based on the appraisal report from William Balsom. The real estate agent will be Reagan Dilny or such other agent mutually acceptable to the parties.

12. All other corollary matters are reserved pending a written decision. The court reserves the right to add further clarification to the matters set out herein.

Enforcement

13. A requirement to pay money under this Order, that is not enforced under the *Maintenance Enforcement Act*, may be enforced by execution order, or periodic execution order.

14. The Sheriff must do such things as may be necessary to enforce this Order and, to do so, may exercise any power of a sheriff permitted in a recovery order or an execution order.

15. All Constables and Peace Officers are to do all such acts as may be necessary to enforce the terms of this Order.

Issued June 18th, 2014.

Prothonotary

Carol Morton
Prothonotary

Appendix III

Thompson – St. Croix

Parenting Plan

Regular Parenting Time

When Mr. St. Croix is living in Nova Scotia, there will be a continuation* of the parenting arrangements in the December 20, 2013 Interim Order, which is that David will live primarily with Dr. Thompson. Mr. St. Croix will have parenting time every other weekend from after school Friday until Monday morning, and every Wednesday from after school until Thursday morning.

When Mr. St. Croix is living outside of Nova Scotia:

- Mr. St. Croix will have parenting time with David one weekend each month during the school year (except for March – which is addressed below)
- To maximize his parenting time, Mr. St. Croix may choose to visit during long weekends (except Easter – addressed below; or Labour Day because of the start of school)
- Dr. Thompson requires confirmation of where David will be staying while he is with Mr. St. Croix.
- Mr. St. Croix must give notice of his proposed weekends no later than six months in advance
- Mr. St. Croix must provide confirmation of the flights no later than one month before the visit
- Mr. St. Croix will be responsible for the cost of his visits; if David is travelling, Mr. St. Croix will pay for David's flight and the cost of a travelling companion (unless it is Dr. Thompson) until David is old enough (likely by age 12) to travel on his own
- Dr. Thompson proposes that Mr. St. Croix come to Nova Scotia for most of his visits so that David can continue to participate in his usual activities (except for holidays)
- Transfers will occur at neutral locations to be chosen by Dr. Thompson – Dr. Thompson will confirm the location once Mr. St. Croix provides confirmation of the flights
- All of this is premised on David travelling at reasonable times
- Email addresses shall be used for communicating about parenting – if Mr. St. Croix does not confirm his travel arrangements one month before the visit, then the visit will be cancelled

Summer vacation/holidays

a. Summer – Mr. St. Croix will have parenting time with David for two weeks in late June/early July (this can start as early as the first Saturday after school ends) and the first two weeks in August (can start the first Saturday in August).

The notice provisions above regarding confirmation of Mr. St. Croix's chosen parenting time, and dates of travel will apply.

b. Victoria Day weekend – if Mr. St. Croix chooses to have his May parenting time with David over the May long weekend, he may take up to two days off school to extend this trip if Mr. St. Croix chooses.

c. Christmas – in even numbered years, Mr. St. Croix will have parenting time with David for the first week of his school Christmas break. Mr. St. Croix's time may start as early as the first Saturday after the last day of school, with David returning no later than the following Sunday. Dr. Thompson will have parenting time with David for the second week.

In odd-numbered years, the schedule will reverse. Mr. St. Croix can pick David up in Nova Scotia (or Newfoundland if Dr. Thompson and Mr. St. Croix are already there) and have parenting time with David for the second week of his Christmas school break. If Mr. St. Croix is travelling outside of Nova Scotia with David, David shall return to Nova Scotia no later than 48 hours before school resumes in January.

David shall not travel on Christmas Eve or Day, and the parenting schedule shall be adjusted accordingly if this would otherwise be the mid-point of the break.

If they choose, either parent will have the right to spend time with David on Christmas Eve and Christmas Day (Christmas Eve from 1-4 pm; Christmas Day from 1-6 pm) if David is with the other parent during these times. The Christmas Eve/Day parenting time must occur in the Municipality in which David is spending time with the other parent.

The parent who does not have David on Christmas Even or Day must confirm whether they are going to avail of their access time by no later than December 1st of that calendar year.

d. March Break – in odd-numbered years, Mr. St. Croix will have parenting time with David during March Break (March Break is defined as the Saturday after school ends for the Break until the Sunday before school resumes). In even-numbered years, Dr. Thompson shall have parenting time with David.

e. Easter – in odd-numbered years, Mr. St. Croix will have parenting time with David from Good Friday to Easter Monday. In even-numbered years, Dr. Thompson will have parenting time with David during these times.

*With the exception of paragraph 5 of the Interim Order which shall be amended to read:

> Except in circumstances where a phone call would not be feasible, when David is in the care of Dr. Thompson, Mr. St. Croix shall be permitted to have a phone call (not to exceed ten minutes) with David every second evening and when David is in the care of Mr. St. Croix, Dr. Thompson shall be permitted to have a phone call (not to exceed ten minutes) with David every second evening.

Appendix IV

		VALUE	MR. ST. CROIX	DR. THOMPSON	TOTAL
(A) MATRIMONIAL ASSETS					
REAL ESTATE					
1	48 Lanark Drive, Paradise, NL - to be sold and proceeds divided				$0.00
HOUSEHOLD ITEMS					
2	Divided				$.0.00
VEHICLES (to be retained by party with current possession)					
3	1999 Toyota Camry Solara	$5,000.00		$5,000.00	$5,000.00
4	2004 Ford F250 Super Duty	$8,000.00	$8,000.00		$8,000.00
5	3 Datsuns	$9,000.00	$9,000.00		$9,000.00
6	1987 Jaguar V 12 - Mr. St. Croix				
	($2,550.00 est.)	$2,500.00	$2,500.00		$2,500.00
7	1992 Nissan NX 2000	$250.00	$250.00		$250.00
8	1987 Yamaha Enticer 340	$250.00	$250.00		$250.00
9	Canoe	$300.00	$300.00		$300.00
PENSIONS/NALCOR ($80,000.00 estimate)					
10	Mr. St. Croix - Nalcor employment				
	pension contributions during				
	marriage ($80,000 estimate) to be divided equally at source				$0.00
RRSP's - rollover to equalize					
11	RRSP - Dr. Thompson ($8,712.60 in Sept/11				$0.00
12	RRSP - Mr. St. Croix ($22,086.28 in Sept/11				$0.00
13	TFSA - Dr. Thompson (opened after separation)				$0.00
SAVINGS AND OTHER ACCOUNTS					
14	Dr. Thompson - CIBC Chequing	$998.00		$998.50	$998.50
15	Mr. St. Croix - US Dollar Account	$159.69	$159.69		$159.69
SUBTOTAL MATRIMONIAL ASSETS		$26,458.19	$20,459.69	$5,998.50	$26,458.19
(B) MATRIMONIAL DEBTS					
16	National Bank Line of Credit -$45,095.00				
	to be paid from proceeds jointly; balance				
	to be paid from Mr. St. Croix's proceeds				$0.00
17	CIBC Perosnal Line of Credit - $10,346.00				
	to be paid from proceeds jointly; balance to				
	be paid from Mr. St. Croix's proceeds				$0.00
18	Mortage on matrimonial home - to be				
	paid from proceeds				$0.00
19	Dr. Thompson - student loan ($33,096.00)				
	to be divided equally				$0.00
SUBTOTAL MATRIMONIAL ASSETS		$0.00	$0.00	$0.00	$0.00

NET MATRIMONIAL ASSETS	$26,458.19	$20,459.69	$5,998.50	$26,458.19
PERCENTAGE DIVISION		50	50	
BALANCING ASSET (CASH)		-$12,730.60	$12,730.60	
Credit to Dr. Thompson for mortgage payments		-$7,692.70	$7,692.70	
Credit to Dr. Thompson for CIBC LOC payments		-$3,107.44	$3,107.44	
Credit for $ from David's RESP Account		-$7,700.00	$7,700.00	
Credit to Dr. Thompson for National Bank				
LOC payments		-$4,275.00	$4,275.00	
TOTAL BALANCING PAYMENT		-$35,505.74	$35,505.74	