

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

**Citation:** *MacLeod v. MacLeod*, 2014 NSSC 212

**Date:** 20140618

**Docket:** 1217-000764

**Registry:** Port Hawkesbury

**Between:**

Mary Jacqueline MacLeod

Petitioner

v.

Ian Alexander MacLeod

Respondent

**Judge:** The Honourable Justice Moira C. Legere Sers

**Heard:** May 6, 2014, in Port Hawkesbury, Nova Scotia

**Counsel:** Nash Brogan for the Petitioner  
Diana Musgrave for the Respondent

**By the Court:**

[1] The Petition for Divorce was filed March 2<sup>nd</sup>, 2011.

[2] The petitioner and the respondent married in Grand River, Nova Scotia on August 25<sup>th</sup>, 2001 and separated on June 13<sup>th</sup>, 2009.

[3] They have one child of the marriage, Leighea Jacqueline MacLeod, born August 31<sup>st</sup>, 2002.

[4] In this proceeding, the petitioner is seeking a divorce, an unequal division of assets and debts in her favour and spousal support.

[5] The respondent is seeking an unequal division of the equity in the matrimonial home and an equal division of debts. He contests the petitioner's entitlement to spousal support.

[6] The terms of custody and access were decided by contested hearing resulting in an Order dated September 10<sup>th</sup>, 2013.

[7] By this order, the mother was permitted to relocate to Kentville, Nova Scotia.

[8] The terms and conditions of that order shall be incorporated in the Corollary Relief Judgment unless specifically varied in this Decision.

[9] The only dependent child of this union is 11 years of age.

**Divorce**

[10] I am satisfied that there is no possibility of reconciliation and grant the divorce on the basis of section 8(2)(a) of the *Divorce Act*.

**Child Support**

[11] The respondent's current income for 2013 is \$40,251 yielding a child support award of \$338.36 per month, which shall be payable commencing May 1<sup>st</sup>, 2014, and continue thereafter on the first of each month until further order of the Court.

[12] The petitioner will continue such medical and dental coverage for the child as he currently has, as long as he has a plan available and the child is dependant.

[13] The parties shall share, in proportion to their income, any necessary after tax child care expenses relating to the mother's employment. She shall provide verification of the expenses if and when they occur.

[14] The respondent shall pay these expenses within 30 days of receipt of a copy of the child care bill.

[15] The respondent has agreed to pay half of the horseback riding lessons and that shall continue until further order of the court.

[16] The Interim Order dealt with access costs. I have had insufficient evidence before me to modify or change the original provisions resulting from the contested mobility hearing.

[17] No later than June 1<sup>st</sup> of each year, both parties must provide each other with a copy of his or her Income Tax Return, completed and with all attachments, even if the return is not filed with the Canada Revenue Agency.

[18] They shall also provide each other with all Notices of Assessment and reassessment from the Canada Revenue Agency immediately after they are received.

### **Life Insurance**

[19] The respondent shall maintain the life insurance policy naming the child as the beneficiary as long as child support is payable.

### **Spousal Support**

[20] The petitioner (born July 2<sup>nd</sup>, 1964) was 37 at the time of the marriage; the respondent, (born December 14<sup>th</sup>, 1957) was 43.

[21] The petitioner was 44 and the respondent 52 at separation.

[22] The marriage lasted just under eight years.

[23] This is a second marriage for the petitioner. The petitioner had two children from a previous marriage for which she received child support during the course of their dependency including those years when she was married to the respondent.

[24] Before the marriage, the petitioner moved from New Glasgow where she was employed as a trainer for a call centre. She moved to Cape Breton prior to the relationship and found employment shortly thereafter.

[25] The petitioner's evidence on her pre-marital employment is minimal.

[26] After her move to Cape Breton, she worked as a jeweller, waitress, at Canada Post and finally as a janitor for the school board.

[27] During her marriage, she moved with the respondent to Alberta and returned to Nova Scotia where she became re-employed at a local hotel.

[28] For a few months, the respondent was the primary caretaker of the child while the petitioner was employed at a local restaurant.

[29] The petitioner advised that she contributed to the financial support of the family.

[30] The petitioner admitted however that her child support and child tax credit payments were deposited into her personal account.

[31] The respondent advised that at no time did the petitioner deposit any funds she received from employment or any other benefits including child support or child tax credit into the joint account.

[32] At the time of separation, the petitioner was employed on a casual basis as a janitor. The casual work with the school board as a janitor in Cape Breton did not allow for summertime work. This employment ended on July 12<sup>th</sup>, 2013.

[33] Her current employment with the Valley school board started April 15<sup>th</sup>, 2014 with the possibility of full time work with benefits.

[34] The petitioner has been assured she may expect more summer hours with her current employment in Kentville. She looks forward to full time work.

[35] By her own account, this job in Kentville has more earning potential than that which she left in Cape Breton.

[36] Essentially, the petitioner worked from 1995 to the present day.

[37] Nothing in the marriage interfered with her employability. It appears her employment circumstances have improved although she has not provided verification of her current income.

[38] I have reviewed both income positions as provided.

[39] The respondent's employment T4 for 2013 showed income of \$37,600 together with employment insurance of \$2,451. In 2012, he earned \$27,000 with employment insurance of \$10,032. In 2011, he earned employment of \$37,800 with employment insurance of \$3,733.

[40] The petitioner's income is less defined given the loss of her job in Cape Breton, her move to Kentville and her new and evolving employment.

[41] Her argument in the mobility hearing was that the move would produce better employment prospects.

[42] The petitioner's estimated income after the move as shown in her income statement for child support purposes, inclusive of child tax benefit, EI earnings and employment earnings and child tax credit, was \$30,424.52.

[43] Her 2010 income from employment insurance and earnings was \$14,611.76 and 2011 was \$12,704.06 in addition to other undisclosed tax benefits.

[44] The spousal support provisions in the *Divorce Act* provide as follows :

**15.2** (1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse.

Interim order

(2) Where an application is made under subsection (1), the court may, on application by either or both spouses, make an interim order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse, pending the determination of the application under subsection (1).

Terms and conditions

(3) The court may make an order under subsection (1) or an interim order under subsection (2) for a definite or indefinite period or until a specified event occurs,

and may impose terms, conditions or restrictions in connection with the order as it thinks fit and just.

#### Factors

(4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including

1. (a) the length of time the spouses cohabited;
2. (b) the functions performed by each spouse during cohabitation; and
3. (c) any order, agreement or arrangement relating to support of either spouse.

#### Spousal misconduct

(5) In making an order under subsection (1) or an interim order under subsection (2), the court shall not take into consideration any misconduct of a spouse in relation to the marriage.

#### Objectives of spousal support order

(6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should

4. (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
5. (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;
6. (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
7. (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

1997, c. 1, s. 2.

[45] The petitioner is asking for retroactive spousal support or lump sum support.

[46] No spousal support was claimed or paid in cash from separation since 2009.

[47] No application for spousal support in addition to the benefits the petitioner received was initiated in that four year period.

[48] From separation in June 2009 to August 2013, when the petitioner moved to the Valley, she lived rent free in the matrimonial home without debt obligations. The debts were absorbed by the respondent.

[49] This was a considerable benefit, a contribution by the respondent in kind, providing transitional support to the petitioner.

[50] The employment circumstances of the petitioner did not change significantly during the marriage. She is now employed, with better job prospects than she had at the commencement of the marriage and, indeed, at separation.

[51] She was not called upon in the interim to absorb or maintain payments towards matrimonial debt. This would have addressed some of her transitional costs.

[52] The facts of the case do not now support a further entitlement to contribution on a long term basis. The facts do not support a compensatory support award.

[53] The current circumstances of the petitioner do not arise out of the marriage.

[54] Given the respondent's contributions to child support and extracurricular activities, the current facts do not produce an award of spousal support according to Divorce Mate.

[55] The respondent has proven he is unable to provide a lump sum payment.

[56] I decline to award any further spousal support.

### **Division of Assets – Matrimonial Home**

[57] In addressing this issue, I first refer to the *Matrimonial Property Act*, R.S.,c.275.

[58] The petitioner argues for an equal division of the equity from the matrimonial home.

[59] The respondent's claim for an unequal division of the equity is founded on section 13(d) and (e) of the *Matrimonial Property Act*.

[60] In *Parke v. Vassallo*, 2014 NSSC 68: Jollimore J. walks us through the approach required when assessing whether to grant equal or an unequal division of

assets:

[Subsection 12\(1\)](#) of the [Matrimonial Property Act](#) .R.S.,c.275 provides that matrimonial assets are to be divided in equal shares at the end of the marriage.

In limited circumstances described in [section 13](#), the *Act* allows for an unequal division of matrimonial assets and a division of non-matrimonial assets.

According to [section 13](#), this may occur where I am satisfied that an equal division would be “unfair or unconscionable” having regard to certain enumerated factors.

1. [21] In *Harwood v. Thomas* (1981), 45 N.S.R. (2d) 414 (A.D.) Chief Justice MacKeigan said, on behalf of the unanimous court, at paragraph 7, that equal divisions “should normally be refused only where the spouse claiming a larger share produces strong evidence showing that in all the circumstances equal division would be clearly unfair and unconscionable”.
2. [22] In *Young*, [2003 NSCA 63 \(CanLII\)](#), 2003 NSCA 63, Justice Bateman also spoke for a unanimous Court of Appeal when she wrote at paragraph 15:
3. The inquiry under [s. 13](#) is broader than a straight forward measuring of contribution. The predominant concept under the *Act* is the recognition of marriage as a partnership with each party contributing in different ways. A weighing of the respective contributions of the parties to the acquisition of the matrimonial assets, save in unusual circumstances, is to be avoided.
4. [23] Her Ladyship said that any division other than an equal one will be granted “only where there is convincing evidence that an equal division would be unfair or unconscionable.”
5. [24] In determining whether an equal division would be unfair or unconscionable, I am restricted to considering those factors listed in [section 13](#). If I find this is an appropriate case to divide matrimonial assets unequally or to divide a non-matrimonial asset, I am to apply the very same considerations listed in [section 13](#) in determining what division would be fair and conscionable, according to Justice Chipman, with whom Justices Jones and Hallett concurred, in *Donald*, [1991 CanLII 2563 \(NS CA\)](#), 1991 CanLII 2563 (AD).

[61] The petitioner enjoyed exclusive possession of the matrimonial home located at 114 East Side Grand River Road, Grand River, Nova Scotia, mortgage free, from the date of separation on June 13<sup>th</sup>, 2009 to August 2013, a period in excess of four years until she and the child were permitted by the Court Order to move to Kentville, Nova Scotia.



[62] The petitioner wishes an equal division of the net equity in the matrimonial home. The appraised value is \$251,000. However, the home has been on the market on two separate occasions, earlier when the parties relocated to Alberta and currently. No offers were received as of the date of hearing.

[63] *If the appraised value* is used, one half of the net value would be \$117,783.75. The petitioner also requests an unequal division of debts in her favour.

[64] The petitioner agrees to share responsibility for the consolidation loan of \$20,211 and asks that the respondent assume all responsibility for the Aliant bill, the RBC credit card of \$6,270 and the trailer loan of \$27,484.73 which exceeds the value of the trailer by \$12,484.

[65] Her proposal would yield an unequal division of assets and debts in her favour.

[66] The respondent asks that the actual sale price be used as the home is currently on the market for \$247,000; less than the appraised value. He has evidence to prove he is unable to buy the petitioner out.

[67] The factors relevant to the enquiry in the case before me would include Section 13:

(d) the length of time that the spouses cohabited with each other during the marriage;

(e) the date and manner of acquisition of the assets

(i) the contribution made by each spouse to the marriage and to the welfare of the family, including any contribution made as a homemaker or parent.

### **Section 13(d)**

[68] This is not a long term or traditional marriage. It lasted less than eight years.

### **Section 13(e)**

[69] The deed to the respondent is dated April 1983.

[70] The respondent was deeded the home 18 years prior to marriage, built it over a 14 year period and completed the building prior to marriage. He lived in this home for two years prior to the marriage.

[71] At the time of the marriage, there was a mortgage of approximately \$26,000 which he took out in 1998 and which he “paid off” shortly after they were married.

[72] On April 27<sup>th</sup>, 2007, six years after marriage, 2 years prior to separation, at the petitioner’s request, he put the property in joint names.

**Section 13(i)**

[73] The Respondent maintains that the petitioner did not contribute to the purchase and maintenance of this property. The facts support his contention.

[74] The petitioner’s contribution to the household came from what income she earned to pay towards common expenses.

[75] She admits, however, that she received child support of \$1,000 and the child tax credit and these sums of money went into her personal account.

[76] Her contribution to the matrimonial home was minimal and amounted to a contribution toward household expenses in general.

[77] The petitioner came into the marriage with two dependent children. The parties had a child born subsequently.

[78] The respondent provided the children and the petitioner with a home through the remaining dependent years for the two oldest.

[79] At separation, the petitioner removed the respondent’s employment insurance cheque which he deposited into the joint account to pay bills. This is an account to which he largely contributed. The cheque was intended to pay against existing matrimonial debts.

[80] He assumed the burden of paying all matrimonial debts in the transition between separation and this final resolution.

[81] She accepted most of the household furniture, the family car and four years of rent free occupation of the home. She admits to no contribution to the debts.

[82] The petitioner was not a stay at home parent.

[83] Her own evidence indicates she worked throughout the marriage as she had done prior to the marriage. When she left one job, whether because she became dissatisfied or for other reasons, she sought and obtained another.

[84] She did not advance the respondent's career. She did not assume the sole responsibility for child care. She did not sacrifice her career potential to contribute to the marriage.

[85] The respondent's contribution to the home was largely well before the marriage with little contribution by the petitioner after the marriage.

[86] In general, the facts support a conclusion that the petitioner wished to share equally in an asset to which she contributed very little, if anything.

[87] For the four years following separation, the respondent assumed the burden of the debt. He is now unable to obtain financing and has been advised by the bank to sell the home he built before the marriage under the appraised value of \$251,000.

[88] The petitioner's expectations regarding spousal support and a division of assets are not reasonable.

[89] Receiving an equal share of the home in the circumstances of this case would result in a windfall for the petitioner.

[90] The respondent wishes an unequal division of the equity in the matrimonial home, proposing a 35 percent share, rather than a 50/50 share.

[91] This offer to share 35 percent of the equity in the home, on the facts of this case, is a generous offer.

[92] Given the unequal contribution to the building and maintenance of the home, and the date and manner of acquisition of this asset, the duration of the marriage, an equal division of this asset would be unfair in accordance with section 13 of the *Matrimonial Property Act*.

[93] I conclude that the house should remain on the market and that when sold the parties shall deduct the ordinary disbursements (5 percent real estate costs, HST, legal fees not to exceed \$1000 and other mandatory costs to effect sale).

[94] The petitioner shall be entitled to 35 percent of the net equity, the respondent 65 percent.

[95] I reserve for the parties the right to come before the Court to effect the division should the need arise.

### **Trailer**

[96] The petitioner also argues that the trailer they purchased together was the respondent's responsibility and he should be responsible for the outstanding debt which far exceeds the loan.

[97] In 2008, the respondent testified the petitioner wanted to buy a travel trailer. They agreed. They both purchased this one year old trailer in Alberta. No objective evidence of value was tendered.

[98] The loan taken out was for a period of 20 years, for which the respondent has assumed all payments.

[99] The petitioner recollects that with tax included they paid approximately \$20,000.

[100] The respondent testified that the trailer should be valued at \$15,000. He approached a dealer to obtain a price. He declined to pay for a written estimate. He tendered his estimate of value in accordance with his enquiries.

[101] The outstanding loan on this trailer was \$27,484.73 as of the date of separation.

[102] The petitioner originally had possession of the trailer as it was parked on the matrimonial property while she had exclusive possession.

[103] After discussions, the respondent agreed to take over payments but he insisted on obtaining possession of the trailer.

[104] Thus, he has had the benefit of the trailer, a depreciating asset since shortly after separation, she the benefit of the home.

[105] I accept the value of \$15,000 reflecting separation value, absent a professional evaluation.

[106] The asset was purchased by the parties jointly. The loan relates to the asset. Removing the asset and debt would result in an unequal division of assets in favour of the petitioner. There is nothing in the evidence that would support an unequal division of the totality of assets in favour of the petitioner.

### **Consolidated Loan**

[107] There is agreement this loan is a joint debt and will be shared equally. The respondent shall attempt to make all reasonable efforts and remove the petitioner from these loans and keep her indemnified.

### **Mazda Tribute**

[108] This was a matrimonial asset. The petitioner kept the asset and sold it for \$2,500.

### **Household Possessions**

[109] The parties agree on a value of the household possessions. They also agree the petitioner received the majority of the household property and both place a value of \$2,500 for the petitioner and \$500 for the respondent.

### **Royal Bank Visa**

[110] The petitioner admits she made no payments on the matrimonial debts. She argues that this is the respondent's debt.

[111] The outstanding amount at separation was \$6,270.48.

[112] The Court must 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))

[113] 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 the basic living expenses or preserve matrimonial assets? And,
3. Were they reasonably incurred?

[114] Knowledge of a debt is not essential to its classification as matrimonial in *Selbstaedt v. Selbstaedt*, 2004 NSSF 110, Dellapinna, J. In this case, the petitioner was aware of the nature of the debts.

[115] 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.

[116] A Court may consider among other factors, the amount of the debt, the liability of the spouse, and the current balance.

[117] The respondent testified that while the card was in his name, it was used for the benefit of the family. The purchases appear to relate to matrimonial household purchases and gas.

[118] The respondent notes that the expenditures closest to separation occurred in Cape Breton, in close proximity to where the petitioner lived in the matrimonial home.

[119] I am satisfied the debt is matrimonial and this debt will be included in the division.

### **Cell Phone Debt**

[120] The cell phone debt in the amount of \$375.93 is a matrimonial debt.

### **Conclusion**

[121] The home was the main asset.

[122] Aside from the home, the matrimonial debts exceed the assets. The assets I valued at \$20,500 and the debts at \$54,343.

[123] If considering the house separately, an equal division of the remaining assets and debts would result in a payment by the petitioner to the respondent of \$21,921.50.

[124] In granting the petitioner 35 percent of a home in which she lived for under eight years of marriage, over a span of a little less than 26 years during which the respondent owned the land and built the home, the petitioner is put in a position

where she can absorb half the matrimonial debts and still have approximately \$60,277 left in assets to move forward.

[125] I have not included in this equation the additional four years the petitioner had exclusive possession of the home without obligation for mortgage rent or any burden of maintaining the debt payments as I have already considered that period in deciding the issue of spousal support.

[126] The matrimonial home is to be listed immediately for sale. The parties agree to contract with a different realtor, one operating out of St. Peter's.

[127] The parties shall cooperate with the realtor to ensure the home is listed and to comply with the signature of any required documentation forthwith.

[128] The respondent has born the majority of the financial burden since the marriage and it's breakdown without contribution from the petitioner.

[129] He provided a home for her two older children while they were being supported by their mother and biological father.

[130] He vacated his home, constructed by himself and paid for by himself, leaving occupation available for the petitioner and his child since separation.

[131] Overall, the petitioner received the bulk of the household possessions.

[132] The respondent paid the matrimonial debts.

[133] This situation is not similar to *Larue v. Larue*, 2001 Carswell NS 232 as argued. While the respondent's income in Alberta for a short period may have well exceeded the petitioner's, their current income differential is far less.

[134] In addition, the petitioner is receiving 35 percent of an asset that puts her in a position to absorb her fair share of the matrimonial debt, a debt she was aware of, had the benefit of and was for a four year period free from obligation to pay down while she re-established herself.

[135] Once the home is sold, the parties shall deduct what remains owing to the respondent by the petitioner from her 35 percent share of the net value of the home.

[136] To equalize the remaining assets, the respondent owes the petitioner \$5,250.

[137] To equalize the debt, the petitioner owes the respondent \$27,171.50.

[138] Thus, once the net value on the sale of the home is determined, the amount owing to the respondent of \$21,921.50 shall be deducted from the petitioner's 35percent share.

[139] Should the matrimonial home not be sold within six months, the parties may come back to the Court with an updated appraisal at which time, and failing agreement between the parties, the Court may establish a value to effect payment of the equity and finalize the amount owing for payment and establish terms and time limitations for payment.

[140] The respondent shall bear responsibility for the payment of the debts and keep the petitioner indemnified from any claims.

[141] Should the parties require an order to effect this, they may come before the Court to seek further Order to effect sale.

[142] Counsel for the respondent shall prepare the orders.

Moira C. Legere Sers, J.