

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

**Citation:** Reeves v. Reeves, 2009 NSSC 139

**Date:** 20090612

**Docket:** 1201-062152

**Registry:** Halifax

**Between:**

Natasha Olivia Reeves

Petitioner

v.

Bruce Allen Reeves

Respondent

**Restriction on publication:**

**Judge:** The Honourable Justice R. James Williams

**Heard:** February 24 and 25, 2009 and March 2, 2009,  
in Halifax, Nova Scotia

**Counsel:** James Morris, counsel for the Petitioner  
Peter Crowther, counsel for the Respondent

**By the Court:**

[1] Natasha Olivia Reeves and Bruce Allan Reeves are divorcing. They met and began living together in early 1997. They married October 23, 1999 and separated September 15, 2007. They cohabited approximately 10 years. They have three children:

Ethan, born May 18, 2001;  
Delaney, born February 20, 2003; and  
Jake, born October 1, 2004.

[2] They are disputing a variety of parenting, child support, spousal support and property issues within their Divorce proceeding.

[3] The parties have agreed that Mr. Reeves' pension will be divided based on their time of cohabitation. The divorce grounds have been proven, the divorce will be granted upon the filing of the Corollary Relief Judgment and Divorce Order.

**BACKGROUND OF THE PROCEEDING**

[4] Ms. Reeves commenced the divorce on October 18, 2007. An interim hearing was originally scheduled for November 27, 2007. It was converted to a settlement conference which took place December 5, 2007 before Justice Beryl MacDonald of this Court. While agreement was reached, it appears that there were difficulties agreeing on the form of order. An appearance before Justice MacDonald months later on May 7, 2008 resulted in an Interim Order issuing, which provided:

1. The Petitioner shall have primary care and custody of the children of the marriage, namely: Ethan Allen Reeves, born May 18, 2001; Delaney Grace Reeves, born February 20, 2003, Jake Ruin Reeves, born October 1, 2004 (the "children");
2. The Petitioner shall be entitled to receive the universal child tax credit and any other government credits or benefits to which the primary care parent is normally entitled;
3. Each party shall have the right to keep themselves fully advised of all information regarding the children's health, education, religious training, and regular and special activities, and to obtain all medical, educational,

religious and other records regarding the welfare of the children, and to discuss the welfare of the children with the children's doctors, teachers, ministers, or others who are involved with the children.

4. Each party shall make reasonable efforts to notify the other of all major issues regarding the children, including such issues related to the children's health and education.
5. Each party shall have the opportunity to participate in the children's school and extracurricular activities and to attend any functions in this regard.
6. The Respondent shall have access to the children every second weekend from Friday at 6:00 pm to Sunday at 4:00 pm. Such access shall commence on Friday, December 14, 2007 and continue until further agreement of the parties or further order of a court of competent jurisdiction.
7. The Respondent shall have one-time access on Sunday December 23, 2007 from 8:30 am to 6:00 pm.
8. The Respondent shall have access during the 2007 holiday season from 8:30 am on December 28, 2007 to 4:00 pm on January 1, 2008.
9. With respect to transportation regarding the access visits referred to in paragraphs 6, 7, and 8 of this Order, the Respondent shall pick up the children at the Petitioner's home at the commencement of each access visit and the Petitioner shall pick up the children at the Respondent's home at the conclusion of each access visit.
10. The Petitioner shall have possession and use of the parties' 2003 Mazda van. The van will be delivered by the Respondent to the Petitioner on or before December 10, 2007.
- ...
13. The parties shall list the matrimonial home, located at 121 Tina Court, Porters Lake, Nova Scotia (the "matrimonial home") for sale with Exit Realty or such other realtor as they shall mutually agree upon on or before February 1, 2008. The sale date for the matrimonial home shall be on or after June 30, 2008.

14. The listing price and ultimate sale price of the matrimonial home shall be as agreed upon by the parties. The parties shall reasonably consider advice they receive from their realtor or appraisers as to the listing price and its reduction based on all factors, including comparable listings and market conditions, and any maintenance or cosmetic work necessary to make the matrimonial home suitable for sale.
15. Until the closing of the sale of the matrimonial home, the Petitioner shall remain in exclusive possession of the matrimonial home. The Petitioner shall be responsible for the following household expenses incurred after the transfer of the following accounts into her name in December of 2007: phone, power, heating, satellite system and security system.
16. The Petitioner shall allow the Respondent access to the basement of the matrimonial home to obtain his personal belongings at an agreed upon time.
17. The Respondent shall sign the Consent for Services form regarding the parties son, Ethan, if he is required to do so to obtain counseling [sic] services.
18. The Respondent shall pay to the Petitioner for the support and maintenance of the children the sum of \$1,654.00 per month, payable in two installments on the 15<sup>th</sup> and the last day of each month, commencing on the 15<sup>th</sup> day of December, 2007 and continuing as aforementioned until further agreement between the parties, or further order of a court of competent jurisdiction.
19. The Respondent shall pay to the Bank of Montreal the lease/loan payment regarding the van in the amount of \$546.00 per month, commencing December, 2007.
20. The Respondent shall pay to the Canadian Imperial Bank of Commerce the mortgage payment regarding the matrimonial home in the amount of \$1,595.00, commencing December 2007.
21. The Respondent's payments, pursuant to paragraphs 19 and 20 of this Order shall be considered spousal support payments and shall be taxable to the Respondent [sic][Petitioner?] and tax deductible by the Applicant [sic] [Respondent], pursuant to section 56.1(2) and 60.1(2) of the *Income Tax Act*, as amended.

22. The Respondent shall pay to MacDonald Chisholm Insurance the insurance premiums regarding the van.
23. The issues of retroactive child support, spousal support and costs remain outstanding.

- [5] The order provided that Mr. Reeves pay:
- a. \$1,654.00 per month child support
  - b. 546.00 per month Bank of Montreal (van)  
\$1,595.00 per month mortgage or  
\$2,241.00 per month - third party spousal support payments.

The total annual payments (subject to income tax adjustments on spousal support) are/were  $\$2,241.00 + \$1,654.00 = \$3,895.00 \times 12 = \$46,740$ . Mr. Reeves also was attempting to maintain the parties debts, pay pension, medical, income tax. The consent order was financially onerous on him.

[6] The settlement provided that the matrimonial home be listed for sale by February 1, 2008 and that Ms. Reeves have exclusive possession until the sale. Sale of the home would create some financial relief.

[7] The parties appeared before Justice Gass of this Court on November 24, 2008. Justice Gass ordered the home listed for sale forthwith. It had not been listed at that point. The spousal support payments were to be adjusted to \$1,250.00 should the house sell (before the Trial). It did not.

## TRIAL

[8] The trial of this matter proceeded February 24, 25 and March 2, 2009.

## PROPERTY

[9] At the Pre-Trial Conference of January 9, 2009 I directed that:

Counsel are directed to develop a joint list of assets and/or debt, it's value as of the date of separation, it's current value, and a proposal for the division of assets. Counsel will each file either an affidavit or a memorandum with this information

on it. This affidavit or memorandum may be used in examination or cross examination.

[10] This was not done before, or at the trial; nor did either party file or prepare his/her draft demonstrating their proposed division of assets. The result is a grab-bag of issues, presented with limited consistent focus or context, little in the way of valuation and valuation dates and unorganized information for the Court to use. Post-trial I asked, on May 8, 2009, that counsel file this information. Counsel for Ms. Reeves filed an equalization chart May 12, 2009 which contained some, not all of this material. Counsel for Mr. Reeves did not receive instructions to do so.

[11] The matrimonial home is in Porter's Lake, a rural area in the Halifax Regional Municipality. All the students at the local school are bussed. The driveway to the home must be privately maintained/plowed. There is no bus service to the area in non-summer months - and the submissions of counsel on May 12, 2009 acknowledge it would take approximately an hour and a half or more to travel from Dartmouth or Bedford to the Porter's Lake area.

[12] The parties built the home - it was their dream home. It is listed for sale. Ms. Reeves has been in the home since the parties separated. She has been or appears to have been consistently resistant to lowering the price of the home to facilitate its sale. I conclude that the home is a financial burden on these parties.

[13] Despite the Order/Agreement arising from the appearances before Justice MacDonald in December 2007 and May 2008, there were difficulties getting the property listed - both parties blaming each other.

[14] Following the appearance before Justice Gass the home was listed for sale by the parties for \$349,900.00 on November 25, 2008 with Ms. Livingston of Century 21 Realty. The list price was reduced by \$10,000.00 at the close of the trial in March 2009 at the direction of this Court.

[15] Ms. Reeves' Statement of Property (dated October 17, 2007) values the property at \$320,000.00. Mr. Reeves' Statement of Property (dated October 26, 2007) values it at \$300,000.00.

[16] The home is listed at \$339,000.00 on May 12, 2009. Ms. Reeves counsel estimated that disposition costs (6% Realtor commission, legal fees, HST) would

reduce this to \$318,806.00. I am prepared to notionally treat the value of the home as \$308,000.00 (after disposition costs).

[17] The parties refinanced the mortgage on the home in May of 2008. Both parties were represented by counsel at the time. The mortgage was refinanced in the amount of \$271,200.00. The following debts were paid out:

<b>Item</b>	<b>Debt</b>
existing CIBC mortgage	\$239,157.00
Royal Bank Loan	11,206.67
Royal Bank Visa	10,264.56
CIBC Visa	4,346.95
CIBC Personal Loan	5,253.60
	<b>\$270,228.78</b>

[18] The \$4,346.95 CIBC Visa appears to be a post separation debt of Mr. Reeves. Including it in the mortgage payout effectively offsets the “treatment”, inclusion of the President’s Choice Mastercard as a debt that should be paid out when the house is sold. It is in the interests of the parties and the children that their debt be minimized.

[19] The parties had a President’s Choice Mastercard. It appears that it was closed by Mr. Reeves in December 2006, January 2007; the cards ripped up. Ms. Reeves evidence was that she simply called and got a replacement card. Her evidence concerning this is less than convincing. She asserts that she got the new card in part because Mr. Reeves provided her with only \$800.00/month while he was on deployment in Afghanistan in early 2007. The evidence indicates she received significantly more than that. I conclude from the whole of the evidence that Ms. Reeves has and has had significant money management issues. The President’s Choice Mastercard (\$4,333.68) is not, I conclude a matrimonial debt. The expenditures incurred were not jointly incurred. As I indicated, however, its payout offsets the CIBC Visa referred to, and it is in the interests of these parties and the children to reduce debt.

[20] To be fair, the cost of maintaining the matrimonial home and van have exacerbated the financial pressures on both these parents. Mr. Reeves has paid a very high level of spousal support but it has gone entirely to maintain the mortgage and van loan, not to Ms. Reeves' hands as discretionary money. The home is a financial drain on this separated couple.

[21] It is alleged by Ms. Reeves that Mr. Reeves' 2007 income tax return was a matrimonial asset. At the time he received this return Mr. Reeves was paying considerable and onerous child and spousal support. This testimony is that the return was used to pay on debt, provide living expenses. I accept this. It is not appropriate to treat it as a Matrimonial Asset. I note, also, that the parties separated in mid-September 2007. I have been provided no calculation as to what portion of the Income Tax Return could be said to have accrued prior to separation. Mr. Reeves paid the mortgage, car and other expenses during September, October, November, December 2007.

[22] In his Answer to the Petition for Divorce (dated October 26, 2007) Mr. Reeves indicated he was paying the then mortgage (\$1,590.00/month) and taxes (\$208.33/month). It is unclear, from the evidence before me, whether he has continued to pay the taxes, or whether there is an outstanding tax bill. If there is an outstanding property tax account it should be shared by the parties on the sale of the home.

[23] Ms. Reeves asserts that her parents lent them a total of \$21,800.00 at or near the time the home was built. She asserts that she paid informally on the loan until early 2007. At that time Ms. Reeves was going overseas and left some post-dated cheques for Ms. Reeves' father. Mr. Morris, Ms. Reeves' counsel, asserts it is a loan, a debt to an independent third party. There is no accounting of what monies have been paid. There are no loan documents. Ms. Reeves' father asserts the money was lent to facilitate the building of the home and payments of \$100.00 per month made until September of 2007 - saying this was "interest". \$100.00 per month is less than the interest would be. Mr. Reeves denies the money was loaned.

[24] In *S.(J.H.) v. S.(J.W.)* 2009 Carswell NS 164 (NSSC) Justice MacDonald of this court reviewed the question of whether monies advanced by a parent to a "child" was a gift or a loan (in the context of the "child's" divorce) - and concluded that the factors include:



1. Whether there are contemporaneous documents evidencing the loan. Here there are no loan documents but are copies of account records evidencing the money transfer but not that the transfer was a loan.
2. Whether the method of repayment was specified. Here it is alleged to have been discussed. It was not specified.
3. Whether there was security for the loan. Here there is no evidence of such security.
4. Whether there are advances to one child and not others, or advances of unequal amounts to various children. Here the evidence is unclear, incomplete on this issue.
5. Whether there was any demand for repayment before the separation of the parties. Here there are cheques for \$100.00 per month - less than interest would be - signed by Mr. Reeves in 2007. He says these cheques were for, he thought, unspecified borrowings from Ms. Reeves' parents.
6. Whether there has been any partial repayment. Here, perhaps. Mr. Reeves asserts the few cheques tendered were for other money advanced by Ms. Reeves' parents.
7. Whether there was an expectation of repayment. Mr. Monk - Ms. Reeves' father says "yes".
8. Whether the loan is legally enforceable. There are no documents, no security. The monies were, in my view, treated informally, a help, more a gift than a loan. The monies are asserted by Mr. Monk to be related to the home building, purchase. To the extent that this is alleged to be the land, home or related to Mr. Reeves' paying for monies lent to Ms. Reeves, the absence of a loan agreement suggests that the Statute of Frauds is not complied with. Section 7 of the *Statute of Frauds* (NS) provides:

(s. 7): No action shall be brought

- ... (b) whereby to charge any person upon any special promise to answer for the debt, default or miscarriage of another person;
- ... (d) upon any contract or sale of land or any interest therein; or

(e) upon any agreement that is not to be performed within the space of one year from the making thereof,

unless the promise, agreement or contract upon which the action is brought, or some memorandum or note thereof, is in writing, signed by the person sought to be charged therewith or by some other person thereunto by him lawfully authorized. R.S., c. 442, s. 7.

I conclude the monies from the Monks' were not a loan.

[25] Mr. Reeves asserts that he (at or just before the time the home was being built) sold a lot of land given him by his father - receiving \$14,379.98 in July, 2003. At least \$5,000.00 went to the down payment on the home/land in August, 2003 - the purchase of the lot took place in March, 2004.

[26] All these monies appear to have gone into the parties' "marital pot" at or before the time of the purchase of the land, building of the home. The parties built the home, there were delays, over-runs.

[27] There is an MBNA Mastercard with a balance owing of approximately \$5,000.00. Mr. Reeves asserts this was not a matrimonial debt. In May/June 2005 there was over \$4,900.00 in cash advances on this card. The balance was \$4,745.67 in October, 2007 (according to the November 2007 statement). It will be treated as a matrimonial debt.

[28] The parties own a 2003 Mazda MPV. The Bank of Montreal is owed \$12,293.66 on July 1, 2009 in relation to this loan. Ms. Reeves has had the use and possession of the van that will continue until she disposes of it. She valued it at \$2,500.00.

[29] The household belongings - largely in Ms. Reeves' possession - have not been valued. Mr. Reeves accepts the physical division but asserted he wanted them valued. Neither party provided a valuation. Ms. Reeves received the vast majority of these household items. I have reviewed the list of items. I would conservatively estimate that she received \$3,000.00 more in household assets. If I am wrong in making such a valuation I would order the household assets sold at an auction, and the proceeds split.

[30] The *Matrimonial Property Act* provides at sections 11, 12, 13:

s. 11: Powers of court respecting matrimonial home

11 (1) Notwithstanding the ownership of a matrimonial home and its contents, the court may by order, on the application of a spouse,

(a) direct that one spouse be given exclusive possession of a matrimonial home, or part thereof, for life or for such lesser period as the court directs and release any other property that is a matrimonial home from the application of this Act;

(b) direct the spouse to whom exclusive possession is given under clause (a) to pay such periodic or other payments to the other spouse as is prescribed in the order;

(c) direct that the contents of a matrimonial home that are matrimonial assets, or any part thereof, remain in the home for the use of the person given possession;

(d) determine the obligation to repair and maintain the matrimonial home and to pay for other liabilities arising in respect of the matrimonial home;

(e) authorize the disposition or encumbrance of the interest of a spouse in a matrimonial home who has not been granted exclusive possession;

Application for division of matrimonial assets

s. 12: (1) Where

(a) a petition for divorce is filed;

either spouse is entitled to apply to the court to have the matrimonial assets divided in equal shares, notwithstanding the ownership of these assets, and the court may order such a division.

Factors considered on division

s. 13: Upon an application pursuant to Section 12, the court may make a division of matrimonial assets that is not equal or may make a division of property that is not a matrimonial asset, where the court is satisfied that the division of

matrimonial assets in equal shares would be unfair or unconscionable taking into account the following factors:

- (a) the unreasonable impoverishment by either spouse of the matrimonial assets;
- (b) the amount of the debts and liabilities of each spouse and the circumstances in which they were incurred;
- (c) a marriage contract or separation agreement between the spouses;
- (d) the length of time that the spouses have cohabited with each other during their marriage;
- (e) the date and manner of acquisition of the assets;
- (f) the effect of the assumption by one spouse of any housekeeping, child care or other domestic responsibilities for the family on the ability of the other spouse to acquire, manage, maintain, operate or improve a business asset;
- (g) the contribution by one spouse to the education or career potential of the other spouse;
- (h) the needs of a child who has not attained the age of majority;
- (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;
- (j) whether the value of the assets substantially appreciated during the marriage;

I have considered these provisions.

[31] The parties agreed to sell the matrimonial home in December, 2007 before Justice MacDonald. It has not sold. Ms. Reeves appears to have been consistent in resisting reductions in the listing price of the home. The list price on the home will be immediately reduced by \$10,000.00. It will be notionally valued at \$308,000.00 (\$10,000.00 less than her valuation).

[32] Ms. Reeves will retain the family van which she has valued at \$2,500.00.

[33] On the sale of the home these debts will be paid out:

1.	The mortgage	\$265,249.00
2.	President's Choice Mastercard	4,333.68
3.	MBNA Mastercard	4,745.67
4.	Bank of Montreal (Van)	<u>12,293.00</u>
		\$286,621.35

Subject to the sale of the home (and treating it as \$308,000.00 after disposition costs) the equalization chart is as follows:

<b>Assets</b>		<b>Ms. Reeves</b>	<b>Mr. Reeves</b>
Matrimonial home	\$308,000.00	\$308,000.00	
Van	\$2,500.00	\$2,500.00	
Household goods		<u>\$3,000.00</u>	
		\$313,500.00	
<b>Debts</b>			
Mortgage	\$265,249.00	\$265,249.00	
President's Choice Mastercard	\$4,333.68	\$4,333.68	
MBNA Mastercard	\$4,745.67	\$4,745.67	
Bank of Montreal (Van)	\$12,293.00	<u>\$12,293.00</u>	
		\$286,621.35	
Difference	\$26,878.65		
Equalization		(\$13,439.32)	\$13,439.32

[34] Section 13(e) of the *Matrimonial Property Act* allows the Court to depart from an unequal division considering the “date and manner of acquisition of the assets”. There is notional marital “equity” of \$26,878.65. It is obvious that this arises primarily from two sources, the advancement of \$21,800.00 from Ms.

Reeves' parents and the gift of the equivalent of \$14,380.00 from Mr. Reeves' family - both at the time or within months of the purchase of the lot, subsequent building of the home. In my view it would be unfair to simply divide the marital equity equally. It would be fair to divide it proportionally - it would be unfair not to do so.

[35] The marital equity should be divided:

$$.40 \times \$26,878.65 = \$10,751.46 \text{ Mr. Reeves}$$

$$.60 \times \$26,878.65 = \$16,127.19 \text{ Ms. Reeves.}$$

[36] This finds and assumes that Mr. Reeves has no independent obligation to Ms. Reeves' parents. In the event that he was found by a Court to have such an obligation, I would reserve the jurisdiction to alter this division, making an unequal division that considered the gift from his family, and removed consideration of the monies from Ms. Monks' family, Mr. Reeves \$10,751.46 will be subject to adjustment arrears of child support - addressed later.

[37] Mr. Reeves will pay the interest only on the MBNA Mastercard, and Bank of Montreal (car) loans through the month of September 2009 as third party spousal support. If counsel cannot agree upon this amount they may appear before me **July 13, 2009 at 9:15 a.m.** Ms. Reeves will be responsible for payment of interest on the President's Choice Account.

[38] As I indicated, the listing price of the home will be reduced by \$10,000.00 immediately and its manner of sale. Section 15 of the *Matrimonial Property Act* permits the Court to make an order "for sale of property ... and to make such other orders and directions as are ancillary thereto."

[39] The home will be sold, the price reduced by \$10,000.00 and the manner of sale, price of sale, and form of order of sale reviewed by this Court on **July 13, 2009 at 9:15 a.m.**

[40] The parties will advise the Court of the status of the sale in writing one week before that date and of any changes or adjustments in the order for sale that they are seeking.

## CUSTODY

[41] The parties have three children:

Ethan, born May 18, 2001;  
Delaney, born February 20, 2003; and  
Jake, born October 1, 2004.

Ms. Reeves has been an at-home mom since Ethan's birth.

[42] Mr. Reeves employment with the Canadian Armed Forces has separated him from the family on a number of occasions including extended postings to Greenwood, Nova Scotia, Dubai, and Afghanistan (twice). The last posting for Afghanistan was from late January to August 2007. The parties separation followed shortly thereafter.

[43] Mr. Reeves absences do not diminish his role as a parent; they do reduce the time he spent parenting.

[44] Following the separation Mr. Reeves left the matrimonial home. Within three months Ms. Reeves was given use of the family vehicle. Mr. Reeves lived, and continues to live with his mother in Bedford, Nova Scotia. He does not own a vehicle apart from the family van - which Ms. Reeves has had. Mr. Reeves lives a 1 ½ hour bus ride away from the matrimonial home, a bus ride that is not even possible in the summer.

[45] Mr. Reeves has had significant transportation issues since delivering te family van to Ms. Reeves in December 2007 - the matrimonial home is in Porter's Lake, a rural area outside of Dartmouth. Mr. Reeves has lived with his mother in Bedford. Public transit is difficult to the area. It is not available in summer months.

[46] Ms. Reeves has been very critical of Mr. Reeves' lack of involvement with extracurricular activities, school meetings, etc. of the children. Her criticisms in this regard show little consideration of Mr. Reeves' circumstances.

[47] Both parties have since the separation been dependent on family for rides, driving the children, and money. Both according to the evidence of extended family have come close to exhausting that assistance.

[48] Financial difficulties appear to have been chronic within their relationship - examples include:

- the building of the matrimonial home having exhausted their and others resources;
- the ongoing expenses related to the matrimonial home;
- Ms. Reeves apparently incurring debt, against the express wishes of Mr. Reeves (he would say forging his name to cheques, re-opening a closed credit card, etc.)
- Mr. Reeves appearing to have gambled sums of money in the two to three months immediately post separation;
- Ms. Reeves shop-lifting or attempting to shop-lift a considerable amount of goods in November 2008 - with one of the children with her.
- Mr. Reeves continues to be the only income earner.

[49] Ms. Reeves asserted repeatedly that Mr. Reeves provided her with only \$800.00 per month during his last deployment to Afghanistan during the first half of 2007. The evidence does not support her view.

[50] Mr. Reeves' payment of an onerous rate of (interim) child and spousal support has hampered his ability to be part of the children's lives, and re-established his own.

[51] Ms. Reeves seeks sole custody of the children. Her plan is to stay, remain in the Porter's Lake community - asserting the school the children attend gives them stability, they are settled in the community. Her plan is to work as little as a day a week at a school. I conclude that her plan creates an extraordinarily perilous economic situation for the family, will exacerbate financial problems (it is unclear whether either party will have a vehicle after their cars lease expires this summer - and it is difficult to identify where the resources to purchase/maintain vehicles would come from). Remaining in the Porter's Lake community would create obvious transportation problems relating to:



- Ms. Reeves re-entry to the work force - transportation being an issue and her ability to contribute financially to the family appearing to be limited in that community.

- the children's participation in extracurricular activities - travel to these activities being an issue;

- Mr. Reeves ability to be involved with the children - after school, for extracurricular activities, etc.

[52] Mr. Reeves seeks shared custody, to have the children with him on a 50/50 basis. He wants Ms. Reeves to live in Dartmouth or Eastern Passage (he works in Shearwater - between the two) where public transportation is more available. If he has shared custody he feels he would be eligible for forces subsidized housing. Child care at a reasonable cost is also available through his employment.

[53] The past parenting arrangements, employment circumstances and animosity and lack of effective communication between these parties all mitigate against a shared custody arrangement. I have considered the case law put forward by Mr. Morris including *Burchell v. Savoie*, 2008 NSSC 307, *Foley v. Foley*, [1993] NSJ No. 347, *Rivers v. Rivers*, [1994] 130 NSR (2d) 219, and *Farnell v. Farnell*, 2002 CarswellNS 471.

[54] I have considered the *Divorce Act*:

s. 16 (4): The court may make an order under this section granting custody of, or access to, any or all children of the marriage to any one or more persons.

s. 16 (5): Unless the court orders otherwise, a spouse who is granted access to a child of the marriage has the right to make inquiries, and to be given information, as to the health, education and welfare of the child.

s. 16 (6): The court may make an order under this section for a definite or indefinite period or until the happening of a specified event and may impose such other terms, conditions or restrictions in connection therewith as it thinks fit and just.

s. 16 (7): Without limiting the generality of subsection (6), the court may include in an order under this section a term requiring any person who has custody of a

child of the marriage and who intends to change the place of residence of that child to notify, at least thirty days before the change or within such other period before the change as the court may specify, any person who is granted access to that child of the change, the time at which the change will be made and the new place of residence of the child.

s. 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.

s. 16 (9): In making an order under this section, the court shall not take into consideration the past conduct of any person unless the conduct is relevant to the ability of that person to act as a parent of a child.

s. 16 (10): In making an order under this section, the court shall give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child and, for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact.

[55] I note that the *Foley* decision specifically identifies the financial consequences of custody - as a factor, one of many for consideration, and have considered this and the other enumerated factors.

[56] I note that the *Divorce Act* specifically gives the Court jurisdiction to impose conditions on custody orders (s.16(6), *Card v. Card* (1984) 43 RFL (2d) 74 (NSCA)). I must consider that the best interests of the child(ren) having regard to their condition, means, needs and other circumstances. Those circumstances include the financial circumstances of their parents, and the practical consequences where they live with their mother has on their relationship with their father, and the financial circumstances of their parents.

[57] I conclude that the purpose of Section 16(10) of the *Divorce Act* lies within the best interests of the child principle. It is a provision that must be considered within, not apart from, best interests considerations.

[58] Ms. Reeves raised a number of concerns about Mr. Reeves, his stability, anger immediately before and following the separation, his mental health. He works full time as a nurse/supervisor. There is no evidence of difficulty in his work place. Apart from the conflict between the parties there is no evidence to

raise these “concerns” she expresses to beyond just that, concerns. He - and she - have been under enormous financial and emotional pressure through the separation. Neither parent has appeared to have an ounce of empathy for the pressures the other have lived with. Sadder, neither has any interest in understanding the others situation. I have considered these concerns - in the end her proposal for access includes overnights, includes summertime blocks, and though less than what I order, is not qualitatively different than what I am ordering. I conclude it is in the best interests of the children to have ongoing contact, parenting time with their father.

[59] In Ms. Reeves’ oral evidence she raised a “concern” that Mr. Reeves had visited, book marked inappropriate pornographic websites prior to their separation. This was the first time this was raised. The websites were not specifically identified. Whatever “the concern” it has not stopped her from proposing overnight access. This evidence is of little use to the Court.

[60] Mr. Reeves asserted Ms. Reeves was caught shoplifting with one of the children. This happened, and is a serious concern - but not one that overrides the family history. It is consistent with concerns this Court about her financial management, awareness and observation I have just made - that both these parents have been under enormous financial pressure.

[61] I conclude that it is in the best interests of the children to be in the custody and primary care of Ms. Reeves subject to the following:

1. upon the sale of the matrimonial home, Ms. Reeves shall move the children within the boundaries of the former City of Dartmouth, Cole Harbour, Eastern Passage or Bedford.
2. The children will be registered in school in one of those areas. Thereafter the children’s schools will not be changed without agreement of the parties or order of the Court.

[62] I have identified public transportation, or lack thereof, in the Porter’s Lake area as impacting upon amongst other issues:

- Ms. Reeves’ ability to re-enter the workforce;

- housing costs as disclosed in the evidence are, if anything, slightly less within the city;
- the children's access to extra-curricular activities;
- Mr. Reeves ability to exercise access.

These factors all relate to the children's short and long term best interests. Public transportation is available in the areas I have designated.

[63] I recognize that the order is unusual, I consider Ms. Reeves desire to remain in the Porter's Lake area to be a wish or desire that is disconnected from the financial realities this couple face, and the future best interests of the children. It is as if she hopes, wishes that nothing will change that Mr. Reeves will keep paying as he has, and for all intents disappear. Much has changed. It is impossible for this Court to endorse such a plan when it has been until now beyond her financial means. She has borrowed heavily from her parents. Her father has indicated that that well is dry.

[64] I have considered the evidence provisions of the *Divorce Act*, including Section 16(10) which provides:

s. 16 (10): In making an order under this section, the court shall give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child and, for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact.

[65] I conclude that the order and conditions are in the best interests of the children.

[66] Ms. Reeves position on access was that Mr. Reeves have access as follows:

- a. each second weekend from Friday at 6pm to Sunday at 4pm

I conclude appropriate access to be each second weekend from Friday after school, to Monday morning and each Wednesday evening from 4:00 pm to 7:30 pm.

- b. one week each summer

I conclude that both parties shall have two non-consecutive full weeks of the children's summer vacation in 2009; 3 weeks in subsequent years.

Mr. Reeves will designate his weeks by June 18 this year Ms. Reeves by June 25, 2009. If the parties cannot agree on the weeks for this summer, I will designate them following submissions on June 29, 2009 at 9:15 am. Following this year Mr. Reeves will designate his weeks by April 30 of each year, Ms. Reeves by May 15 of each year.

- c. from Friday to Tuesday 6:00 p.m. of March Break

I conclude the March Break shall be split - Mr. Reeves having from Friday after school to Wednesday at 4:30 p.m.

- d. 2:00 p.m. December 27 to 4:00 p.m. New Year's Day

Mr. Reeves shall have access from December 26 at 10:00 a.m. to New Year's Day at 4:00 pm in even years; and December 25 at 4:00 p.m. to December 30 at 4:00 pm in odd numbered years.

[67] Mr. Reeves access will include in addition to this:

- (a) each Easter weekend from Thursday afternoon to Saturday at 6:00 p.m.;
- (b) from 10:00 a.m. to 6:30 p.m. each Father's Day (Ms. Reeves will have the same each Mother's Day);
- (c) the children's actual birthday will fall according to the schedule - the birthday can be celebrated on days proximate to the date.

[68] Mr. Reeves will make every reasonable attempt to ensure the children attend extracurricular activities during his access - failing to do so will jeopardize the access.

## CHILD SUPPORT

[69] Ms. Reeves seeks:

- a. Table amount of child support of \$1,722.00 per month for three children based on 2008 income of \$98,298.00.

This does not appear to be in dispute.

- b. Table amount of child support for three months in the fall of 2007 (to December 15, 2007) based on 2009 income of \$93,700.00, \$1,654.00 per month x 3 = \$4,962.00

The Interim Order of Justice MacDonald provided that a child support payment be made December 15, 2007, and reserved the issue of retroactive support. The parties separated September 15, 2007. The evidence concerning this time frame is vague, uncertain. Mr. Reeves paid the mortgage and van (Bank of Montreal) and some additional monies - what those were is unclear from the evidence. That said, Mr. Reeves made a number of unexplained withdrawals that may have been used to gamble. There was no monthly child support paid in a separate cheque. The parties chose not to address this issue before Justice MacDonald.

Mr. Reeves paid child support December 15, 2007, separated September 15, 2007. If child support was payable October 15 and November 15 and if notionally he paid half the child support he should have to third parties, then he would owe  $\$1,654.00 \div 2 = \$827.00 \times 2 \text{ months} = \$1,654.00$  in arrears. This shall be paid by Mr. Reeves at the time of the sale of the home.

- c. \$68.00 per month for January 2008 through May 2009. Mr. Reeves paid support under the order of Justice MacDonald which issued at or after May 7, 2008. It appears that the order was based on the previous year's income (\$93,700.00). This is not uncommon. His child support for 2009 should be adjusted to his 2008 income (\$98,125.00) - which triggers an increase in the Table Amount of Child Support of \$68.00 per month for January through May 2009 - 5 months x \$68.00 = \$340.00 in arrears. This amount will be paid by Mr. Reeves to Ms. Reeves at the time of the sale of the home.
- d. Section 7 Expenses. Ms. Reeves seeks "proportional" contribution to the children's extracurricular activities. She has limited income save spousal support. Mr. Reeves pays \$1,722.00 per month in child support. The children's extracurricular activities vary - softball,

paddling, soccer, skating, guitar, swimming - but are not extraordinary. They are standard community activities. There will be no order for section 7 expenses. The activities are not extraordinary.

## SPOUSAL SUPPORT

[70] The *Divorce Act* provides at:

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

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

### 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

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

(b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;

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

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

1997, c. 1, s. 2.

### Priority

#### Priority to child support

15.3 (1) Where a court is considering an application for a child support order and an application for a spousal support order, the court shall give priority to child support in determining the applications.

### Reasons

(2) Where, as a result of giving priority to child support, the court is unable to make a spousal support order or the court makes a spousal support order in an amount that is less than it otherwise would have been, the court shall record its reasons for having done so.



Consequences of reduction or termination of child support order

(3) Where, as a result of giving priority to child support, a spousal support order was not made, or the amount of a spousal support order is less than it otherwise would have been, any subsequent reduction or termination of that child support constitutes a change of circumstances for the purposes of applying for a spousal support order, or a variation order in respect of the spousal support order, as the case may be.

[71] The Reeves were married for 8 years, cohabited for 10. They have three children. Ms. Reeves has been an at-home mom since Ethan's birth in May 2001. Ms. Reeves has taken no significant steps to secure income since the parties separation in September 2007. Were she to go to work there would be significant child care costs that may well impact upon the level of spousal support. Mr. Reeves states that there are child care resources available through his employment in the Eastern Passage area which would reduce that expenditure.

[72] This couple face many financial challenges in the future.

[73] Ms. Reeves is under the provisions of the *Divorce Act* entitled to spousal support. There is no identifiable prospect of that changing. There will be no fixed termination date for the spousal support. Mr. Reeves' position that there be an \$800.00 per month order that is terminated in one year is not tenable temporally. Nor in my view would be a suggestion that spousal support here be "forever". It will be indefinite at this time - but should not be assumed by Ms. Reeves to be a lifetime order - she should pay heed over the coming years to the provisions of the *Divorce Act* referring to self-sufficiency.

[74] Mr. Reeves is paying \$1,722.00 per month, \$20,664.00 per year in after tax monies for child support. This impacts his ability to pay spousal support.

[75] The home is not sold. That will be reviewed by the Court in July 2009.

[76] I have considered the provisions of the *Divorce Act* - and particularly the factors and objectives therein. I have considered the financial circumstances of both parties and the children and the evidence available to me.

[77] The current spousal support order will remain in place - subject to the elimination of the Bank of Montreal car payment in July, 2009 and (the addition of

interest payments on it and the debts earlier referred to). After the sale of the home the support order will be \$900.00 per month payable in equal installments the 15<sup>th</sup> and last day of each month.

[78] Ms. Reeve's counsel submitted documents indicating Mr. Reeves, were he paying \$1,000.00 per month, would have:

Federal and Provincial Tax	\$22,035.00
Source deductions (EI and CPP)	<u>2,851.00</u>
	\$24,886.00

Other non-discretionary expenditures Mr. Reeves has include:

Child support	\$20,644.00 (\$1,722./mo.)
Spousal Support	12,000.00
Insurance	876.00 (\$73./mo.)
Pension Contribution	<u>7,000.00</u> (approx.)
	\$40,520.00

\$40,520.00 plus \$24,886.00 = \$65,406.00

Mr. Reeves' disposable income (paying \$1,000.00 per month) using Ms. Reeves' tax amount, approximates \$32,719.00.

Ms. Reeves, again using her numbers, would have taxable income of \$13,200.00 (\$1,000./mo. spousal support plus \$100./mo. Universal child credit) but pay no income tax on this.

To this \$13,200.00 would be added non-taxable annual "income" of:

Child support	\$20,664.00
GST rebate (\$72./mo.)	864.00
Canada Child Tax Credit (\$745./mo.)	<u>8,940.00</u>
(the latter two sums per her affidavit of February 12, 2009, clause 95)	
	\$30,468.00

Ms. Reeves' disposable income, using again her numbers, would be \$13,200.00 plus \$30,468.00 = \$43,668.00.

The order of spousal support of \$900.00 per month closes this gap in disposable income (Ms. Reeves \$43,668.00, Mr. Reeves \$32,719.00) slightly. I note and have considered the fact that one of those expenses is his pension - and note that Ms. Reeves does not have pension provisions beyond the agreed to division. I also note that Ms. Reeves has the primary care of three young children.

[79] The calculations provided this Court were calculations based on the household standard of living test under the *Child Support Guidelines*. In my view, this support order should not be reviewed unless there are disposable income calculations provided that consider the non-discretionary expenses Mr. Reeves has.

[80] The support burden he has carried, and will continue to carry until the house is sold, is by any measure onerous - his payments of spousal support have exceeded \$2,000.00 per month - and will continue to be over \$1,500.00 per month. I have considered the overall level of support he has paid when exercising my discretion concerning claims for retroactive spousal and child support.

[81] There will be no retroactive order for spousal support. It appears that Mr. Reeves maintained the mortgage and car payments throughout the time frame of September 2007 - December 2007.

[82] Ms. Reeves has asserted she seeks monies to pay income tax on her spousal support. Those payments are her responsibility. To order such payment would effectively increase the spousal support order retroactively, indirectly.

## SUMMARY

1. The list price of the home will be reduced \$10,000.00 immediately and the terms of the sale of the home be subject to review by the Court on **July 13, 2009 at 9:15 a.m.**

2. The marital equity of the sale of the home and payment of debts described shall be divided 40% to Mr. Reeves and 60% to Ms. Reeves, subject to the reservation of jurisdiction discussed.
3. Mr. Reeves will pay the interest only on the MBNA Mastercard, and Bank of Montreal (car) loans through the month of September 2009 as third party spousal support. If counsel cannot agree upon this amount they may appear before me **July 13, 2009 at 9:15 a.m.** Ms. Reeves will be responsible for payment of interest on the President's Choice Account.
4. I conclude that it is in the best interests of the children to be in the custody and primary care of Ms. Reeves subject to the following:
  - (a) upon the sale of the matrimonial home, Ms. Reeves shall move the children within the boundaries of the former City of Dartmouth, Cole Harbour, Eastern Passage or Bedford.
  - (b) The children will be registered in school in one of those areas. Thereafter the children's schools will not be changed without agreement of the parties or order of the Court.
5. Mr. Reeves shall have access:
  - a. each second weekend from Friday afters school, to Monday morning and each Wednesday evening from 4:00 pm to 7:30 pm.
  - b. both parties shall have two non-consecutive full weeks of the children's summer vacation in 2009; 3 weeks in subsequent years. Mr. Reeves will designate his weeks by June 18 this year Ms. Reeves by June 25. If the parties cannot agree on the weeks for this summer, I will designate them following submissions on **June 29, 2009 at 9:15 a.m.** Following this year Mr. Reeves will designate his weeks by April 30 of each year, Ms. Reeves by May 15 of each year.
  - c. March Break shall be split - Mr. Reeves having from Friday after school to Wednesday at 4:30 p.m.

- d. from December 26 at 10:00 a.m. to New Years Day at 4:00 pm in even years;
  - e. from December 25 at 4:00 p.m. to December 30 at 4:00 pm in odd numbered years.
  - f. will include, in addition to this:
    - (a) each Easter weekend from Thursday afternoon to Saturday at 6:00 p.m.;
    - (b) from 10:00 a.m. to 6:30 p.m. each Father's Day (Ms. Reeves will have the same each Mother's Day);
    - (c) the children's actual birthday will fall according to the schedule - the birthday can be celebrated on days proximate to the date.
  - g. Mr. Reeves will make every reasonable attempt to ensure the children attend extracurricular activities during his access - failing to do so will jeopardize the access.
6. The child support order will provide:
- a. table amount of child support of \$1,722.00 per month for three children based on 2008 income of \$98,298.00.
  - b.  $\$1,654.00 \div 2 = \$827.00 \times 2 \text{ months} = \$1,654.00$  in arrears (arising from the fall of 2007). This shall be paid by Mr. Reeves at the time of the sale of the home.
  - c. His child support for 2009 should be adjusted to his 2008 income - which triggers an increase in the Table Amount of Child Support of \$68.00 per month for January through May 2009 - 5 months x \$68.00 = \$340.00 in arrears. This amount will be paid by Mr. Reeves to Ms. Reeves at the time of the sale of the home.
  - d. There will be no order for Section 7 expenses.

7. The spousal support order will provide:
  - a. that he pay per the existing interim order re the mortgage, other expenses (except the Bank of Montreal) until the sale of the home;
  - b. the Bank of Montreal car payment to the end of June, interest on the monies owed to the Bank thereafter until the sale of the home or further order of the Court.
  - c. interest on the MBNA account until the sale of the home or further order of the Court.
  - d. spousal support of \$900.00 per month commencing the month following the sale of the home.

## COSTS

[83] I conclude that there should be no order as to costs.

J. S. C. (F. D.)

Halifax, Nova Scotia