

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

**Citation:** *MacPhee v. Doyle*, 2014 NSSC 424

**Date:** 2014-11-26

**Docket:** *Halifax* No. SFH1201-064796

**Registry:** Halifax

**Between:**

LIAM FRANCIS MACPHEE

Petitioner

v.

ALISON CLARE DOYLE

Respondent

Judge: The Honourable Justice . Legere Sers

Heard: April 10<sup>th</sup> & April 11<sup>th</sup>, 2014, in Halifax, Nova Scotia

Final

Submissions: June 17<sup>th</sup> 2014

Written Release: December 2<sup>nd</sup>, 2014

Counsel: Jennifer Campbell for the Applicant  
Lydia Billingsley for the Respondent

**By the Court:**

[1] This Divorce Petition was issued August 23rd, 2010 and served on the Respondent on August 27th, 2010.

[2] An Answer was filed on October 21st, 2010.

[3] The parties were married July 25th, 1998. They lived separate within the matrimonial home as of July 2010 until the Respondent left the home in October 2010.

[4] There are no children of the marriage. Spousal support is not an issue.

[5] As of the date of hearing both parties were employed.

[6] The Petitioner seeks exclusive possession of the home, an equal division of assets and debts. The Petitioner argues each should retain their own pension.

[7] The Respondent seeks an unequal division of debts. She argues she was unaware of many of the debts. She alleges the Petitioner forged her signature on documents to obtain credit.

[8] She also alleges that the Petitioner cashed in her spousal RRSP very shortly before separation without her knowledge and consent.

[9] There is a procedural history together with a history of conflict that had affected timely resolution of this case which in turn impacted on the division of assets and debts.

**Self-representation**

[10] The parties remained self-represented until immediately preceding the hearing. They retained counsel late in the process and did not seek an adjournment.

[11] Both advocates struggled valiantly to present their client's case in spite of the limitations they faced.

[12] The Petitioner's counsel presented what she was able to piece together in spite of the limitations of her client's disclosure.

### **Chronology of disclosure directions**

[13] Disclosure from both parties has been late and incomplete. Failure to disclose was a more significant issue for the Petitioner.

[14] The evidence he has tendered was incomplete and at times misleading.

[15] The Petitioner's evidence and filings raise serious concerns regarding his credibility.

[16] **On July 8th, 2013**, court staff advised the Petitioner that before the matter could proceed he was required to provide his 2010, 2011 and 2012 income tax returns with notices of assessment. He was to confirm his 2013 year-to-date income.

[17] This is significant due to the fact that some of his investments that existed in his name at separation no longer existed at the divorce hearing.

[18] A pre-trial memorandum issued on **August 22nd, 2013** further advised the parties of the filing requirements.

[19] The matter returned to court on October 3rd, 2013.

[20] Pension division and division of property were identified as issues to be resolved.

[21] Ms. Doyle was to file, by October 10th, 2013, a statement from her employer regarding the status of her pension and all documents in relation to the Stantec spousal RRSP she alleges the Petitioner cashed without her consent. This was filed as directed.

[22] Both were to file statements of property and income one week in advance of the settlement conference in January 2014.

[23] The Petitioner was directed to file a letter from each financial institution that he has/had an RRSP with in the last five years by October 10th, 2013.

[24] The Petitioner did not comply.

[25] Trial dates were set.

[26] A second extensive memorandum was issued on **February 20th, 2014** outlining the issues, filing dates and instructions to assist the parties prepare for the hearing. Disclosure was to be complete on or before Friday, March 21st, 2014.

[27] Specific direction was given regarding pension division, the matrimonial home, up-to-date mortgage disclosure and debts.

[28] Each party was reminded they were required to file their 2010, 2011, 2012 and 2013 tax returns prior to their court appearance.

[29] A further pre-trial was scheduled and adjourned at the request of the Petitioner to **March 31st, 2014**.

[30] At this pre-trial the Respondent's counsel advised she had not received the 2011, 2012 and 2013 income tax returns.

[31] The Applicant said he filed the 2011, 2012 and 2013 income tax returns on March 21st, 2013.

[32] A review of the documentation he disclosed on March 21st, with his affidavit, confirms that on October 2nd, 2013 he filed his 2008, 2009 and 2010 income tax returns.

[33] While he said he filed his 2011, 2012 and 2013 with his March 20th affidavit this affidavit only contains a one page executive summary of his 2011.

[34] While he said he would file the required returns again, he actually filed them on the date of the hearing, April 10th, 2014.

[35] At the hearing in **April 2014** the Petitioner filed his 2011 and 2012 H&R Block tax returns without notices of assessment or reassessment and without full income schedules and summaries capable of illustrating withdrawals and contributions to his RRSP's.

[36] It became clear early in the hearing that full disclosure had not taken place and the Petitioner would not willingly comply regardless of court order.

**History**  
**Domestic Violence**

[37] This has been a high conflict separation requiring police involvement.

[38] Both allege the other is guilty of domestic violence.

[39] An incident occurred between them that brought the possibility of safely living together to an abrupt end.

[40] This is relevant to possession and sale of the home and post separation expenses associated with the home.

[41] The parties had an altercation while living in the home after their date of separation.

[42] The Respondent testified that the Petitioner has earned his black belt in martial arts. He did not deny this.

[43] The Respondent alleges the Petitioner has been stalking her post separation. She addresses these incidents in her affidavit.

[44] The Respondent alleges the Petitioner tried to intimidate her before and after the marriage such that she has changed her ordinary habits and haunts.

[45] The Respondent alleges the Petitioner assaulted her on the morning of October 14th, 2010. She obtained an emergency protection order of limited duration. She did not report the assault to the police.

[46] The transcript of the emergency protection hearing on the same date at 2:55 in the afternoon is contained at Tab A in the Respondent's April 4th, 2014 affidavit.

[47] The transcript details an incident in the matrimonial home where the Petitioner hit the Respondent in the mouth with a closed fist resulting in splitting her lip.

[48] A protection order was granted.

[49] As a result of the same incident the Petitioner informed police he was assaulted.

[50] He visited his doctor the next day complaining of a sore neck. There is an undated doctor's report referring to an altercation that took place the day previous to the doctor's visit. (Tab 2, March 2014 affidavit)

[51] The Petitioner claims his wife punched him on the lower jaw and nose. The doctor noted very mild edema along jaw line, no bruising, no exterior abrasions, no nasal or jaw deformation and a small abrasion ... with scant red blood.

[52] As a result of the Petitioner's complaint to police, on October 14th, 2010 the Respondent was charged with assault. The Petitioner pursued this unabated. A conviction would have been an impediment to the Respondent's employment.

[53] The charge was ultimately dropped. A 'no contact order' was put in place.

[54] The Respondent had to leave the matrimonial home. Unable to afford alternate arrangements she went to live with her family.

[55] Although he was employed outside Nova Scotia the Petitioner remained in the home in sole control of the home for some undetermined time after that.

### **Post hearing order to disclose**

[56] Subsequent to the hearing and before submissions, on the Court's own Motion, a disclosure order was issued to be served directly on third parties sources to assist in adjudicating the division of assets and debts. This was necessary to ensure the Court had credible evidence on which to make the necessary findings of fact.

[57] The post hearing disclosure order was directed to (1) H&R Block to provide the full particulars of his 2011, 2012 and 2013, if available, including all schedules and RRSP slips; (2) to Canada Life, (3) TD Trust (4) Manulife Financial and Manufacturer's Life to disclose the details respecting any current or previous accounts in the Petitioner's name.

[58] The disclosure subsequently provided by H&R Block on June 5th, 2013, on June 11th, 2014 from Manulife and TD Trust contained summaries of RRSP and investments not included in the Petitioner's Statement of Property nor, more alarmingly, not included in the previous H&R Block tax returns he filed on April 2014.

## **Discrepancies 2010**

[59] The Petitioner did not file the full particulars of his 2010 income. The notice of assessment indicates a total income of \$115,860.

[60] I am unable to verify what portion of his income , if any, comes from RRSP withdrawals or share disposition with Stantec.

## **2011**

[61] H&R Block acknowledged they do not have a summary of all information slips for 2011. The Petitioner's 2011 return was filed in 2014. The summaries went with the return. There is no notice of assessment for 2011.

[62] The copy of the tax returns bearing the H&R stamp **filed by the Petitioner on April 10th, 2014** shows employment income of \$115,323 and RRSP income of \$4,269.17 for a total **\$119,592.49**.

[63] The Petitioner's notice of assessment filed as a result of the third party disclosure order on June 5th, 2014 adjusts the RRSP income to 4628, includes \$84 in taxable capital gains, for a total income from all sources of \$120,035. This is a relatively minor discrepancy.

## **2012**

[64] The tax information the Petitioner filed on the date of hearing (April 10th, 2014) show line 150 total income of **\$101,990**. inclusive of \$5,557.34 of RRSP income.

[65] The summary of information slips filed by the Petitioner in April 2014 is missing the TD Trust withdrawal of \$10,099. It is also missing \$174.24 taxable amount of dividends and taxable capital gains of \$69.50.

[66] The document filed by H&R Block on **June 5th, 2014** shows line 150 income of **\$112,333.74** inclusive of RRSP income from all slips in the amount of **\$15,656.34** and \$60.50 capital gains.

[67] His tax form shows no rental income or deductions although his evidence is that he began renting the matrimonial home in May of 2012.

## 2013

[68] The Petitioner's statement of income prepared on June 3rd, 2013 indicates income of **\$24,048**.

[69] His 2013 income tax form submitted on the date of hearing in April 2014 does not mention the dividends. The form claims RRSP income of \$5,496 and rental income of \$8,750 without deductions. His income was **\$74,541.59**.

[70] His 2013 notice of assessment filed directly by H&R Block on June 2014 shows total employment income of \$42,759, employment insurance income of \$17,535, dividends of \$126, taxable capital gains of \$2,505 and RRSP income of **\$8,417** for a total of \$71,342. He did not actually claim rental income on the official return although he testified to the contrary in his March 21st, 2014 affidavit (para 10).

[71] The summary of information slips provided on June 5th, 2014 from H&R Block show disposition of Stantec shares in the amount of \$4,762 and \$11,031 for a total of \$15,793.

[72] He has another \$8417.81 from RRSP's and \$2505.50 from taxable capital gains.

[73] Again it is notable that although he could and may yet do so, he has not refiled to reduce his taxable income by claiming the rental deductions.

[74] H&R Block acknowledge that they did not have all the information slips.

[75] Canada Trust acknowledges that the Petitioner set up two RRSP's and post separation he contributed as follows:

1. RRSP#13019 was opened December 2004 with no activity until January 2011. He contributed \$100 bi-weekly from January 28th, 2011- November 2013 and an additional \$2000 on February 28th, 2013;

He withdrew \$1,350 on August 17th, 2012. The withdrawal in 2011 from these two accounts does not equal the \$4,269.17 withdrawn on his income tax return; and,



2. Account #...6478504 opened February 28th, 2011 funded with the proceeds of a \$10,000 RSP loan. He contributed \$100 bi-weekly on December 2013 to the current date. Between January 20th, 2012 and June 6th, 2012 he withdrew \$10,099.

[76] I am unable to conclude whether any RRSPs cashed after separation contain any of the pre-separation contributions or came solely from post separation funding.

### **Credibility**

[77] At the hearing the Petitioner was evasive, unwilling to clarify his disclosure, reluctant to advise of his employment status and unclear about his actual earnings.

[78] He admitted he now worked as a technician in Alberta with Suncor.

[79] While he admitted he no longer worked for Stantec he was unclear as to when he left that employment in 2013. He believes he drew unemployment insurance for seven or eight months. He did not have a clear recollection as to his travel or other expenses.

[80] The information regarding the termination of his Stantec employment was important because some of his investments related to this employment existed at separation and no longer existed at the time of hearing

[81] The Petitioner admitted falsifying his resume to suggest he had a civil technology diploma from UCCB. He said he completed the courses necessary for an engineering diploma.

### **Conclusion on Credibility/Disclosure**

[82] I have reviewed the documents in their entirety, listened to the oral testimony, read the affidavits and weighed the evidence of each party.

[83] The evidence before me was not entirely accurate, changed depending on when the documents were filed and was insufficient in certain cases to draw reliable conclusions.

[84] In the process I have made certain findings respecting the credibility of the parties in deciding which evidence is the most reliable and credible.

[85] It is impossible to conclude or rely on the Petitioners evidence as credible without independent verification from a reliable source.

[86] Given his evasiveness and the fact that the tax documents he tendered on the date of hearing were not verified by the documents filed directly from H&R Block, the Petitioner's evidence needs to be corroborated to be believed.

### **Agreement**

[87] The parties were able to agree on the following issues:

1. The Petitioner's student loan is not to be considered a matrimonial debt. It is and will continue to be the Petitioner's debt and his responsibility exclusively;
2. The Petitioner will keep and take responsibility for the time share and the Respondent for the Direct Buy Licence. Both parties will be responsible to prepare and sign that which is necessary to ensure this agreement is put in place;
3. Both parties did agree at a pre-trial conference that all personal property currently in their possession shall remain with each of them. I heard no evidence to the contrary; and,
4. They agreed on the possession of the vehicles.

### **Matrimonial debts**

5. The parties agree and read into the record the following debts and amounts as matrimonial debts.

#### Petitioner's

TD Visa Emerald debt \$5,566.10  
Capital One \$4,132.27  
PC Master Card \$544.97  
HBC Master Card \$472.07  
HBC Master Card \$2,003.48

**Totals \$12,718.89**

#### Respondent's

RBC Visa \$17,164.47  
PC Financial \$220.50  
Tweed & Hickory \$213.65  
J. Crew \$412.79  
The Bay \$129.56  
Sears @ \$1,148.64

**\$19,289.61**

[88] The Respondent claims she was unaware of the other credit card debts, other than the Capital One card. Some of the debts were incurred during the Petitioner's employment in the west.

[89] She alleges the accounts went directly to the Petitioner to his address in the west and were unavailable to her.

[90] The RBC Visa in the Respondent's name was used for the Petitioner's commute back and forth to Edmonton. The Petitioner admitted to some reimbursement but could not recall what amount of reimbursement his employer provided for these expenses.

[91] The Petitioner accused the Respondent of escalating the debt resulting in the need to remortgage the home to pay the debt.

[92] The Respondent rebutted this accusation by explaining that prior to 2007 the Petitioner was unable to obtain credit so she held the credit cards. This explains why 60% of the party's credit card debt is in the Respondent's name.

[93] I have few details about why the debt was incurred and what expenses were paid out by these credit arrangements to confirm the purpose for which they were used.

[94] I am unable to determine therefore, whether these debts are attributable to one or the other or both. I accept their agreement.

## **Disputed Issues**

### *Assets*

The manner of sale of the matrimonial home

Pension Division (classification and division of RRSP's)

### *Debts*

1. Costs associated with matrimonial home
2. TD line of credit
3. Revenue Canada debt
4. Home Buyer's loan
5. Home Depot

6. The Respondent's parent's loan

**1. Matrimonial Home**

[95] Each want the house sold. Each argues they individually should have exclusive rights to engage a real estate agent and sell the home due to the lack of cooperation from the other.

[96] The matrimonial home in Stillwater Lake, Nova Scotia was constructed by the parties beginning in September 2003. They moved in on June 2004. While they separated in July 1st, 2010 the Respondent did not move out until October 26th, 2010.

[97] The Respondent obtained the mortgage with TD Trust in 2003 as the principal mortgagor, the Petitioner as the secondary due to his poor credit rating.

[98] The Respondent depleted her RRSP to contribute \$20,053 plus an additional \$10,000 from her bank account to the construction of the home.

[99] The Petitioner advised he contributed \$5000.

[100] Both parties agree the house must be sold and both agree there is little equity. Neither is willing to work with the other to affect this sale.

[101] They have, to date, been unsuccessful in effecting a sale.

[102] The home is currently leased with the hope that the current tenant will buy when able. There does not appear to be any timeline for defining this option to purchase.

[103] The evidence and submissions do not definitively address valuation.

[104] The home was valued at \$377,000 by the Petitioner on June 23rd, 2010. Earlier it was placed on the market for \$409,000.

[105] I have not been provided up-to-date figures. In their latest statement they appear to agree on a value of \$377,000.

[106] The mortgage outstanding, as of July 2010, was \$366,074.08. In November 2013 the mortgage was renewed without the consent or signature of the Respondent.

[107] The principal balance on December 31st, 2012 was \$355,000.49. The December 2013 balance was \$354,878.42. The mortgage payment was reduced from \$1,704.05 to \$1,392.94.

[108] The Petitioner advised an earlier Court that the mortgage was in his name. I have no documentation to verify this.

### **Sale of the Matrimonial Home**

[109] I am satisfied that the Petitioner cannot be relied upon to truthfully or properly disclose transactions regarding the sale of the home or division of any possible proceeds.

[110] I therefore lift the exclusive possession order subject only to the rights of the current tenant.

[111] The Respondent will have access to and decision making power along with the Petitioner in the sale of the home.

[112] The home shall be listed for sale immediately. The Respondent will choose the listing agent from a list of three accredited real estate agents provided by the Petitioner's counsel.

[113] I borrow the solution provided by Williams J. in *Patriquen v. Stephen* 2010 NSSC 248 in a similar acrimonious divorce noting that the aggravating factor here is the Petitioner's continuous failure to act in a forthright and transparent manner.

[114] The Respondent shall have the authority to negotiate directly with the Agent chosen by her to effect sale.

[115] Should there be a current binding agreement with an agent the Respondent will be free to choose the agent on the completion of the current listing agreement if any.

[116] **The valuation date for the home and the mortgage payout will be the date of sale.**

[117] Should the current tenant be unable to enter into an agreement of purchase and sale with a closing date by March 15th, 2015 the home is to be listed for sale immediately.

[118] The lease agreement notes the tenant is entitled to three months' notice in advance of the anniversary date which is August. Thus, he must be given proper notice as soon as possible.

[119] Each party shall cooperate fully with the real estate agent to facilitate sale.

[120] Failure to cooperate and communicate with the agent in a timely fashion will be deemed to be a breach of this order. The remedy for this failure shall include an order of costs against the offending party.

[121] Any delay in addressing the requirements of sale may result in an unequal division of the proceeds or deficiency.

[122] The parties shall communicate directly with the real estate agent.

[123] Each shall be entitled to equal access to the agency records, mortgage and any other records pertaining to the sale.

[124] The Respondent shall have the right to enter into the premises and speak directly with the tenants in accordance with the lease provisions and the Residential Tenants Act for the purposes of effecting this order.

[125] Both Respondent and Petitioner shall be entitled to receive a copy of any and all payments made by the tenant towards any expenses related to the home.

[126] The Petitioner shall provide to the Respondent on or before December 20th, 2014, a written record of any income he has received from all tenants with proof of disbursements provable by receipts from the tenant and bank statements which can verify the payment of tax and insurance.

[127] The Petitioner shall keep the Respondent notified in writing by the provision of this information verified at source.

[128] If the Petitioner has failed to verify the expenses by source documents proving the expense and the payment, he shall be responsible for the deficiency between the rental income and the payment of mortgage, taxes and insurance.

[129] The parties must consult and agree in advance on payment of any necessary reparations' to effect sale .

[130] Should the Petitioner fail to consult the Respondent in advance for her written consent to incur reasonable expenses for sale or to address any deficiencies in advance the Respondent will not be liable for these expenses as disbursements on sale.

[131] Should the tenant not indicate by December 31<sup>st</sup> 2014 by written agreement to buy the home I reserve the right of the parties to return to court to address valuation, mortgage disbursements other than ordinary disbursements and equal division of any equity that remains in order to effect a final division.

[132] I reserve the right for the parties to return to court to seek exclusive possession or an expedited sale with the order of the Court should either party present unreasonable obstacles to the sale of this home.

## **2.Pensions**

### **The Petitioner's pension information**

[133] The Petitioner's pension information is a moving target. He was employed with the Department of Transportation when they married and laid off in the fall of 1999

[134] He worked in the fall with CBRM and in 2001 he was terminated from this employment.

[135] In the summer 2001 he worked with the Halifax Regional Municipality until May 2007.

[136] In May 2007 he moved to Alberta to work at various sites until he obtained employment in 2008 where he remained until January 2010. He then moved back to Halifax to work for his employer's local office.

[137] At separation the Petitioner had a pension with Investors Group...7587 valued at **\$28,194.98**(March 2014 value of \$40,321.94), Investors Group ....7520 at **\$3.08**, Manulife Financial ....1943 valued at **\$291.03** and Manulife Financial ...1944 valued at **\$5,900.59**. (Affidavit dated March 21, 2014)

[138] He advised that there was no current value to the policies 7587, 7520, Manulife ...1943 and... 1944.

[139] He explained that the Manulife accounts closed when his employment ended. (para. 5 of this affidavit)

[140] Manulife Financial responded to the Order to Disclose and advised as follows:

“Mr. Liam McPhee’s RRSP of Stantec Consulting Ltd. Policy number ....1943 began March 1st, 2009, valued on July 1st, 2010 at \$291.04. The plan was terminated February 21st, 2013 and **all funds were cashed out on April 5th, 2013.**”

[141] Manulife advised that currently there are no attachable accounts.

[142] The records are incomplete. One has to rely on the tax forms and counsels submissions to set valuation at the date they were cashed out.

[143] With respect to the non-registered employee stock option plan of Stantec, Manulife advised that the date of the Petitioner’s membership was March 1st, 2009. The plan was terminated February 21st, 2013. Their letter does not provide the disposition numbers at termination . His tax forms as filed in June through court order do identify specific income from Stantec.

[144] The forms file by H&R Block on June 5th regarding the Petitioner’s 2011 return (schedule 3) shows proceeds of disposition of Stantec shares in the amount of \$3,968 (schedule 3, tax return) and other dispositions totaling **\$4,269.17.** (Post separation he withdrew \$1,500 from the TD RSP; \$121.86 from his Investors RSP and \$2647.31 from Manufacturers RSP.)

[145] The summary slips for 2012 show that proceeds of disposition of Stantec in 2012 were \$926 and \$1,845 for a total of \$2,771.

[146] His 2013 income tax return as submitted by H&R Block directly for the 2013 year contains a summary of the proceeds of disposition of his various investments . This includes proceeds of disposition from Stantec in the amount of \$15,793. (see paragraph 71)

[147] As the evidence demonstrates the Petitioner was deliberately vague about when his employment with Stantec terminated. The letters from Manulife indicate his membership in the Stantec Consulting Ltd terminated February 2013.



[148] I am unable to conclude with certainty a direct link between the contributions that existed at the date of separation and the existence if any of contributions made post separation.

[149] There does appear to be investments the Petitioner had at or around separation, did not disclose and received the benefit of, post separation. However, I am not in a position given the state of the evidence to determine with certainty what and how much of those investments existed at the time of separation.

[150] The only pension that appears still available for distribution at the date of hearing is Investors Group ...7587.

[151] Both counsel in their submissions use separation date value for this investment ie \$28,194.98.

[152] However, the current valuation as presented in the Petitioner's own evidence verified from source is \$40,321 as of March 20th, 2014.

[153] In his oral testimony the Petitioner was questioned by the Respondent's lawyer regarding whether or not he contributed to this pension post separation.

[154] He confirmed that this investment came from the City of Halifax and was transferred to Investors Group.

[155] He also confirmed he did not contribute to this investment since separation.

[156] He suggests later in his evidence that he withdrew his Stantec pension and used to pay his expenses.(transcript pg. 40 line 21)

[157] The quality of the Petitioner's evidence regarding what he had at separation and what he cashed afterwards is so poor it is unreliable. He certainly cashed in RRSP's which are vaguely referred to in his oral testimony and virtually untraceable.

[158] However, respecting this Investors Group policy his own evidence is he did not contribute to this post separation.(transcript pg. 40 line 38 line 17)

[159] I therefore, conclude that the correct valuation for this investment is the value closest to the hearing date given the contributions were made pre-separation and the growth is attributed to the investment made pre-separation and therefore shareable as a matrimonial asset. (*Simmons v. Simmons*, 2001 NSSF 35, Campbell, J)

[160] His counsel, in her submissions, confirmed the remaining investments no longer existed. The Investor's Group RRSP was cashed in 2011, the Manulife in 2013 when his tax rate was 43.5%, leaving the after-tax value at \$1.74 and \$184.44 respectively.

[161] He also shows payments from Canada Trust \$2,319.47; proceeds from Manufacturers of \$3,237.87 and from TD Trust of \$10,099.

[162] His contributions (post separation) between March 2nd, 2011 to December 31st, 2011 were \$4,591 and from January 1st, 2012 to February 29th, 2012, \$10,946.66 for a total of \$15,573.92.

[163] The ESPP was cashed in in February 21st, 2013 and the RRSP was cashed out on April 5th, 2013.

[164] His counsel advises the total amount was \$15,793 resulting in a capital gain of \$5011. This includes shares accrued post separation. She calculates the capital gain was \$927.84 leaving an after tax value of \$5,497.33.

[165] Absent better evidence I will use this figure in the division of assets.

[166] What is clear is that the Petitioner engaged in disposing of his RRSP's and other investments immediately prior to and after separation.

### **The Respondent's pension information**

[167] The Respondent began her employment with Air Nova on September 5th, 1989. She was on disability from May 2007 to January 2010. Her Air Canada pension at separation date, **July 1st, 2010, was \$561.**

[168] This is a defined contribution pension plan.

[169] Both counsel have used this figure in their valuations.

[170] The exhibit used to value this as at December 2010 shows post separation contributions.

[171] I have no means of calculating what the value would be if those contributions were assessed as at the date of hearing and backed out of the valuation. Indeed that is not the role of the Court.

[172] I therefore, will use the most reliable evidence as of the date of separation.

[173] The Respondent had previously cashed her RRSP while on disability. These funds were used to pay household expenses and assist the Petitioner in Alberta.

[174] The Respondent has a Teamster's Pension valued on October 31st, 2009 at \$11,193.01. The funds were transferred to a deferred pension of \$201.06 per month payable at normal retirement.

[175] In 2007 the Respondent cashed in her remaining RRSP in the amount of \$10,261 to pay towards household expenses.

### **Manulife Financial**

[176] This group policy was in the name of Stantec Consulting Ltd., the Petitioner's former employer. The member's name is listed as Alison Doyle. The Petitioner withdrew all the funds in this RRSP on May 25th, 2010 immediately prior to separation.

[177] The proceeds of this RRSP were \$8,211. She was subsequently reassessed in 2012 by Revenue Canada and learned of this withdrawal.

[178] The Respondent argues she is entitled to ½ of the funds realized on disposition of her spousal RRSP funds.

[179] She alleges that this spousal RRSP was disposed of without her knowledge and consent.

[180] She provided the Court a copy of the withdrawal from relating to this RRSP. She believes her signature was forged requesting the funds be deposited into the Petitioner's bank account. (Exhibit 13, tab 12)

[181] Manulife was instructed to deposit the funds to the Petitioner's personal TD Trust account...525. This account is identified in his July 2013 statement of property.

[182] Page 49 is missing from both exhibits tendered by the Petitioner with respect to the joint line of credit. This would be the page that could confirm where the deposit was made.

[183] Clearly the Petitioner received, at his request, a complete account transaction because the numbering at the top appears to be the bank numbering and he has added his own to the selected filings.

[184] The Petitioner had the option to produce the full and complete records of his account transactions from May 2010 forward. In his affidavit of April 4th, 2014 he files a partial account which begins in June 2010. The May deposits and withdrawals are missing.

[185] There is a deposit of \$6,255 from Manulife 568592 credited to his (...525) personal account in June 29th, 2010 one month before the separation.

[186] While he denies he forged her signature he argues that he spent the funds on maintaining the joint matrimonial asset the home.

[187] It is difficult to believe the Petitioner's statement that the Respondent requested the withdrawal of these funds and put the money in the Petitioner's bank account one month prior to their separation.

[188] In the line of credit the July, August and September mortgage payments were made (total of \$5,112.12) as well as certain Visa accounts and insurance debits.

[189] He argues the Respondent benefited from the proceeds of this RRSP. Thus, he argues it ought not to be included in the division of property.

[190] I conclude the funds were deposited under his signature as he requested to his personal account.

[191] He advised the Court that he continued to pay the Respondent's expenses. However, the Respondent submitted that the same day he received the proceeds he paid out his own Visa in the amount of \$5778.67. Her Visa confirms the payments were not paid towards her Visa.

[192] In his statement of property, dated August 23rd, 2010, he lists this ...1943 account with a value of \$398.10. This account is not disclosed on his statement of property dated July 5th, 2013.

[193] In his affidavit filed April 4th, 2014, paragraph 17, the Petitioner speculates without verifying this allegation that the Respondent cashed in her RRSP.

[194] On the totality of the evidence his testimony is simply unbelievable.

[195] These RRSP funds of \$8,211 will be included in the division of assets as having been cashed and used by the Petitioner.

[196] Due to the fact that the evidence of the actual disposition is not contained in the withdrawal slip and the petitioner has not acknowledged in his testimony or in his account attachments the exact link between what was disposed of and what was put into his account I have not discounted the figure I have for tax .

### **Costs associated with maintaining the home**

[197] In a September 2013 submission he suggests, without verification, that the Respondent owes \$16,947.42 on various repairs, insurance etc... plus an additional **\$12,713.94** on oil, taxes and insurance. (The expenses include taxes for 2012 in the amount of \$3,755.90 to the end of 2013 in the amount of \$7,850.04 and oil for March, April and June 2013 and insurance for 2012 in the amount of \$1108.)

[198] In Tab 2 of his March 2014 affidavit the Petitioner summarizes a list of expenses. There is no independent proof of these expenditures totaling 16,974.42. The Petitioner wishes to have the Respondent share the net costs for maintaining the home since separation (exclusive of the rental period) as well as any necessary expenses associated with sale.

[199] In December 2011 he decided he no longer wanted the burden of the home. He rented the home in April 2012 to January 2013 and again from July 2013 to the current date. (September 12th, 2013 submissions)

[200] He alleges the Respondent refused to contact him and engage in negotiations.

[201] At the Petitioner's insistence the Respondent was required to enter into a Recognizance between January 2012 and January 2013 prohibiting contact between the two. There was a financial penalty should she breach the recognizance.

[202] In spite of the fact the Petitioner was not always residing in the home he insisted on having exclusive possession.

[203] There is no evidence of the previous tenants contributions other than the current tenants lease.

[204] The Petitioner provided no verification of the costs, when and how long he lived in the home exclusively, or when and to whom he leased the property prior to the latest tenant.

[205] The lease agreement for the current tenant indicates they are paying \$1750 a month.

[206] The monthly mortgage payment has been reduced to \$1392 by the remortgage of the home in November 2013.

[207] The surplus is being paid to the Petitioner.

[208] With respect to deficiencies the Petitioner is currently receiving a surplus and has failed to pay the tax debt associated with the home.

[209] I have concluded the Petitioner cashed in the Stantec spousal RRSP.

[210] He testified that because the Respondent was not contributing to the mortgage and other household expenses he had access to and used the funds from the Stantec spousal RRSP to pay mortgage expenses.

[211] What appears to have happened is that the Petitioner withdrew the money from the spousal RRSP signing the Respondent's name without her consent or knowledge. He put the money in his account. He used this fund as he chose including he paid some of the household bills while he resided in the property.

[212] The Petitioner orchestrated the Respondent's removal from the home. Her injuries as a result of the altercation between them exceeded his. She had no access to the home after being removed. She had no access to the mail, details or choice as to expenditures.

[213] The Petitioner acted in a manner after the separation that caused the Respondent to be fearful of him such that she resisted any contacts and avoided any further communication.

[214] In large part he authored any losses that occurred because of his own actions within the matrimonial home and post separation.

[215] Her circumstances were considerably less than his. She has been unable, during post separation, to obtain independent quarters.

### **Income Disparity**

[216] A closer look at his income and RRSP contributions and withdrawals also show the income disparity between the two parties.

[217] The Respondent was on leave from May 2007 to January 2010.

<u>The Petitioner</u>	<u>The Respondent</u>	
2008	\$151,876	\$17,625 Disability
2009	\$121,658	\$17,369 Disability
2010	\$115,860	\$36,635 (plus 8,211.95 RRSP 2013 NRA)
2011	\$119,676(RRSP \$4269.17)*	\$43,926 (RRSP reassessment income 1,334)
2012	\$112,332. <sup>74</sup> (RRSP 15,656.34) **	\$46,651(plus RRSP\$1,333 HBP)
2013	\$71,342 (RRSP 8417)	\$50,183 (48,850 plus taxed on 1,333)
2014	\$71,342(filed post hearing)	\$48,000 (plus HBP)

\* Taxable CG \$84 Plus RRSP \$4,269.17 (Stantec)

\*\* Canada Trust included \$1,022.63 and \$1,296.84; Manufacturers \$3,237.87 and TD \$10,099

[218] Given the lack of accuracy in his other disclosures I am unable to rely on his summary of expenses to decide one way or the other whether they should be shared.

[219] The Respondent had her own expenses. She was unable to provide for herself by way of independent living such that she continued to live with family post separation. She could theoretically advance a claim for occupational rent in these circumstances.

[220] Absent proof of deficiency during rental periods the only claim the Petitioner can legitimately advance for contribution for costs would be from the date of separation or **November 1st, 2010 to the first rental agreement in May 2012, a period of one year and six months.**

[221] For this period only she shall be responsible for her equal share of the taxes and insurance providing they have not been paid by a tenant and providing they have been verified as incurred and not paid by investments cashed after separation.

[222] If taxes for 2012 were approximately \$3,754(Petitioner's affidavit April 4th, page 4, exhibit "D") and insurance \$1,108, the Respondent's maximum share for 18 months would be **\$3646**. This is included in the equalization chart.

[223] The consequences of the Petitioner's failure to provide other expenses rests with him.

## Debts

[224] When addressing the issue whether debts are matrimonial we have direction in *Ellis v. Ellis* (1999), 175 NSR (2d) 268 and *Bailey v. Bailey* (1990), 98 NSR (2d) 9 (paragraph 23)).

[225] 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 were they necessary to meet basic living expenses or preserve matrimonial assets? and,
3. Were they reasonably incurred?

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

[227] 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.”

[228] 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. Each debt must be considered individually.

[229] 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.

[230] The Court must also reflect on whether this debt was incurred solely for the benefit of one spouse.

[231] I now turn to examine the disputed debts.

### **TD Line of Credit ...4088**

[232] The parties do not agree on the classification and division of the TD Trust line of credit in the amount of **\$9,883.29** as of August 31st, 2010.



[233] The Petitioner filed a copy of the Credit Agreement from June 5th, 2006 (Exhibit "F", Affidavit April 4th, 2014) which appears to have two signatures, one for each party. A signature, possibly her signature, appears to be on the application in 2006.

[234] The account history reflects two names, MACPHEE DOYLE.

[235] On October 2nd the Petitioner filed a limited deposit account history from October 30th, 2006 to June 21st, 2010. There are many missing pieces to this disclosure.

[236] These do not allow for a full accounting for 2013.

[237] The Respondent argues that the TD Trust line of credit was entered into without her knowledge or consent. She alleges her name was forged.

[238] She first became aware of this debt on separation in 2010 when she received a cheque from the Petitioner for \$125 written on the loan account.

[239] She believes it is not a matrimonial debt. If considered a joint debt the Respondent argues in the alternative that this debt ought to be unequally divided due to the manner and date of acquisition, the impoverishment of assets and escalation of debt by the Petitioner and the disparity in their incomes.

[240] Some of the expenditures in the limited disclosure do appear to relate to the home, the mortgage, insurance, home, and food expenses from October 2006.

[241] The night before the hearing the Petitioner filed an additional deposit account history from June 6th, 2009 to January 2011.

[242] What is noteworthy is that page 49 is missing in the two sets of selective and limited disclosure, one made in October 2nd, 2013 and the one on April 4th, 2014.

[243] This is the page covering the withdrawals and deposits from June 21st, 2010 to August 5th, 2010, the period of time immediately around separation.

[244] The Petitioner tenders a note purporting to be from the TD Trust Bank indicating that the balance as of June 30th, 2010 was \$9,883.29.

[245] The history provided does not confirm or correspond to these numbers.

[246] The evidence in these enquiries also demonstrates that there are transfers in and out of the Petitioner's own personal account.

[247] The evidence does support a conclusion that this is an account the Petitioner set up and used.

[248] The Respondent has raised reasonable objections to the existence of this debt.

[249] The Petitioner has not proven that this debt is entirely matrimonial.

[250] While there is an agreement purporting to have both signatures the Respondent contests this.

[251] Given the totality of the evidence, this debt will be divided unequally to reflect that some payments are related to mortgage and living expenses.

[252] I have sufficient doubt on the balance of probabilities that all of this is matrimonial such that I will divide this debt 60-40 in favour of the Respondent's position.

[253] The lack of full financial disclosure by the Petitioner, his lack of credibility and his overall evasiveness in presenting his testimony has hampered any more sophisticated analysis.

**[254] The Petitioner will be responsible for \$5,930 and the Respondent will absorb \$3,954.**

### **Revenue Canada Debt**

[255] The Petitioner argues that the CRA debt is matrimonial debt.

[256] The Respondent acknowledges this is ordinarily a matrimonial debt. She asks that the penalties and fees associated with the Petitioner's failure to pay his income tax be excluded as a matrimonial debt.

[257] The Respondent further argues that the penalties and fees associated with false claims prepared and submitted by the Petitioner on behalf of the Respondent's tax filings ought to be attributed to the Petitioner.

### **Petitioner's tax arrears**

[258] The Petitioner owes \$42,123.75 on his pre-separation tax debt up to and including 2010, the year of separation.

[259] This arises largely arising from his 2008, 2009 and 2010 filings on his Alberta earnings.

[260] Pre 2008 his tax arrears were \$535.55.

[261] In 2008 he owed \$13,552.92 which with the pre 2008 tax debt penalties and interest totalled \$25,243.44.

[262] In 2009 when his income was \$121,658 he owed \$9,684.77 which, with penalties, arrears and interest resulted in a debt of \$16,829.50.

[263] With the addition of the previous year's unpaid taxes we have a balance of \$42,123 .75.

[264] His 2010, year of separation, taxes owing of \$1,283.36 with penalties and interest totaled \$1,654.67.

[265] If separation date is July 1st then ½ this debt would be \$827.33 resulting in outstanding taxes **during the marriage of 42,951.09.**

[266] The tax balance for 2012 is \$3,525.90.

[267] The Petitioner has not explained the reason for the debt and his failure to pay.

[268] The Petitioner is responsible for incurring penalties and interest as a result of nonpayment of his tax. The Respondent was not aware of his indebtedness.

[269] He had complete control of the finances. He offered no reason why these late fees occurred. He did not share the nature of this debt with the Respondent.

[270] This debt was not created for the benefit of the family. Nor was it reasonably incurred.

[271] The Respondent has no control over the accumulation of this debt and no knowledge that it existed.

[272] There is a great disparity in their income positions.

[273] The portion of the Petitioners tax debt determined to be matrimonial is **\$24,415** (rounded).

[274] They will share the unpaid taxes on money earned.

[275] The Petitioner will bear responsibility for the penalty and interest.

### **Respondent's Tax Debt**

[276] The Respondent became aware at the date of separation that as of September 30th, 2013 she owed \$19,397.91 to Revenue Canada for the period of 2003-2012.

[277] Of this amount \$5,744.56 represents penalty and interest.

[278] Her wages have been garnished since January 2011. She pays \$240 a month towards this debt.

[279] The Petitioner prepared the Respondent's income tax returns from approximately 2000-2004.

[280] The Petitioner took the necessary materials to H&R Block and advanced claims some of which were false claims.

[281] The Respondent came in after they were prepared and signed them without reviewing or verifying the information.

[282] Her return authorized Revenue Canada to deal directly with the Petitioner should question arise.

[283] In her 2003 and 2004 returns the Petitioner advanced a claim to H&R Block to file rental expenses against the Respondent's professional income on the Respondent's tax return. These did not exist.

[284] The Respondent was reassessed in 2003 on May 14th, 2007. She learned from Revenue Canada that she was sent a cheque for \$5,533.61.

[285] On January 2008 she was reassessed for 2004 and was sent a cheque for \$4,151.65.

[286] She had no prior knowledge of this reassessment nor did she receive the cheques.

[287] CRA reassessed her in 2008 and disallowed her rental expenses for professional purposes.

[288] CRA informed the Respondent that the Petitioner filed a notice of objection on her behalf related to her 2003 and 2004 tax returns on February 2nd, 2010. The Petitioner denies it was him who filed the notice.

[289] This reassessment resulted in a requirement to pay \$4,772.23 in taxes and \$1,871.84 in interest for a total repayment of \$6,644.07.

[290] In February 2010 the Respondent discovered this claim and reassessment.

[291] As noted earlier, in 2012 the Respondent became aware when she filed her 2010 income tax return that there had been a withdrawal of \$8,211 from Manulife (Stantec group) RRSP policy number ... 5895 in her name.

[292] The funds were ultimately deposited into the Petitioner's account.

[293] The Respondent was assessed in 2010 as having received this amount and now owes \$1,832.62 in income penalties and interest.

[294] The reassessment relating to 2003 and 2004 false claims equals \$13,177.49.

[295] The reassessment relating to the receipt of the RRSP funds is \$1,832.

[296] The Respondent bears responsibility for failing to review and validate her claims with Revenue Canada. As an adult, without obvious impairment, she has a responsibility to act legally. Her reliance on the Petitioner without assuming any responsibility herself, does not excuse her from legal responsibility.

[297] The Petitioner bears a portion of the responsibility for advancing false claims on her behalf creating the basis for a reassessment. He also bears responsibility for cashing in the spousal RRSP, deposition of the money in his account resulting in her reassessment as if she had received the money.

[298] The benefit of the Home Buyers loan, the disposition of the funds and the income actually earned, minus the false claims benefited the family in that, according to the Petitioner, some of the money was spent on the home and household expenses.

[299] The portion of the Respondent's tax debt determined to be matrimonial is **\$19,397.91**.

[300] He had input and control over the claims and bears the larger responsibility for these penalties.

[301] She however, ought to have been more diligent.

[302] Therefore, the obligation to repay the penalties will be born equally by the Petitioner and the Respondent.

### **Home Buyers Loan**

[303] The Respondent wishes she be reimbursed for ½ the tax cost resulting from the extra income attributed to her by Revenue Canada to account for the failure of the parties to maintain repayments on her Home Buyers loan.

[304] Both parties took out a Home Buyers loan from the Respondent's RRSP of \$20,053 in 2003. Payments were made until 2005.

[305] Other than a small amount in 2006 no other payments have been made.

[306] On October 2nd, 2009 \$17,354.69 remaining on the home owners' equity loan was withdrawn.

[307] The Petitioner testified that the Respondent withdrew the money and put it into the joint line of credit.

[308] Tab 8 of the Respondent's affidavit shows that of the total amount withdrawn \$354.69 was taken out in cash and, according to the Respondent, given to her.

[309] The balance of \$17,000 was transferred from the joint line of credit into account number ....525 (McPhee affidavit April 4th, 2014, Tab C, pg. 42 of 50; also see Ex.5, tab E, Petitioner's affidavit) the same account into which the Manulife RRSP was deposited ie, the Petitioner's personal account.

[310] His documentation verifies the deposit to the joint line of credit ...4088 in 10/02/09 and the cash withdrawal referred to in the Respondent's affidavit at paragraph 30. She acknowledges receiving the small cash withdrawal. The balance was transferred to his personal account.

[311] As a result, the Respondent was assessed as having additional income in 2006 to 2012 of a total \$9,237.

[312] If not repaid, the Respondent is reassessed annually adding \$1,334 in each of 2010, 2011 and 2012 until repaid. \$8,033 is left to be reassessed with interest.

[313] The Respondent has been responsible for payment of the taxes arising from this assessment. I do not have evidence of the resultant tax associated with the inclusion of this yearly amount in her income.

[314] It will take six years to cover the balance.

[315] Each remaining year until paid in full the Respondent will be assessed as having received \$1,334 of additional income.

[316] The Petitioner is equally responsible for the failure to pay back the Home Buyers loan.

[317] The Petitioner also contributed \$5000 to the home construction and is required to pay back \$359 for a period of 8 years each year via an income assessment.

[318] While there are minor differences between their calculations each agree he has approximately \$3000 left to be included in increments to his annual tax.

[319] The tax consequence relates to the increased tax owing as a result of the inclusion of the designated amounts in their respective income.

[320] The Petitioner's counsel indicates the difference between the taxes each party will owe is \$1,590.77. This would result in a payment of \$795.39 from the Petitioner to the Respondent.

[321] In the absence of actual tax calculations I, therefore, accept that the more accurate figures of the two will be satisfied by a payment by the Petitioner to the Respondent of **\$795.39**.

### **Home Depot Loan**

[322] There is an account in the Respondent's name only.

[323] The Respondent argues that the Home Depot debt as of September 4th, 2010 in the amount of \$1,902 is the Petitioner's debt.

[324] The card was used for the Petitioner's business expenses while he was in Alberta.

[325] He admits the card was used in Edmonton by him.

[326] The Petitioner testified that in March 2009 the Respondent signed a letter permitting him to have a card on her account.

[327] He alleges the Respondent e-mailed the letter to him in Edmonton; he signed and sent it to Home Depot. He then emailed her the letter with both signatures.

[328] The letter dated March 24th purports to contain both signatures.

[329] The email back to her is dated March 31st and contains no verification as to the contents or attachment.

[330] The Respondent had no knowledge of the request to have an additional card issued and no knowledge of the use of the card.

[331] She alleges he forged her name on a document requesting the company to give him a card and redirect the accounts to his temporary residence in Alberta.

[332] I have no expert evidence regarding the signature.

[333] The Petitioner submitted exhibit (9) to prove that the Respondent authorized an additional card be issued to him in Alberta.

[334] However, in his submissions (exhibit 5) Tab G he submitted a similar exhibit, this one with different spacing and with dates of birth added to the signatures.

[335] Given the alterations, the reliability of these exhibits is reduced.

[336] I am satisfied that the Respondent knew nothing of this card and did not authorize a second card for the Petitioner.

[337] In his oral testimony the Petitioner admits he was reimbursed for the expenditures/materials relating to the debt card and the balance of the debt.

[338] If I am incorrect in my first finding the Petitioner does verify that he used the card and was reimbursed for the expenses on that card.



[339] He did not however, pay down the account with the reimbursement.

[340] The Petitioner will assume responsibility for the debt.

### **Loan from Respondent's mother**

[341] The Respondent testified that in 2000 her parents gave the parties a \$5,000 loan for living expenses that was not paid back. She proposed that this loan be included in the division of debts.

[342] The Respondent presented a hand written note she says is a written tally (exhibit 12) made by her mother of repayments from April 2002 to February 2004. The mother did not testify.

[343] There is no independent evidence of this loan, no documentation setting the loan and conditions in writing establishing an expectation of repayment.

[344] The Respondent was unable to keep up repayments.

[345] Absent sufficient evidence that this transfer of cash from the parents to the parties was intended to be a legally enforceable contract or other indicia of a loan arrangement I am unable to include it as a matrimonial debt.

[346] While the Respondent feels they own a moral duty to repay her parents the indices of a valid and enforceable contract are not in evidence.

[347] In 2005 she put \$5,000 towards the home.

### **Conclusion**

[348] The jurisdictional elements of the divorce have been proven and the divorce is granted on the basis of one year separation.

[349] The matrimonial home is to be sold and the equity if any divided equally in accordance with the directions noted above.

[350] Regarding the division of matrimonial assets and debts and the request for an unequal division of debts I note the following.

[351] The factors most relevant to the facts of this case are set out in section 13 of the Matrimonial Property Act:

**“Factors considered on division**

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;**
- (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;
- (l) the value to either spouse of any pension or other benefit which, by reason of the termination of the marriage relationship, that party will lose the chance of acquiring;”

[352] While the Respondent was on medical leave in November 2007 she cashed her RRSP's to put \$10,261 towards the household expenses and to assist the Petitioner in Alberta.

[353] She contributed \$20,053 from the First Time Homeowners RRSP contribution.

[354] From 2007 to 2010 the Petitioner worked in Alberta and the Respondent managed the home.

[355] The Petitioner's management of household assets and funds, sometimes without her knowledge and permission, escalated their debt unreasonably.

[356] His actions exposed both to financial risks to which the Respondent did not have knowledge or agree.

[357] The Petitioner has been less than honest or transparent with the Respondent and the Court as it relates to the acquisition of debts in the Respondents name without her knowledge or consent.

[358] The Petitioner has not been forthright with disclosure.

[359] The agreed upon matrimonial debts will leave the Respondent holding 19,289.61 whereas the Petitioner only 12,718.89.

[360] Part of their debt was used to address the Petitioner's transportation and living expenses for which he received some reimbursement. The Respondent did not receive the benefit of the loan or the reimbursement.

[361] The Home Depot debt was undertaken by the Petitioner without the knowledge of the Respondent.

[362] The Petitioner cashed in both parties' pension and investment assets, without the consent of the Respondent, receiving the proceeds in his personal account for his use as he determined appropriate.

[363] While some of the monies may have addressed home expenses the Petitioner has not provided evidence to allow the Court to conclude the Respondent received the benefit of these assets while living with him.

[364] The Petitioner's tax debt was entered into during years when he earned sufficient income to avoid tax debt and penalty again without knowledge or control of the Respondent.

[365] The Petitioner advanced false claims in assisting the Respondent prepare her income tax returns.

[366] He escalated the level of her debt inclusive of tax debt needlessly causing her to incur penalties and interest.

[367] He kept her tax information, refunds and reassessments hidden from her until the separation made disclosure imperative.

[368] While the Respondent has admitted the TD Trust line of credit has been used partially for the household she was not aware of this debt and had no control over its use.

[369] The Petitioner has consistently earned significantly more than the Respondent and is financially better able to absorb and recover from this debt.

[370] The Petitioner has demonstrated he neither respects or intends to comply with Court direction.

[371] This exposes the Respondent to a higher and continuing risk.

[372] He has made false and sometimes incomplete statements in his affidavits and evidence to suggest the Respondent had access to funds when they were deposited to his account.

[373] I am satisfied on the balance of probabilities and the totality of the evidence that the Petitioner placed the Respondent's signature on the spousal RRSP and withdrew the funds without her knowledge ultimately depositing them in his personal account.

[374] He also had the remaining funds from her Home Buyers loan funded by her RRSP deposited ultimately to his personal account and disbursed them without her consent.

[375] I am satisfied on the balance of probabilities that he had a second card issued under her signature and used the card for his own purposes including construction.

[376] I am satisfied he was reimbursed the expenditures and left her with a debt in her name.

[377] This does not excuse the Respondent from failing to assume responsibility for her own finances.

[378] I have concluded that the Petitioner has submitted partial and self-serving records of accounts that support his claim but do not allow for a reliable picture of the finances including the deposits and use of his accounts.

[379] I am also satisfied as a result of his involvement in her tax returns and his use of the RRSP funds and accounts that he has left the Respondent in a state of relative impoverishment.

[380] Given their significant earning disparity his financial situation will be better than hers.

[381] I am satisfied there should be an unequal division of assets and debts in favour of the Respondent. An equal division would be unfair and unconscionable.

[382] The parties had assets that can be traced as at separation of \$65,948.75. (excluding the home)

[383] The Petitioner held \$54,194.74 in his possession and the Respondent \$11,754.01.

[384] Excluding the TD line of credit and the Home Depot loan the debts total \$83,114.41.

[385] The Petitioner is holding \$44,426.89 of that debt in his name and the Respondent is holding in her name \$38,687.52.

[386] To equalize the assets and debt he would have to pay her \$18,350.68.

[387] In addition, he is liable for the Home Depot debt at \$1,902 and his share of the Home Buyers loan reassessment at \$795.39.

[388] He is also responsible for 60% of the TD Trust line of credit total in the amount of \$9,983.29, with him bearing responsibility for \$5990 and she for \$3994. They shall pay that directly to TD Trust bank.

[389] He is not reliable to accomplish that given his own debt.

[390] Other than for taxes and insurance from November 1st, 2010 to April 2012 the Petitioner will assume responsibility for the costs of maintaining the home without contribution from her unless he keeps her updated on all income from house rental and provides proof of all expenditures related to tax and insurance.

[391] His failure to prove the deficiency will result in him absorbing the costs of maintaining the home in excess of the rental income.

[392] He will pay the debts currently in his name directly to the creditors as noted in the attached schedule and she in her name.

[393] Each shall be responsible for paying their share and keeping the other indemnified.

[394] I have attached to this decision schedule "A" which is the manner of division of assets and debts.

[395] The proceeds of sale of the matrimonial home after ordinary disbursements (real estate fees of 5%, HST, outstanding mortgage and penalties if any and legal fees not to exceed 1000) are to be equally divided.

[396] The Petitioner will indemnify the Respondent for any additional payments she is called to make over and above her contribution to the TD Trust line of credit in the amount of \$3,954.

[397] The Petitioner shall pay to the Respondent the sum of \$18,350.68 plus an additional \$795.39 to adjust for the estimated tax costs of the Home Buyers Loan and \$1,902 which is in compensation for the Home Depot loan for a total rounded figure of \$21,048.19 **net** to the Respondent.

[398] At the Respondent's option (to be exercised by notice to the Petitioner in writing within 30 days of the date of this decision or earlier) she may demand a spousal rollover of ½ the current value of the Investors group pension arising from contributions during the marriage.

[399] The balance if any shall be paid in cash to achieve the desired equalization considering the possible tax consequences of the rollover.

[400] The Petitioner shall complete all necessary documentation to effect such a transfer and shall not dispose of any of the proceeds of this investment in advance of the Respondents election on pain of any and all remedies including contempt available to the Respondent for breach of this direction as may flow from a successful contempt of court application in the event of breach.

[401] Each party shall keep the other indemnified from any demands for payment on any of the matrimonial debts.

[402] Until the Petitioners share of the TD Trust line of credit, the Home Depot loan, the Home Buyers credit and the equalization payment, noted above, is paid in full the Respondent shall be provided security for payments by way of instrument drafted by the Respondent counsel creating a hold against the Petitioner's remaining assets.

[403] The Respondent is not restricted by the provision of this security from other legal remedies to collect on her entitlement

[404] Upon proof of payment in full the Respondent shall release the security forthwith.

[405] Counsel for the Petitioner shall draft the order.

Moira Legere-Sers, J.

**Schedule "A"**

Matrimonial Home is to be sold and equity if any divided after ordinary disbursements including only those household expenses as order in the decision.

<b>Matrimonial Assets</b>		Petitioner	Respondent
(P).Investors Group	40,321.	40,321.	
(P) Investors RRSP	1.74	1.74	
(P) Manulife	164	164	
(P) Stantec ESPP	5,497	5,497	
(R) Spousal RRSP	8,211	8,211	
(R) Sun life	561		561
Teamsters	<u>11,193.01</u>	_____	<u>11,193.01</u>
	65,948.75	54,194.74	11,754.01
<b>Matrimonial Debts</b>			
Agreed debts	32,008.50	12,718.89	19,289.61
(P) Tax debt	24,415	24,415	
(R) Tax Debt	19,397.91		19,397.91
Taxes and Insurance (Nov. 2010 – April 2012)	<u>7,293</u>	<u>7,293</u>	_____
	83,114.41	44,426.89	38,687.52
Net Debt Remaining	-17,165.66	9767.85	-26,933.51
Shared equally (1/2)	<u>- 8,582.83</u>	<u>-18,350.68</u>	<u>+18,350.68</u>
		-8582.83	-8582.83

TD Line of credit to be shared unequally with payments made by each party directly . (Petitioner \$5930; Respondent \$3954)

Home depot loan of \$1902.12 Petitioner pays Respondent

Home buyers Loan Petitioner pays Respondent \$795.39

