

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

Citation: *Poirier v. Poirier*, 2016 NSSC 336

Date: 20161209
Docket: 1201-068744
Registry: Halifax

Between:

Stephen Alfred Poirier

Petitioner

v.

Michelle Frances Poirier

Respondent

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Judge: Beryl MacDonald

Heard: September 9, 2016

Written Decision: December 9, 2016

Keywords: Family, Child and Spousal Support ongoing and retroactive, Matrimonial Property and Debt, Separation Agreement

Legislation: Divorce Act, R.S. 1985, c 3; Matrimonial Property Act R.S.N.S. 1989, c.275

Summary: Father requested a Divorce, access with the parties' daughter, payment of money owed to him in a Separation Agreement and ongoing and retroactive spousal support. The Mother requested custody, child support and an order relieving her from the payment

provisions of the Separation Agreement due to a breach of that agreement by the Father.

The parties' daughter was 17 years of age and living with the Mother in California. It was appropriate that the Mother have custody and the daughter have such contact with the Father as was agreeable to her. She was a dependent child and entitled to receive child support. After a 22 year marriage the Father had a non-compensatory claim for spousal support. The Mother had always been the higher income earner in the family. He was financially dependent upon her. A retroactive claim was calculated both for child and spousal support. The Father had not breached the terms of the parties' Separation Agreement. The Mother had not brought a motion to set aside the Separation Agreement and it was an enforceable agreement. The parties' matrimonial property and debt were to be divided as required in the Separation Agreement.

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Judge: The Honourable Justice Beryl MacDonald

Heard: September 9, 2016

Counsel: Kendrick H. Douglas, counsel for the Petitioner;
Michelle Frances Poirier, the Respondent, self-represented

By the Court:

[1] This is a Divorce Proceeding. On September 9, 2016 the parties appeared for the trial. I am satisfied all jurisdictional requirements of the *Divorce Act* have been met and there is no possibility of reconciliation. I am further satisfied there has been a permanent breakdown of this marriage. The parties have lived and they continue to live separate and apart from one another for a period in excess of one year from the commencement date of this proceeding. A divorce judgment will be issued.

Background

[2] This was a very difficult file to manage essentially because the Wife has been living in California, USA, and has not made her contact information readily available to either the Husband or the lawyer acting on his behalf. She has not filed all the material typically required. She has not filed a sworn Statement of Special and Extraordinary Expenses with all the necessary calculations in respect to the net amounts requested for those expenses. She has not filed Notices of Assessment from the Canadian Revenue Agency nor has she filed completed Income Tax Returns. She has filed various T4 slips and other financial information from which I have calculated her various incomes over time. I was not prepared to delay this

matter to obtain traditional materials from the Wife. I have prepared this decision based upon what she has provided including a document she called a “brief” which I treated much like an affidavit and to which she wished to refer in oral testimony. That document was marked as Exhibit #9 in the proceeding.

[3] On June 15, 2015 the Husband filed a Petition for Divorce. On July 20, 2015 the Wife filed an Answer. Both request a divorce. The Husband wanted defined access with their daughter, spousal support and a division of pensions. The Wife does not object to the Husband’s request for access but because the Wife and child live in California, USA, because of the child’s age, and the strained relationship between the Husband and the child she does not know how she can ensure access will occur.

[4] In her Answer the Wife requested an increase in the child maintenance paid by the Husband. She suggested it should be \$363.60.00 per month based upon his income and she wanted it “backdated to March 29, 2014”. She also wanted “50% of the cost of their daughter’s school trip and 50% of additional care costs ...for clothing, entertainment, clothing gifts etc.” The Wife did not consider the Husband was entitled to receive spousal support. She was uncertain about the pension division requested.

[5] In her “brief” filed August 31, 2016 the Wife added a request for the following:

- payment of 50% of the medical/dental coverage premiums for the child for the next 4 years at a rate of \$372.22 per month
- payment of her costs award in the amount of \$106.45
- 50% of the interest payments on the line of credit and visa
- 50% of the consumer proposal debt payments for 5 years at \$200.00 per month
- additional expenses associated with their daughter’s care in the amount of \$100.00 per month backdated to March 2014 and up to the end of her 4 years college program
- 50% of tutoring expenses associated with the child’s school amounting to \$280.00 per month for the next 2 years as well as reimbursement of 50% of the tutoring she already paid for during final examinations in May 2016
- 50% reimbursement of the cost of the child’s braces
- 50% of the costs of the child’s school trip which totaled \$1,800.00
- payment of the damages to the house in the amount of \$900.00
- reimbursement of 50% of the child’s uninsured medical expenses totaling 101.13 to date with the requirement that the Husband pay 50% of future uninsured medical bills within 30 days of being supplied with those bills
- 50% of her living expenses incurred from July 2014 to December 2014 totaling \$9,600.00

[6] In attachments to her affidavit filed April 20, 2016 the Wife also wanted reimbursement for an outstanding water bill account because the Husband did not pay his 50% share of \$177.00. When she purchased the husband’s interest in the matrimonial home she withheld the amount of \$1,537.26 to cover the following:

- his 50% share of 4 mortgage payments due after December 19 amounting to \$628.00.
- 4 property tax payments of \$100.00 each for the same time period
- \$209.26 for interest on the matrimonial visa
- \$300.00 for interest owing on the line of credit

[7] Her justification for those deductions was the failure by the Husband and his lawyer to keep to some deadline she thought existed about the conclusion of the transfer of the Husband's ownership in the matrimonial home. As a result she could not remortgage the property until mid-February 2015.

[8] The Wife's accounting is not supported by documentation. Her multiple claims contain similar subject matter and she has not appropriately broken out the amounts in a clear and concise fashion so as to constitute proof of her claim. I have no doubt the Wife believed she shouldered far more of the debt incurred by this family than was fair. However, she was the significant income earner in the family and events in which she participated resulted in some unintended consequences that neither had foreseen.

[9] As so often happens in these cases I am asked to recreate the past and essentially undue financial decisions made by the parties to provide a "fair" division of debt.

[10] The parties married on August 31, 1991 and separated on March 29, 2014. They have 3 children; 2 who are now independent. Their dependent child was born October 7, 1999.

[11] Both parties worked during the marriage but the Wife always earned significantly more than the Husband. Their borrowing capacity was primarily based upon her earnings. The Wife is presently employed as a “senior claims adjustor”. She is well educated both generally and in respect to financial management. At the time the parties separated the Wife was employed with an Insurance Company as a “Bodily Injury Consultant”. She has been self-represented throughout this proceeding. The Husband has counsel.

[12] The Husband had great difficulty accepting the breakdown of the marriage. He knew he could never afford to keep the matrimonial home. He knew his income could not contribute substantially to the family debt and it would have to be paid from the sale of the matrimonial home. The home was placed on the market for sale. The Husband was unwilling to leave the home but he did move to the basement. This was very uncomfortable for the Wife but she did not commence any legal action to have him move. Eventually she and their daughter found their own apartment and moved out on July 1, 2015 leaving most of the household furnishings in the home. The Wife continued to pay 50% of the mortgage, all the

interest on the parties' line of credit and visa, all the household insurance cost, and all expenses associated with their daughter except for the \$300.00 per month the Husband paid as child maintenance since March 2014 when the parties "separated". This amount was suggested by the Wife. The Husband increased the payment to \$365.00 per month on March 3, 2016.

[13] By December 2014 the matrimonial home still had not sold and it was apparent the Husband could not afford to pay the expenses associated with the home. The Wife decided to purchase his interest so she and their daughter could live in the home until it did sell.

[14] On January 16, 2015 the parties signed a Separation Agreement. It provided a parenting plan. It required the Wife to purchase the Husband's interest in the matrimonial home for \$8,000.00. She was to take over all matrimonial debt except for the debt associated with the Husband's vehicle. It left the question of division of pensions and spousal support for a later date.

[15] The Husband relies on the provisions of the Separation Agreement but requests that the Court include the access provisions contained in the *Maintenance and Custody Act* Consent Order issued August 13, 2016.

[16] The Wife has not formally applied to set aside the Separation Agreement. She has provided no evidence to suggest the Husband failed to disclose material information or that she was under duress when she signed the Agreement or that the Husband misrepresented a material fact. The Agreement indicated she choose not to obtain legal advice.

[17] The Wife's argument is that the Husband breached the terms of the Agreement and the financial arrangements are or should be unenforceable. She also suggests the Husband refused to leave the home unless she would take over paying all the matrimonial debt. However, she was paying most of the debt in any event and she knew the Husband wanted spousal support which she did not want to pay. She was not in any unequal bargaining position and choose to sign the Agreement voluntarily. She choose to pursue a refinancing arrangement that would put all the debt in her name.

[18] In March 2015 the Wife was laid off from her employment. She did find employment in Nova Scotia in April 2015. She testified that employment was unsuitable because it paid her one half the salary she usually earned but her Statement of Income, filed December 9, 2015, calculated that income at \$65,100.00, an amount \$13,000.00 less than her 2014 income and \$10,000.00 less than her 2013 income. The amount she received was less but not 50% less than her

historic incomes. The Wife has dual citizenship and many of her relatives live in California. Clearly she wanted to leave Nova Scotia. She eventually found a better paying job in California in December 2015. She earns \$85,000.00US. The exchange rate varies daily but I accept 30 % as an appropriate exchange rate to apply. This will give the Wife a total Canadian income of \$110,500.00.

[19] On April 17, 2015, the Wife filed a Notice of Application under the *Maintenance and Custody Act* requesting custody with access to the Husband and the right to change the child's residence from Nova Scotia to California. Although she had found a job in Nova Scotia she obviously did not want to stay here. She did not ask for child maintenance nor did she ask for any contribution to any special or extraordinary expenses. There had been a previous application to permit the child to travel to California with the Wife so she could tend to a sick relative. An order was granted permitting travel at that time. The Husband was ordered to pay costs. He has not yet paid that cost award. He must do so.

[20] On August 13, 2015, a Consent Order was issued pursuant to the *Maintenance and Custody Act*. It permitted the relocation of the child's residence to California, USA. It also set out a detailed parenting plan. The Husband did not request a rehearing about the relocation issue during this *Divorce Act* proceeding. He has not been regularly provided information about their daughter as was

contemplated in the Consent Order. Some of this has occurred because the Wife has not provided him with contact information and she has moved since the time the Consent Order was granted.

[21] The matrimonial home remained unsold. In December 2015, the Wife negotiated a “Consumer Proposal” pursuant to the *Bankruptcy and Insolvency Act* R.S.C., 1985, c.B-3 and she “assigned the house back to the bank”. The total amount of her indebtedness was \$198,140.00 including the mortgage on the matrimonial home. To relieve her of this debt, the Wife was required to pay a total amount of \$12,000.00 in installments of \$200.00 per month for 5 years.

Parenting Plan

[22] The parties’ daughter is 17 years old. The unpleasantness that occurred between her parents has no doubt contributed to her personal reluctance to engage with the Husband. He is not proven that the Wife has significantly influenced their daughter but because she would have seen her mother in distress from time to time that has contributed to the opinions she has formed about her father. Given that this child is now living in California her willingness to travel to Nova Scotia to spend time with her father will determine whether that ever occurs. From a practical point of view penalizing the Wife for the child’s failure to comply under these

circumstances would not be a satisfactory outcome for the child. However, the Husband must be given an opportunity to try and mend the relationship with his daughter and there are electronic means by which he could communicate with her provided he has the necessary email addresses, computer connections to Skype and cell phone numbers to speak to her or provide text messages. If his daughter is willing to engage him through Facebook or Skype, the Wife suggests she would not interfere. The father must understand these are not opportunities to “provide his side of the story” to his daughter. This is an opportunity to learn about her new home and her daily life and to arrange for visits in Nova Scotia. It is not to be used as an opportunity to criticize either the Wife or the child.

[23] Many of the provisions in the previous Consent Order are impractical. Because of the distances involved and their poor relationship, it is wishful thinking to believe these parents can make joint decisions. The Wife will be the sole decision-maker for the child. In the parenting plan I have developed, (attached to this decision), the Wife is required to inform the Husband about the child’s progress and about the decisions she has made. I am not satisfied she has done so in the past. She has reasons for this. She believes the Husband did not genuinely want to have a relationship with their daughter. I accept his testimony that he does want to “mend fences”. I will give him the opportunity to do so.

[24] Because distance would impede or possibly prevent the Husband from becoming a fully informed parent through interaction with professionals I am not requiring the Husband to be consulted by the Wife prior to her making decisions for the child.

Child Support

[25] The Husband's historic incomes are as follows:

2012 - \$40,774.00
2013 - \$41,392.00
2014 - \$40,817.00
2015 - \$46,377.00

[26] The Husband can apply for and work overtime. This accounts for the difference in his historic incomes and his 2015 income. However, there is limit and there is no guarantee he will earn in 2016 as much as he did in 2015. Nevertheless, he is to be encouraged to accept overtime as a measure toward self-sufficiency. As a result I have decided his 2016 and likely his 2017 income will be the same as the income he earned in 2015. His child support table amount is \$388.00 per month. This payment must commence January 1, 2017.

[27] The Separation Agreement required the parties to be jointly responsible for the "cost of special and/or extraordinary expenses, such as the child's school trip of

\$1,200.00, and any other items/events/sports as the child wishes to join....”.

However, the Agreement further states that “before any expenses are incurred there should be a discussion about the potential expense... The parties acknowledge that any expenses are to be shared between them in proportion to their respective incomes.” The Agreement does not indicate what was to happen if the parties could not agree about whether an expense should be incurred.

[28] The Husband knew the cost of the school trip because the amount was put into the Separation Agreement. In this proceeding the Wife alleged varying amounts for the cost of that trip. In her Answer she indicated the Husband’s 50% share of that cost would be \$825.00. This suggests the total cost of the trip was \$1,650.00. In her “brief” she indicated the total cost was \$1,800.00. She provided no documentation to substantiate the actual cost of that school trip. While a court is not bound by the provisions of a Separation Agreement they are to be given considerable respect to encourage parties to settle matrimonial and couple disputes. In this case the Separation Agreement required the Husband to contribute toward a \$1,200.00 cost of the child’s school trip. The amount of the contribution was to be calculated in proportion to the parties’ income. The Agreement was signed in January 2016 but was negotiated sometime in December 2015. As a result, I will use the total incomes earned by each of the parties in 2015. In that year the

Husband earned \$46,377.00. The wife earned \$65,100.00. The Husband is to pay the Wife 41.6% of 1,200.00 which is \$499.20.

[29] I have no evidence to confirm that the other “special and extraordinary” expenses claimed by the Wife have been discussed with the Husband. Several do not fall within the *Federal Child Support Guidelines* definition of those expenses. However, claims for dental care including orthodontics and claims related to a child’s educational needs, such as tutoring, are generally accepted as necessary expenses for which contribution may be provided.

[30] The Wife has made a claim for compensation in respect to payments for the child’s braces. I have been given nothing to substantiate the cost. The material I have been given as Exhibit #11 suggests there is an insurer involved and, if so, it would be the net cost of this expense that would be proportionally shared between the parties. The Wife has failed to prove her claim for a contribution toward this expense.

[31] The Wife has provided information in Exhibit #12 to substantiate the child’s tutoring expense. The total amount was \$300.00US. Applying an exchange rate of 30 % that is equivalent to \$390.00. This is an expense that was paid in 2016. The Husband’s total income in 2016 is \$46,377.00 and the Wife’s total income is

\$110,500.00. The Husband is to pay the Wife his proportional share at 29.56%.

The Husband must pay the Wife \$103.58.

Retroactive Child Support

[32] The use of the word “retroactive” when applied to these parties’ claims for child support, and spousal support, may be technically inaccurate but that word is typically used and is commonly understood to represent a calculation about money that should have been paid for a past period of time rather than for a current or future period of time.

[33] A parent is presumptively entitled to be paid child support from the date he or she files a court proceeding requesting child support. A parent can also request child support for a time prior to that filing date. In such cases the court may order child support to be paid from the date when the paying parent was given “effective notice” of the request. (*DBS v. SRG, LJW v. TAR, Henry v. Henry, Hiemstra v. Hiemstra*, 2006 SCC 37 also referred to as *DBS*)

[34] The court is not required to order a parent to pay retroactive child support. In *DBS* the Supreme Court required consideration of the following factors:

- 1) whether there is or is not an existing court order or agreement
- 2) status of the child/children
- 3) delay by the recipient in seeking the award

- 4) conduct of the payor parent
- 5) financial circumstances of the child/children
- 6) hardship imposed by a retroactive award

[35] The only order requiring the Husband to pay child support is the Consent Order issued August 13, 2015. The Order states the Husband “agrees to pay monthly child support in the amount of \$300.00.” Nothing further is said.

[36] I am not bound by the Consent Order granted under the *Maintenance and Custody Act* but it does reveal what the parties considered appropriate at the time. I am satisfied the Wife knew the range of income earned by the Husband. In addition, she made no specific request for a different amount of child support even though, in her Answer filed July 20, 2015, she requested an increase from this amount. She signed the Consent Order on July 29, 2015, nine days after she had filed her Answer. The Husband has paid child support since the parties separation and he voluntarily increased that payment in March 2016. Under these circumstances I consider it appropriate that he pay child support based upon his 2016 total income at the monthly rate of \$388.00 commencing April 1, 2016 one month after he increased his payment but not in an amount I have now decided he should pay. Subtracting the \$365.00 per month he has paid leaves a total amount of \$207.00. This amount is to be set off against the retroactive spousal support owed to the Husband by the Wife.

Division of Matrimonial Property

[37] The parties had few assets when they separated. They had the matrimonial home, vehicles, furniture, an RRSP and pension benefits. They had joint debts. The Wife willingly signed a Separation Agreement that placed these debts in her name. The total at that time was \$171,853.00. The Wife disputes the date upon which she was to pay 100% of all matrimonial debt.

[38] The parties Separation Agreement required the Husband to vacate the matrimonial home on or before December 27, 2014. He vacated the home on December 20, 2014. The parties signed the Separation Agreement after that date but the wording is clear; the Wife was to assume all matrimonial debt. The appropriate interpretation of the Agreement is that she would assume this obligation upon signing the Agreement. The agreement does not say otherwise. Her assumption of that debt would include amounts not paid by the Husband during his occupation of the home even if those were debts he “should” have paid. The Agreement does not differentiate between debt. All the debt was matrimonial. The Wife signed that Agreement on January 16, 2015. No “deadlines” were imposed upon the Husband other than the requirement that he vacate the premises on or before December 27, 2014.

[39] The Wife was not able to get her financing in place until mid-February 2015 but this in no way affects the time period from which she was to be fully responsible for the matrimonial debt. Her argument that the Husband should now pay debt incurred for interest or for other reasons after the date she signed the Separation Agreement is rejected. Perhaps he was in default of some of the payments he should have made while he occupied the matrimonial home and before the Agreement was signed but those were not exempted in the Agreement. I dismiss her request for contribution to matrimonial debt. This includes a dismissal of her claim for contribution from the Husband toward the payments she must now make pursuant to the Consumer Proposal she negotiated.

[40] When the Husband left the matrimonial home, there was damage to a carpet in the home and to some countertops. The Husband acknowledges his responsibility in respect to the damage to the carpet but denies he damaged the countertop and denies he left the bathroom in the deplorable condition described by the Wife during the trial. However, the Wife cannot substantiate the amounts she claims against the husband for necessary repairs. That claim is dismissed.

[41] The Wife was not entitled to make any deductions from the \$8,000.00 she was to pay the Husband and she must pay him the \$1,537.26 remaining.

RRSP and Pensions

[42] The parties have an RRSP. I do not have a current value considering the tax implications. I have the same difficulty with respect to the pensions to which each is entitled. The RRSP could be subject to a rollover but the Wife may not be prepared to co-operate as required to accomplish this division. If this happens the Husband will need to get the RRSP valued, and deduct income tax. He will likely then need authority to cash out that RRSP to obtain funds to provide the equal share to the Wife.

[43] Because I have no reports from an actuary about the appropriate value to use for the pensions they must be subject to a statutory division from the date of the marriage until the separation date pursuant to the appropriate legislation. Separate orders will be required to direct the division of the pensions. I expect the Wife will have little interest in completing this process. If her pension was valued by an actuary I expect it will have a greater value than will the Husband's pension. I must leave the completion of these divisions to the Husband and his lawyer. The court retains jurisdiction to consider appropriate wording and issue necessary orders to divide the RRSP and the pensions.

Spousal Support

[44] In *Bracklow v. Bracklow* [1999] 1 S.C.R. 420 the Supreme Court analysed the statutory objectives described in the *Divorce Act*, R.S., 1985, c.3 s.15 and decided they create three rationales for spousal support. The relevant rationale in this proceeding is non-compensatory support.

[45] Once it is decided that a spouse is entitled to spousal support, the quantum and duration are to be determined by considering the length of the relationship, the goal of the support (is it compensatory, non-compensatory or both), the goal of self-sufficiency, and the condition, means, needs and other circumstances of each spouse.

[46] Non-compensatory support incorporates an analysis based upon the concepts of economic dependency, need and ability to pay. If spouses have lived fully integrated lives, so that the marriage creates a pattern of economic dependence, the higher-income spouse is to be considered to have assumed financial responsibility for the lower-income spouse. In such cases a court may award support to reflect the pattern of dependence created by the marriage and to prevent hardship arising from marriage breakdown. This non-compensatory analysis articulated in *Bracklow*

was suggested by L'Heureux-Dubé, J. when she wrote in *Moge v. Moge*, [1992] 3 S.C.R. 813 p. 39

Although the doctrine of spousal support which focuses on equitable sharing does not guarantee to either party the standard of living enjoyed during the marriage, this standard is far from irrelevant to support entitlement (see *Mullin v. Mullin* (1991), *supra*, and *Linton v. Linton*, *supra*). Furthermore, great disparities in the standard of living that would be experienced by spouses in the absence of support are often a revealing indication of the economic disadvantages inherent in the role assumed by one party. *As marriage should be regarded as a joint endeavour, the longer the relationship endures, the closer the economic union, the greater will be the presumptive claim to equal standards of living upon its dissolution* (see Rogerson, "Judicial Interpretation of the Spousal and Child Support Provisions of the Divorce Act, 1985 (Part I)", *supra*, at pp. 174-75). (emphasis added)

[47] This analysis is often described as the “lifestyle argument” - that the spouse should have a lifestyle upon separation somewhat similar to that enjoyed during marriage. (*Linton v. Linton* 1990 CarswellOnt 316 (Ont. C.A.) A lengthy marriage generally leads to a pooling of resources and an interdependency even when both parties are working. Usually the recipient spouse will never be able to earn sufficient income to independently provide the previous lifestyle. However, there is no requirement that spousal support in a lengthy marriage must be lifetime support.

[48] The Wife suggests the Husband is or should be self-sufficient given his income and the fact that his budget does not disclose a deficit. However ability to live frugally is not the test. Self-sufficiency must be analysed in the context of the

standard of living previously enjoyed by the parties. (*Strecko v Strecko* 2014 NSCA 66)

[49] The Wife has argued that the parties did not have an affluent lifestyle when they were together. They lived from paycheck to paycheck. However, their combined paychecks did provide them with a residential property they jointly owned furnished in a way to provide them with comfortable surroundings. The Husband cannot duplicate what he once had based upon his earnings. The Wife argues she cannot afford a home either and her earnings just meet the budget she has prepared for herself and their daughter. I have no doubt that the Wife spends everything she earns but I have decided she does have an ability to pay some spousal support. The Husband's budget is modest. He does not have a monthly deficit but, as he says, "he lives in a crappy apartment when I used to have a home". He has been disadvantaged. After a 22 year marriage, he is entitled to non-compensatory spousal support. However, he will need to adjust and he will never have enough spousal support to meet his expectations because the Wife will be the only person who can provide significant financial contribution to their daughter's needs. I also note the Wife agreed to pay for one return trip per year so the child can visit with the Husband although I am not naive to the possibility the child may never willingly take such a trip.

[50] Neither party has provided any submissions about the use of the Spousal Advisory Support Guidelines. Because the Wife works in the US it likely would be inappropriate to use them in any event.

[51] After reviewing all the factors outlined in this decision I have decided the Wife is to pay the Husband, commencing January 1,2017, \$500.00 per month for spousal support. Because he is to pay her \$388.00 for child support, that amount is to be deducted from her obligation so that the amount she is to pay him monthly must be \$112.00 CAD.

Retroactive Spousal Support

[52] Retroactive spousal support has been commented upon by the Supreme Court of Canada in *Kerr v. Baranow*, 2011 SCC 10 (S.C.C.) at paragraph 201 (per Cromwell, J.):

While *D.B.S.* was concerned with child as opposed to spousal support, I agree with the Court of Appeal that similar considerations to those set out in the context of child support are also relevant to deciding the suitability of a "retroactive" award of spousal support. Specifically, these factors are the needs of the recipient, the conduct of the payor, the reason for the delay in seeking support and any hardship the retroactive award may occasion on the payor spouse. However, in spousal support cases, these factors must be considered and weighed in light of the different legal principles and objectives that underpin spousal as compared with child support.

[53] In this case those other factors include the provisions of the *Divorce Act* dealing with spousal support specifically section 15(4) that directs the Court to consider the condition, means, needs and other circumstances of each spouse including the length of time they cohabitated, the functions performed by each spouse during cohabitation, and any order or agreement relating to the support of the spouse.

[54] Until the Husband vacated the matrimonial home any spousal support he may have claimed for that period of time was satisfied by the Wife's payment of joint debt, including the mortgage and other expenses that benefited the Husband. After he vacated the matrimonial home no spousal support was paid because the Wife refused to acknowledge his entitlement.

[55] I have decided the Husband is entitled to spousal support. The Wife knew he wanted spousal support at least since late December 2014 when she negotiated the purchase of his interest in the matrimonial home. The Separation Agreement makes reference to spousal support. I have no direct evidence about any other "effective date" from which to commence spousal support.

[56] In 2015 the Wife's total income was \$65,100.00. She had responsibility for all the matrimonial debt. Because of his income the Husband was not contributing

a significant amount of child support. The Wife did not have the financial ability to pay spousal support in 2015. She did have financial ability to pay spousal support in 2016 when she earned \$110,500.00. She is to pay spousal support commencing January 1, 2016 until December 1, 2016 in the monthly amount of \$500.00 for a total of \$6,000.00. Subtracting the retroactive child support to be paid by the Husband leaves \$5,793.00. Commencing January 1, 2017 she is to pay this in monthly installments of \$200.00 until paid in full.

[57] As a result of my decision the total monthly amount the Wife must pay the Husband is \$312.00.

Beryl A. MacDonald, J.

PARENTING PLAN

Custody/Primary Care

1 The Mother shall have custody of the child meaning she has sole authority to make decisions that have significant or long lasting implications for the child, for example, decisions about physical or mental health, dental care, counseling, and education.

2 The Mother shall have primary care of the child.

Access

3 The Father may communicate with the child directly at suitable times to have contact with her and to discuss arrangements for visitation with him in Nova Scotia.

4 If the child is willing to travel to Nova Scotia, the Mother must be informed and she must make all necessary arrangements to ensure that visit will occur including paying all return air flight transportation expenses for the child's visit to Nova Scotia once per year.

Terms and Conditions

Right to be Informed

5 The Mother must inform the Father about any significant changes, problems or recommendations relating to the child's physical and mental health, dental care, physical and social development, and about her educational progress, and must provide copies of all written reports received from service providers about these changes, problems, recommendations and progress.

Emergency Decisions

6 With respect to emergency decisions, the parent who has care of the child according to this parenting plan is to be the decision-maker with the other parent being advised as soon as possible about the emergency and the decision made.

Communication

7 The parties shall communicate by way of text messaging or e-mail exchange but if for any reason that is unavailable to one of the parties at any time communication must be by telephone.

8 Communication must be respectful and reply must be within 48 hours of receipt of the message with an explanation if a later reply is made.

Parties' Addresses/ Contact Information

9 The parents must provide each other, and continue to provide each other, current addresses, telephone and cell phone numbers, e-mail addresses and all other contact information.

10 The Mother must provide the Father with the child's cell phone number, e-mail address and other necessary contact information so that he can communicate with her by letter, e-mail, text messaging, Skype, or phone conference.

Passport and Travel

11 The Mother is granted the necessary authority to apply for and receive a passport for the child and the child may travel at any time outside of Canada.

12 If a passport authority requires a consent to travel signed by the Father, he must sign that consent and provide it to the Mother.