

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

**Citation:** *Strople-Sombeek v. Strople*, 2017 NSSC 113

**Date:** 20170501

**Docket:** 1201-068153

**Registry:** Halifax

**Between:**

Elisabeth Strople-Sombeek

Petitioner

v.

Donald Paul Strople

Respondent

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**LIBRARY HEADING**

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**Judge:** The Honourable Justice Beryl A. MacDonald

**Heard:** November 28, 2016

**Keywords:** Family; Divorce; Child Support for Adult Child; Compensatory Spousal Support; Imputing Income; Disclosure of Assets

**Summary:** Wife left remunerative employment in the Netherlands to live with and eventually marry the Husband. She was not regularly employed in Canada and was the primary caregiver for their child. Shortly after the parties separated, the Husband left his employment to obtain work in China as a hockey coach (coaching hockey was “his passion”). Income was imputed at his previous level of earnings. The parties’ daughter remained a “dependent child” and table guideline child support was appropriate.

The Husband engaged in a fruitless search for monetary benefits he believed were available to the Wife either as an equivalent to CPP or as some type of disability benefit. The Wife had a compensatory entitlement to spousal support. She was not self-supporting although she had obtained stable employment.

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**Counsel:**

Elisabeth Strople-Sombeek with counsel, Pavel Boubnov  
Donald Paul Strople with counsel, Mark T. Knox, Q.C.

**By the Court:**

**Divorce**

[1] This is a divorce proceeding. 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] The parties met in 1994 in the Netherlands. The Wife was a Dutch citizen and at the time was operating a successful business. The Husband was a professional hockey player. In 1994 the parties began to cohabit. They married in 2003. In that year, they moved to Canada. Eventually the Husband pursued an international hockey coaching career. When he worked abroad the Wife remained in Nova Scotia. She had sporadic employment during the marriage but her earned income contributed little to the family finances. The primary financial support was provided by the Husband.

[3] The party's child was born in 1997. Because of the nature of the Husband's work and the fact that, for the most part during the marriage, the Wife was not employed, their child was primarily parented by the Wife.

[4] In May 2014, the parties separated, ending their 19-year relationship. The Wife had no employment and was 54 years old. Their child was a dependent child.

[5] The Wife filed a Petition for Divorce on December 8, 2014. An Interim Hearing was held on April 9, 2015. In the decision rendered following that hearing the Husband's income was calculated to consist of earned income in the amount of \$63,345.00, and an additional sum of \$1,000.00 per month, requiring a gross up. The monthly income came from the Husband's periodic work as an electrician, as a hockey coach, and as a home renovator. He had not disclosed these income sources in his Statement of Income but acknowledged he did received "under the table" income from these sources. The Wife's annual income from employment was determined to be \$31,219.00. The Husband was required to pay table guideline child support in the amount of \$675.00 per month commencing one week after their child's return from the school she was attending in Ontario. It appears she returned in the month of June 2015. The Husband was also ordered to pay spousal support commencing April 15, 2015 in the amount of \$900.00 per month. There

was no indication in the interim decision about whether spousal support entitlement was based upon a compensatory or non-compensatory analysis.

[6] In this hearing the Wife requested table guideline support for their child who is living with her and attending University. She requested spousal support. She asked for contribution from the Husband toward a matrimonial debt and costs of the proceeding.

[7] The Husband did not want to pay child support or spousal support. He denied there was any matrimonial debt for which he should be responsible. He alleges the Wife has a disability or pension benefit that is a matrimonial asset to be divided. He requests costs of the proceeding.

[8] What became most interesting and most frustrating about this case was the singular lack of evidence the parties provided to confirm allegations each made in the course of the proceeding. To some extent this has affected the credibility of both of these claimants and I will make more specific reference in my findings about evidentiary failures and how that has affected the decision I have made.

### **Division of Matrimonial Property**

[9] The parties sold the matrimonial home and a vacant lot of land they once owned.

[10] The Husband alleges the Wife has a disability (or possibly a pension benefit) to be divided. The Husband testified that after the birth of their daughter the Wife did not return to work because of a “mental health related issue” about which I have no evidence other than the Husband’s statement. This also applies to his testimony that the Wife received from the “Dutch Government” a benefit in the nature of a disability benefit as a result of her illness. He testified approximately \$1,800.00 was paid to her monthly during their marriage. The Wife denies she is in receipt of any money other than her earned income. Given the money she has borrowed to support herself and their daughter I find the suggestion that she is “hiding” money in some off-shore account implausible. In addition, she was never asked to disclose any banking account records to determine whether money is coming into her or their child’s use from undisclosed sources.

[11] The Husband testified this benefit was listed on their mortgage application. He did not produce a copy of that application.

[12] A great deal of court time was spent attempting to obtain information from the Dutch Government to confirm or reject the allegation that the Wife was in receipt of a pension or disability benefit. The Wife was required to consent to the release of the requested information and she failed to do so. She provided some information but did not give the authorities what was required to release information to the Husband's counsel.

[13] The Wife may be entitled to receive some type of old age pension benefit or possibly a benefit similar to the Canada Pension Plan Benefit upon her reaching a retirement age. However, no evidence about the type of benefits the Dutch Government may provide to its citizens has been entered as evidence in this Court. The Husband requested the Court to impute a benefit to the Wife because of her failure to cooperate as expected even under court order. In the alternative, the Husband asks the Court to dismiss the Wife's spousal support claim.

[14] Even if the court could impute ownership of an asset to a party, the asset must have an identification. In this case I cannot identify the asset, I know nothing about its value, and, if it exists, it is in another country whose authorities likely are not required to divide that asset according to the Nova Scotia *Matrimonial Property Act*. I also note that if a pension exists it almost entirely was "earned"

prior to the parties' relationship, raising a potential section 13 argument under the *Matrimonial Property Act*. I dismiss this claim.

[15] There is no other matrimonial property to be divided.

### **Division of Matrimonial Debt**

[16] When the parties separated they had considerable matrimonial debt. They had few assets but were the owners of a matrimonial home and a vacant lot of land. Initially the Wife requested time to determine whether she could purchase the Husband's interest in the matrimonial home but she was unable to obtain financing. At the time she made this request she had no regular employment. She became employed before the Interim Hearing but it appears her income was insufficient to permit her to buy out the Husband's interest. I make this statement, not because I have any documentary material indicating that a bank refused a financing application, but based upon the fact that the property was sold and the Wife's income, at that time, was limited and irregular.

The parties sold their matrimonial home in August 2015 but the proceeds did not pay all the parties' debt. The Wife remained responsible for a Scotia line of credit.

[17] The Wife's Statement of Property filed September 9, 2014 listed a number of debts. One of these was a Scotia line of credit in the amount of \$16,722.82.

Because she placed her name alone in brackets beside this debt I concluded it was not a joint debt but taken out in her name alone.

[18] The Husband did not file a Statement of Property until February 27, 2015.

No debts are listed, although at that time the mortgage was owing, as was an RBC loan and a debt to City Financial. These debts had been listed in the Wife's Statement of Property as joint debts.

[19] The Wife claims the Scotia line of credit on her Statement of Property filed October 27, 2016 is the same line of credit listed on her September 9, 2014 statement. She acknowledges using it to pay ongoing expenses since the parties separated but alleges the bulk of the debt was incurred during the marriage. She suggests, without itemization, that she used this line of credit to pay the mortgage, utilities and other debts after the separation because the Husband refused to do so and was not paying either child or spousal support. She requests compensation for the balance now owing which is \$19,800.00. No copies of the debt statements were provided by either party.

[20] The Husband alleges the Scotia line of credit was always the Wife's debt. He denies it should be considered as a matrimonial debt. He alleges this debt related to a vehicle she purchased for which an insurance claim was made because the vehicle burnt. Whether that was settled is unclear. During the Interim Hearing, there was testimony that the insurers may not payout the claim because the Husband failed to cooperate during the investigation into the circumstances of the fire. Neither party provided information about whether this claim for compensation was ever finalized. The Wife carried the burden to prove this line of credit was a matrimonial debt. She has failed to do so. Her claim for division of this debt is dismissed.

### **Child Support**

[21] The Husband had a successful international coaching career but, although hockey was his passion, it did not continuously provide him with remunerative employment. He looked for other opportunities and became employed in a management position earning \$70,000.00 per year. In addition, he worked "on the side" as an electrician. He acknowledged he earned approximately \$12,000.00 in 2013 and in 2014 "under the table". He also coached hockey as a volunteer. The Wife believed he received payment for his "volunteer" services. During the Interim

Hearing the Husband included hockey coaching in his additional income. In this hearing he insisted his coaching services were unpaid. He provided a letter from the Director and President of an organization for whom he provided volunteer services. This individual was not called for cross-examination and the letter confirms he was not paid for his involvement with that organization. Neither party indicated how many volunteer positions were held by the Husband and therefore this is evidence only that his involvement with this one organization did not result in payment.

[22] The Husband has admitted at the Interim Hearing and at this hearing, that he earned \$12,000.00 in tax free income in 2013 and in 2014. I accept this evidence and have included it in my analysis of his total annual income for support purposes. His typical total annual income was \$82,000.00.

[23] In May 2014, the parties separated. Although the Husband eventually contributed some money toward the then existing matrimonial debt it was insufficient to fully service that debt. Because the parties had enrolled their daughter in a private school in Ontario requiring a tuition payment of approximately \$1,500.00 per month he testified he focused on paying that debt. The Wife testified a portion of the tuition payment, as much as \$1,000.00 per

month, was paid by a “sponsor”. There is nothing to substantiate the information provided by either party.

[24] The parties did complete an Interim Hearing on April 9, 2015. The Husband was required to pay the Wife monthly child support in the amount of \$675.00 when their child returned to live with the Wife at the end of the school term.

[25] The parties’ child remains a dependent child. She is living with the Wife and she is attending University. She does have periodic employment and she has student loans. However, because she is living with the Wife, table guideline support is appropriate and is to be paid to the Wife.

### **Income Analysis:**

#### **Husband**

[26] Because coaching hockey was his passion the Husband decided, in the fall of 2016, to accept employment coaching hockey in China. He provided an employment contract with an employer in China. According to that document “The employee’s monthly salary after-tax will be \$2,000.00 USD...”. In addition, the employee is entitled to 2 round trip flight tickets to Canada per year for vacation. The employee’s cost for board and lodging as well as travel expense during

training sessions, races and projects are paid by the Association. The Husband suggests that by applying his chosen exchange rate and a gross up for Canadian tax his income is \$2,703.00 per month providing \$32,441.00 as a total yearly income. The Husband has not provided any estimate of the dollar value of the benefits he receives grossed up for tax. These must be included as income. No such calculation has been provided.

[27] The Husband does not have to pay any rent for his apartment. He does not have to pay for the food he eats. Most, if not all, of his transportation costs are paid. He walked away from an \$82,000.00 annual income to follow his bliss. He did so ignoring the financial responsibilities owed to his wife and his child. He has the education, background and experience to find employment that will provide more income than he alleges he presently receives. He is underemployed. I impute his income at \$82,000.00 per year.

[28] The Husband must pay \$694.00 per month for child support.

### **Wife**

[29] In 2014 the Wife obtained employment with a Bank at its call centre. Her hours of work fluctuate but she has had steady employment with that Bank since that time. She works as much overtime as has been made available to her. This

does create variances in her income from year to year. In 2014 her total annual income was \$11,931.00. In 2015 her total annual income was \$42,054.00. In 2016, by extrapolating from the latest pay stub she filed, it appears she will likely earn \$38,000.00.

[30] Her total annual income for 2017 will be \$38,000.00 for support purposes.

### **Spousal Support**

[31] Throughout this proceeding the Husband has been engaged in a fruitless search for monetary benefits he believes are available to the Wife. He asserts, with her present income, she is self-supporting and is no longer entitled to spousal support.

[32] Entitlement to spousal support and the objectives to consider in making an award is governed by section 15.2 of the *Divorce Act*, R.S., 1985, c.3. Section 15.2(6) creates four statutory support objectives. The Supreme Court of Canada in *Moge v. Moge* [1992] 3 SCR 813. and *Bracklow v. Bracklow* [1999] 1 SCR 420 confirmed that all four objectives are to be considered in every case but no one objective has paramountcy. If any one objective is relevant upon the facts, a spouse is entitled to receive support.

[33] In *Bracklow v. Bracklow, supra*, the Supreme Court analysed the statutory objectives and held that they create three rationales for spousal support only two of which are relevant to this proceeding:

1. Compensatory support to address the economic advantages and disadvantages to the spouses flowing from the marriage or from the roles adopted in marriage.

2. Non-compensatory dependency based support, to address the disparity between the parties, needs and means upon marriage breakdown.

[34] McLachlan, J. in *Bracklow, supra*, indicated that the basis for a spouse's support entitlement also affects the form, duration, and amount of any support awarded.

[35] A spouse suffers economic disadvantage arising out of the roles adopted in a relationship if he or she withdraws from the workforce, delays entry into the workforce or otherwise defers pursuing a career or economic independence to assume primary responsibility for home and child care. When this occurs, the spouse has an entitlement to compensatory support.

[36] 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.

[37] Self sufficiency may reduce or eliminate entitlement to non-compensatory support. It does not necessarily reduce or eliminate entitlement to compensatory support.

[38] The Wife gave up lucrative self-employment in the Netherlands many years ago, to follow the passions of her husband. She assumed primary care for their home and child. Aside from occasional casual work she has relied upon the Husband's income to meet the financial needs of herself and their daughter. There was never enough money in this family especially considering the expensive education chosen for their child, one that would involve her in an attempt to develop a hockey career. The debt carried by this family at the time of their separation is clear evidence of the fact that they were living beyond their means. After their separation, when the Husband left the country, the Wife remained

behind. He provided very little financial assistance until he was ordered to do so by way of an Interim Order.

[39] The Wife still has difficulty meeting her very modest budget. Her present employment income does not erase her compensatory entitlement to receive spousal support. The benefits she might have received, had she been in the workforce earlier, are now lost to her because of her role in this family. She must be compensated for this disadvantage suffered during the marriage. The Husband must continue to pay \$900.00 per month for spousal support.

[40] Both parties requested costs in this proceeding. In order to save time and further financial expense for the parties I will provide my preliminary assessment and give them an opportunity to respond if either wishes to do so. If neither requests a change to my preliminary assessment the order will include the costs suggested in this assessment.

[41] The Wife has been the successful party in this proceeding. I am very familiar with and have considered the cost provisions of the civil procedure rules and the case law that has developed when a cost award is requested. In this case I do consider the tariff as an appropriate place to start my analysis using \$20,000.00 as the “rule of thumb” amount involved per day.

[42] \$750.00 costs for the Interim Hearing were previously granted to the Wife.

[43] The hearing and time spent on conferences consumed a total of 4.5 hours. A day long hearing in the Family Division is scheduled from 10:00 a.m. until 4:30 p.m. with a lunch break from 12:30 p.m. until 2:00 p.m. Taking this into consideration, the time involved in this proceeding is one day. The tariff for a full day would provide a basic amount of \$4,000.00 plus an additional \$2,000.00 for a \$6,000.00 total amount.

[44] I have considered the Wife's failure to fully co-operate with the disclosure ordered in respect to any benefits available to her from the Netherlands. Because of this I reduce her cost award to \$5,000.00.

[45] Because the Wife's claim included child support \$2,500.00 of these costs shall be collect by the Maintenance Enforcement Program.

[46] The parties shall have 10 days from the date this decision is provided to them to request a conference with me, to make submissions on costs. If no request is received an Order will be prepared and issued in this proceeding including the cost award made in this decision.

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B. MacDonald, J.