SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: *MacLeod v. MacLeod*, 2017 NSSC 306

Date: 2017-11-30
Docket: *Halifax* No. 1201-068426
SFHD-094537
Registry: Halifax

Between:

Alison Joanne MacLeod

Petitioner

v.

Joseph Leonard MacLeod

Respondent

LIBRARY HEADING

Judge:	The Honourable Justice Carole A. Beaton
Heard:	September 6 and 7, 2017 in Halifax, Nova Scotia
Final Written Submissions:	September 13, 2017 by the Petitioner September 25, 2017 by the Respondent
Written Decision:	November 30, 2017
Subject:	Divorce; *Divorce Act*; Family; Family-Child Support; Family-Child of the Marriage; Family-Imputing income; Family – Spousal Support; Family – Division of Property
Summary:	Following a long-term marriage, the Court made an interim order in 2015 regarding child support and spousal support, both payable to the Wife. The Husband had historically been self-employed through his solely owned companies. The Husband subsequently declared bankruptcy in 2016 and now operates a sole proprietorship. At the divorce trial the parties disputed whether retroactive child and spousal support were due by the Husband, whether the Wife should now pay child support, entitlement and quantum of spousal support, what income to

impute to the Husband, and which party owed an equalization payment upon division of matrimonial assets.

Issues:

(1) Child support – prospective; retroactive; arrears.
(2) Spousal support – entitlement; prospective; retroactive; arrears.
(3) Division of matrimonial property.

Legislation:

Divorce Act, R.S.C., 1985, c.3; s. 2(1); s. 15.2 (4), (6);
Federal Child Support Guidelines, SOR/97-175; s. 3(2);

Cases:

D.B.S. v. S.R.G., 2006 SCC 37
Baker-Warren v. Denault, 2009 NSSC 59
Desrosiers v. Pastuck 2016 NSSC 308
Morash v. Morash, 2016 NSSC 112
Kerr v. Baranow, 2011 SCC 10

Result:

(1) i) The parties' son is not a child of the marriage. Alternatively, it is not possible to calculate child support for an overaged dependant on the evidence. There is no prospective child support payable by the Wife.
ii) The Husband owes retroactive child support.
iii) The Husband does not owe arrears of child support.

(2) i) The Wife is entitled to spousal support on a compensatory and non-compensatory basis.
ii) Prospective spousal support is set at $2,000 based upon the Husband's imputed income of $140,000.
iii) The Husband owes retroactive spousal support.
iv) The Husband owes arrears of spousal support.

(3) An equal division of matrimonial property is granted based upon the valuations accepted as found in the Wife's evidence. The Court will not require payment of the $9,000 equalization notionally owed to her by the Husband.

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION
Citation: *MacLeod v. MacLeod*, 2017 NSSC 306

Date: 2017-11-30
Docket: *Halifax* No. 1201-068426
SFHD-094537
Registry: Halifax

Between:

Alison Joanne MacLeod

Petitioner

v.

Joseph Leonard MacLeod

Respondent

Judge:	The Honourable Justice Carole A. Beaton
Heard:	September 6 and 7, 2017 in Halifax, Nova Scotia
Written Submissions:	September 13, 2017 by the Petitioner September 25, 2017 by the Respondent
Written Release:	November 30, 2017
Counsel:	Christine Doucet and Laura Kanaan, for the Petitioner Kelsey Hudson for the Respondent

By the Court:

[1] The parties came before the Court for a two-day divorce trial. They cohabited for 3 years and were then married for 18 years. Their son is now 20 years of age. The parties separated in August 2014. At an interim hearing in June 2015 the Husband was ordered to pay interim child support of $1,145 per month and interim spousal support of $2,000 per month, based upon an imputed income of $140,000.

[2] At trial sufficient evidence was provided to satisfy all the requisite elements of the *Divorce Act*, R.S.C., 1985, c.3; the divorce is granted.

[3] Evidence was led by each party on the contested issues of corollary relief:

1. Child support – prospective; retroactive (prior to the interim order); arrears;
2. Spousal support – entitlement; prospective; retroactive (prior to the interim order); arrears;
3. Division of matrimonial property.

Issue No. 1 – Child Support

(a) Prospective

[4] The parties' son resided with the Wife when interim child support was ordered, effective July 1, 2015. By October 2015 their son was living independently of either parent. On that basis, the Husband unilaterally stopped paying child support, but maintains he paid his son's rent until May 2017 when the son moved to his home. The Husband now claims child support from the Wife.

[5] The evidence satisfied me that for the period from October 2015, when the son left his Mother's home, to August 2016 he was employed and living independently. In September 2016, the son turned nineteen years old, began his current program of education and continued his employment. Apparently, he was also the recipient of both a grant and a student loan, the total of which the Husband reports exceeded $17,000.

[6] The *Divorce Act* (*supra*) defines "child of the marriage" in s. 2(1) as:

> … a child of two spouses or former spouses who, at the material time:
>
> a) is under the age of majority and who has not withdrawn from their charge, or;
>
> b) is the age of majority or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessaries of life;

[7] The evidence does not allow me to conclude that the parties' son fits or meets the definition of a child of the marriage as set out above. The son is now over the age of majority but does not appear, for all intents and purposes, to be under the charge of either parent, despite the fact he presently resides in the Husband's home. The son is not by reason of illness, disability or other cause unable to withdraw from the charge of the parents and there is no evidence whatsoever that the son is unable to obtain the necessaries of life. Prior to September 2016, although the son was then under the age of majority, I conclude he had withdrawn from either parent's charge in October 2015 when he moved to his own apartment.

[8] In the alternative, if it could be said the parties' son has been and/or continues to be a child of the marriage (which I do not accept), I turn to the *Federal Child Support Guidelines,* SOR-97-175 to consider calculation of child support.

[9] Section 3(2) of the *Guidelines* provides:

> Unless otherwise provided under these Guidelines, where a child to whom a child support order relates is the age of majority or over, the amount of the child support order is:
>
> a) the amount determined by applying these Guidelines as if the child were under the age of the majority; or
>
> b) if the court considers that approach to be inappropriate, the amount that is considered appropriate, having regard to the condition, means, needs and other circumstances of the child and the financial ability of each spouse to contribute to the support of the child.

[10] In my view, it would be inappropriate for the Court to simply apply the *Guidelines* as if the parties' son was under the age of majority (s.3 (2) (a)). To do so would command the table amount of child support, where quantum is based, among other factors, on an underlying assumption that the child has no ability to contribute to their own support. That is not the case here, although the evidence offered scant

insight into the details of the son's situation. The use of the table amount would be unrealistic and inappropriate in this case.

[11] Due to a lack of evidence, it is also difficult, if not impossible, to conduct a proper assessment of the "condition, means, needs and other circumstances" of the child, as is contemplated in section 3(2)(b). The Husband did not provide any documentation to quantify his son's employment income nor the expenses related to his post secondary program of education. The Husband agreed on cross-examination that his son has ability to contribute to the household but does not do so. There was evidence that the son's girlfriend also resides with him. The Court has no ability to assess the son's means or needs. In addition, the Wife's evidence was that the son wishes to return to her home, while the Husband's evidence was that the son will continue to share accommodations with him. It seems the son's living arrangements might be in a state of flux.

[12] The burden rests with the Husband to persuade the Court regarding an appropriate quantum of child support, which he has not done. Therefore, the Husband's claim for prospective child support is dismissed.

(b) Retroactive – August 2014 to June 2015

[13] The Wife seeks retroactive child support for the period between separation and the implementation of the interim order. The Husband maintains he has already met any retroactive child support obligation existing between August 2014 (the date of separation) and June 2015 (the date of the interim hearing), because he paid child support in that period in the table amount of $550 per month equating to his income of $65,000 per year.

[14] The Court must take into account four factors in considering whether to make a retroactive award: the circumstances of the children, the conduct of the payor, the reason for any delay in seeking support, and any hardship the award might create for the payor (per *D.B.S. v. S.R.G.*, 2006 SCC 37).

[15] At the interim hearing $140,000 annual income was imputed to the Husband. None of the trial evidence spoke to any difference or departure between the circumstances of each party and the child at separation and those that existed when the child support obligation in the interim order took effect on July 1, 2015. I am satisfied the Husband's obligation to pay both child support and spousal support was engaged effective September 1, 2014. There was no evidence to support a conclusion that the timing of the Wife's interim application, filed in February 2015, should now

preclude her claim for retroactive support between the date of separation and the making of the interim order. The same obligation identified in the interim order can properly be applied to the retroactive period. Child support monies could undoubtedly have been utilized during that transitional time in the family's situation, for the benefit of the child, who was then residing with and under the Mother's charge. To the extent that any award of retroactive support might be seen as a hardship to any payor, there is nothing in the Husband's circumstances that persuades me he cannot meet that obligation if given sufficient time to do so.

[16] The repayment arrangement the Court is prepared to require is that proposed by the Wife in her submissions. The details, which are tied to the discussion on the question of arrears of spousal support, are discussed in the conclusion at the end of this decision.

(c) Arrears

(i) October 2015 – August 2016

[17] When the child moved out of the Wife's home in October 2015 the obligation of the Husband to pay child support to the Wife was effectively at an end for the reasons set out above as to entitlement. There is no child support owed by the Husband to the Wife for the period from October 2015 to August 2016.

(ii) September 2016 -September 2017

[18] The Husband seeks arrears of child support from the Wife for the period after the parties' son left his apartment and returned to the Husband's home in August 2016. Applying the same reasoning set out above, I am satisfied there was no child support obligation flowing from the Wife to the Husband during that time; as such no arrears are owed by her for that period.

Issue No. 2 – Spousal Support

(a) Entitlement

[19] Both parties testified they cohabited for approximately 3 years prior to marriage, following which they moved to western Canada, where the Wife was employed as a medical secretary and the Husband was employed as a plumber. The Husband was the "main breadwinner" and the Wife was primarily responsible for the home.

[20] Eventually the parties returned to Nova Scotia, where the Husband began his own plumbing company, and later an electrical business, and the Wife secured her current employment. Initially the Wife was hired in a 0.3 position which, over time, progressed to a 0.7 position and then a full-time position. The Husband continued to put his energies into building the businesses and renovating the matrimonial home. He was often "on-call" during evenings and weekends. The parties continued their same division of labour and responsibilities within the family unit. This is not to diminish the Husband's role, or suggest that the he did not contribute to tasks associated with the home and child-rearing, but rather to say that the parties' division of their time among their responsibilities saw the bulk of the domestic and parenting tasks fall to the Wife.

[21] Both parties gave evidence theirs was a comfortable lifestyle, including acquisition of recreational vehicles (e.g., boats, motorcycles) and travel. While the Wife currently earns just over $45,000 per year, I am satisfied the lifestyle the parties enjoyed during the marriage was possible due to the Husband's more significant income earning capacity.

[22] In assessing a spousal support claim, the Court is required to consider the factors and objectives set out in sections 15.2(4) and (6) of the Divorce Act (*supra)*:

> (4) In making an order under Subsection (1) or an interim order under Subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including:
>
> (a) the length of time the spouses cohabited
>
> (b) the functions performed by each spouse during cohabitation;
>
> (c) any order, agreement or arrangement relating to support by their spouse.
>
> • • •
>
> (6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should:
>
> (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its break down;
>
> (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
>
> (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage;

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

[23] The Husband challenged the Wife's entitlement to spousal support and argued that it is, at most, a non-compensatory claim. He was also critical of the Wife's failure to seek any contribution to her household expenses from her adult daughter, who was temporarily residing with the Wife at the time of trial. I am satisfied, based on the Wife's evidence as to the specific circumstances of her daughter's stay, that any financial burden incurred by the Wife as a result thereof is negligible, if at all. It does not in any meaningful way impact the Husband's obligation to pay spousal support.

[24] The parties had a long-term marriage. The Husband's historical income establishes he was filing tax returns reporting *taxable* income of double and triple the Wife's salary in the years prior to separation.

[25] I find that it was due to the division of labour and the roles and responsibilities assumed by each party during the marriage, that the Husband was able to turn his focus and time to building his businesses. In their respective roles, the Wife was not in any position to remotely approximate or surpass the Husband's income earing ability. The greater emphasis during the relationship was on the Husband's career. The end of the marriage found the Wife able to continue to earn an income but no longer with the augmented financial capacity available to her as a result of the Husband's earning power.

[26] The Wife has been employed in her field for many years. There is no reason for the Court to accept that she is not engaged in pursuing self-sufficiency insofar as is practicable given her age, education and employment history (regardless of her somewhat financially questionable aim of retaining the matrimonial home). The Wife has been shouldering all of the responsibility for matrimonial debt for some time. She is in a significant monthly deficit position. The evidence supports that the Wife's claim for both compensatory and non-compensatory support is valid and justified.

(b) Prospective

[27] What is the appropriate quantum of support on a prospective basis? This requires consideration of the Husband's income, which evidence consumed much of the focus of the trial. The Wife sought to have the Court impute to the Husband an annual income of $185,000. The Husband asked the Court to find he earns $40,000-

$60,000 per year. Consideration of imputation of income in this case has also been informed by an assessment of the Husband's credibility, pursuant to the principles discussed in *Baker-Warren v. Denault*, 2009 NSSC 59.

[28] It is well settled law that the concepts surrounding calculation and imputation of income found in the *Guidelines (supra)* are equally transferable to the spousal support context. Determination of income is governed by sections 15 to 18. Section 18 is of particular importance in this case given the Husband's history as owner of his company(ies) and, after his bankruptcy in 2016, his status as a sole proprietor. Section 19 provides the Court's authority to impute income.

[29] In *Desrosiers v. Pastuck* 2016 NSSC 308, Forgeron, J. discussed the guiding principles to be used when determining income:

> [82] Given these facts, it is important to review relevant legal principles which are applicable to the determination of Mr. Pastuck's income. These principles include the following:
>
> - Courts must base child support on an annual income; it is incorrect to adjust for seasonal employment changes. It is the payor's responsibility to budget: **Peters v. Evenson**, [2003] B.C.J. 948 (S.C.)
>
> - The burden is on the payor to prove that their income will be less than in previous years: **MacLellan v. MacDonald**, 2010 NSCA 34 (CanLII).
>
> - The objectives of the *Child Support Guidelines* must be applied when interpretation issues arise, including the objective that child support awards should ensure consistent treatment for parents and children who are in similar circumstances.
>
> - Section 18 of the *Guidelines* does not require proof of bad faith before it is invoked.
> - Section 18 of the *Guidelines* authorizes the court to attribute all or part of the pretax corporate income to the payor's annual income for child support purposes. The only guidance as to how much of the corporate's pretax income should be included is the reference to s.17, which in turn references historical income patterns and non-recurring gains and losses.
>
> - In the absence of evidence from the shareholding payor to establish that the company's pretax income is unavailable to him, the court will presume availability: **Richards v. Richards, 2012 NSCA 7 (CanLII).**

- Personal benefits paid to, or on behalf of shareholders will be considered by adding the value of those benefit back into the pretax corporate income: **Jenkins v. Jenkins, 2012 NSSC 117 (CanLII)**.

- Section 19 of the *Guidelines* also applies in that s.18 references s.16 which in turns references ss. 17 to 19. Section 19 (1)(g) provides the court with the jurisdiction to impute income where the payor unreasonably deducts expenses from income. Section 19(2) states that the reasonableness of a deduction is not solely governed by whether the deduction is permitted under the *Income Tax Act*.

- A business owner cannot simply file a copy of their most recent income tax return and expect that their net business income will be equated with their income for child support purposes. The business owner must demonstrate, among other things, that the deductions should reasonably be taken into account in the determination of income for the purpose of calculating child support: **Wilcox v. Snow,** 1999 NSCA 163 (CanLII).

- The burden is on the payor to supply meaningful disclosure to support the expense, failing which an adverse inference can be drawn: **Wilson v. Wilson**, 2011 ONCJ 103 (CanLII).

- A payor who seeks to deduct a business expense must provide reasons for the expense, and must provide documentary proof in an organized fashion to enable the court to make a proper determination: **Monohan-Joudrey v. Joudrey**, 2012 ONSC 5984 (CanLII), paras 33 – 34.

- When examining business expenses, the court will likely accept expenses which are necessary to earn income. In contrast, discretionary expenses, such as entertainment or promotional expenses, even if deductible from taxable income, will be more readily reduced or disallowed: *Child Support Guidelines in Canada, 2015*, Julien and Marilyn Payne, Irwin Law, p. 210.
- The court must take a principled approach by balancing the business necessity of the expense against increasing the quantum of the disposable income available for child support. What is the extent of the personal benefit derived from the expense, if any? Is it reasonable in the circumstances? Does the deduction, is its entirety, result in a fair representation of the payor's disposable income?: *Child Support Guidelines in Canada, 2015*, Julien and Marilyn Payne, Irwin Law, pp 204-205.

[30] I consider the same principles, to the extent each may apply, in light of the evidence provided (and lacking) regarding the Husband's financial situation.

[31] Determining the Husband's income has proven to be a challenge. Much of his documentary evidence was incomplete and/or lacking, permitting the Court to draw a negative inference where there were information or documentation gaps. Cross-examination revealed numerous gaps and/or inconsistencies in his evidence. Merely by way of example, I note the following:

a. the Husband did not file his original (as opposed to re-filed) 2011, 2012 and 2013 income tax returns, (which refiling had the effect of reducing almost by half his taxable income). Nor did he call evidence from the person who prepared his post-separation business financial statements and tax returns, which would have been key to explaining or supporting the Husband's position that he does not have a post-separation income earning history that could support imputation of income at the level sought by the Wife. I question the Husband's mere assertion that he could not locate that person.

b. The Husband's former employee Mr. Beaton was called by the Wife. Among other matters he spoke to the Husband's historical practices regarding treatment of cash payment of company invoices. It was clear from Mr. Beaton's evidence that while he may not have been directly involved with the business bookkeeping, he was well aware of the Husband's emphasis on cash sales and treatment of cash sale invoices. By contrast, the Husband maintained that cash was indeed recorded on the books of the business, in complete contradiction to his repeated assertions about his lack of involvement with and absence of understanding of the books of the company.

c. The Husband claimed personal expenses not shown in his sworn Financial Statement, and he has clearly claimed as business expenses certain expenses which are personal in nature.

d. Despite being adamant he could not articulate the book-keeping intricacies of his business, the Husband was able to provide detailed and rather elaborate explanations when questioned about certain business expenses over this past year. Either the Husband was attempting to mislead the Court about the breadth and depth of his knowledge, or more likely, his lack of knowledge is the case and his efforts were only to try to explain away certain "business" expenses (clearly personal in nature) which he

perceived would cast him in a negative light (e.g., large cash advances taken at bars and restaurants). Neither alternative aided his credibility.

e. When the Husband was taken through the 2011, 2012 and 2013 business income tax returns they established approximately $425,000 in shareholders loans or "other income", for which the Husband could only explain that the company did not have the money, he did not have the money and he did not understand how those amounts could be identified because whatever money had been available was spent. Whether the suggestion put to the Husband was there was income attributable to him that had been repaid to shareholders loan(s) or that the company owed him money and returned it to him, the Husband's lack of knowledge of the company's finances and the personal consequences for him underscored the Court's conclusion he has no real grasp on his level of income.

[32] Counsel for the Husband submitted that merely because there are historical shareholders loans shown on the books of the company, that does not equate to properly imputing a current income of $180,000 to the Husband. Even if I accept the Husband has no concept of the implications for assessment of his own income of certain entries on the business financial statements, nonetheless the Court can conclude from his evidence that the Husband has been and continues spending based upon the revenues he generates. Documents before the Court established the Husband has been spending, and therefore earning, much more than the $40,000-$60,000 per year he suggests.

[33] As was done during the marriage, after separation the Husband continued to use one bank account; that is to say, he used one account to both conduct his business operations and to finance his personal expenses and lifestyle. This practice continued after he went bankrupt in September 2016, and to this time he continues to mix business and personal affairs.

[34] The whole of the evidence persuaded me everything that goes into the lone account comes out, or to put it more plainly, everything the Husband makes he spends. Indeed, the Husband stated as much several times in cross examination. This same practice was conducted during the marriage, as corroborated by the Wife's evidence on the point.

[35] I conclude the Husband makes more money than he believes or understands (at best) or than he admits (at worst). The Husband's repeated mantra that he does

not understand the intricate details of his business and/or personal finances neither absolves him of his obligation to pay spousal support, nor permits him to effectively throw his hands in the air and claim he is unable to pay.

[36] I strongly question the motivation of the Husband in winding up his company in June 2016 in favor of a sole proprietorship, despite that company having reported revenues of $417,561 in 2015 and $368,752 in the first 6 months of the fiscal year 2016. It is difficult to reconcile those numbers with the Husband's bald assertions, without out proof, that at that time the company was "suffering" and that he currently continues to be "crushed" by competition. Regrettably, the timing of that event would seem consistent with Mr. Beaton's evidence regarding the Husband's stated post-separation intention to avoid paying spousal support.

[37] The Husband repeatedly claimed there has been a downturn or reduction in work available to him as compared to when the parties were married. He was extensively cross-examined on his bank accounts for the period July 1, 2016 to June 30, 2017. Focusing on business activity only after the Husband's bankruptcy, based on the gross revenues realized, I again conclude that while the Husband spends what he makes, he has more money available to him than the $40,000-$60,000 per year he estimated he earns.

[38] Cross-examination of the Husband established that in the first three months of 2017 the Husband's business revenues were approximately $190,000, yet he was unwilling to agree this level of work would continue in future and stated the business is struggling, despite agreeing that he had not produced any numbers which could point to a decline in gross revenues and despite agreeing that certain of his expenses are inflated (e.g., telephone and motor vehicle costs). The Husband's most recent Statement of Expenses showed sizeable superfluous expenses, (e.g. gym memberships, boat moorage fees) during a time when his spousal support obligation has fallen seriously into arrears. Notably, the Husband no longer has any debt to service as his 2016 bankruptcy effectively transferred all of that burden to the Wife.

[39] The Husband agreed in cross-examination that at this time he does not know what his salary is; either he has no accurate idea of his actual earnings or he pleads ignorance to avoid the issue.

[40] The Husband argued there is no proof to support the Wife's assertions about his lifestyle and that there is no evidence he is living beyond his means, however cross-examination established there is more money available to him than he claims he makes, which accords with his acknowledgment that he really does not know how

much he makes. The activity in his bank account allows me to make conclusions about the Husband's level of income.

[41] While he argues that he is not underemployed, it is clear to the Court the Husband is either uninformed and/or inaccurate about his available income, or untruthful about the same. There was no persuasive evidence to support that the Husband has any constraints on his ability to work at the same level as he was doing both before and after his bankruptcy. (*Morash v. Morash*, 2016 NSSC 112).

[42] Examination of the Husband's business sales revenue for the period September 14, 2016 to March 31, 2017, averaging $17,300 per month, would extrapolate to total annual sales of approximately $207,700 over a 12-month period. Given the Husband is the only person drawing a salary, and including or allowing for business expenses of 25% (a figure advanced by the Husband) he would still have in excess of $155,700 going into the mixed business/personal account, not including or ignoring his historical practice surrounding cash sales. All of this supports that imputing $140,000 per year to the Husband, as was done at the interim hearing, continues to be reasonable and realistic, if perhaps somewhat conservative. That figure more than favorably balances any possible tension between the Husband's (unproven) assertions that his earning power is suffering and the reality of his historical practice of earning some income "under the table".

[43] Prospective spousal support is payable effective October 1, 2017. Given all of the evidence as to the Husband's finances and the Wife's finances, I agree with the submissions of counsel for the Wife that spousal support of $2,000 per month is appropriate, as was previously required by the interim order.

(*c*) *Retroactive – September 2014 to June 2015*

[44] The Wife seeks retroactive spousal support for the period from the date of separation to the date of the interim order (September 1, 2014 through June 30, 2015). Pursuant to the direction found in *Kerr v. Baranow*, 2011 SCC 10, I have applied the "*D.B.S.* factors" (as discussed earlier in relation to child support). As with the claim for retroactive child support, there was no evidence before the Court to support a conclusion that the Wife's needs or the Husband's situation were any different in the period after separation than at the time of the making of the interim order. There was nothing in the evidence that addressed any suggestion of unreasonable or untoward delay in the timing of the Wife's interim motion (filed February 2015). The period of time between the two events would seem neither unusual nor remarkable in the absence of any evidence to suggest otherwise. Any

hardship that might be occasioned by a retroactive award, (and I am not persuaded that there would be any) if it could be said to exist, can be offset by a reasonable plan for repayment.

[45] As with repayment of retroactive child support discussed earlier, the repayment arrangement the Court is prepared to require is that proposed by the Wife in her submissions. The details are discussed in the conclusion at the end of this decision.

(*d*) *Arrears*

[46] The Wife claims arrears of spousal support owing for the period between the making of the interim order (effective July 1, 2015) and the trial. The evidence supports (and there was really no dispute) that arrears are owed as the Husband has not met in full his monthly obligation pursuant to the interim order.

[47] I am compelled to note it was entirely unacceptable that the Husband chose to buy back from his Trustee in Bankruptcy at a cost of $881 per month several of the recreational vehicles which formed part of his asset pool at the time he sought protection from creditors in 2016. This was during the same period he was consistently failing to meet his obligation under the interim order. His decision demonstrated a failure to prioritize his spousal support obligation. Those arrears will have to be repaid in monthly installments as discussed in the conclusion at the end of this decision.

Issue No. 3 - Division of Matrimonial Property

[48] There was no dispute between the parties that an equal division of matrimonial assets is appropriate. The asset picture of the parties is not complicated. The two most significant assets are the matrimonial home and the Wife's employment pension. The net value of the home after disposition costs (as agreed by the parties) is exceeded by the total of the encumbrances: a mortgage, a home line of credit, and the Husband's obligation of $18,473 to the Canada Revenue Agency. The Husband's bankruptcy has had the effect of transferring each of those obligations, plus a joint line of credit and two credit card balances, to the Wife. The Wife has been for some time solely responsible for servicing the matrimonial debts.

[49] I accept and the evidence supports the valuations set out in the Wife's asset and debt chart, which identifies total assets of $298,757, of which $23,170 are held by the Husband and $275,587 held by the Wife, reflecting her occupation of the

matrimonial home. These amounts are offset by the matrimonial debt listed above, totalling $270,478, all of which is now the responsibility of the Wife. The Husband's Trustee in Bankruptcy has executed a Deed in the Wife's favour transferring his interest in the matrimonial home, and while the Husband argued that he is owed an equalization payment, the valuations and calculations I accept allow me to conclude the Wife is notionally owed an equalization payment of $9,000 from the Husband.

[50] Counsel for the Wife requested that if the Court accepted her position as to division of matrimonial property, which I do, that the Court then decline to direct payment of the equalization amount at the Wife's request. Therefore, as requested, the Corollary Relief Order shall include a recognition that each party retains the items of personal property in their current possession, and that the matrimonial home and the Wife's pension become her sole property. All "Airmiles" held by the parties become the property of the Wife with the Husband's consent.

Conclusion and Summary

[51] Finally, the parties agreed the Husband made total combined child and spousal support payments of $16,230.50 between August 2014 and June 2015. At the commencement of the hearing the parties agreed the Court can be satisfied that any funds paid by the Husband identified as child support after October 2015 may be properly credited against spousal support arears presently owed by the Husband.

[52] I accept the math and submissions set out by the Wife's counsel regarding the total monies outstanding and owed by the Husband relating to retroactive and arrears payments due. The sum of $44,600 is owed. It shall be repaid at the rate of $1,000 per month effective February 1, 2018 (to provide a grace period) and continuing on the 1st day of each and every month thereafter until paid in full.

[53] By this decision, the Court has effectively forced the Husband to begin to do what he has failed to do to this point, which is to "get his financial house in order". He is possessed with income earning capacity of which to avail himself, if he can appreciate the merit in retaining reliable and qualified financial services to assist him. His spousal support obligation gives the Husband a tax cushion that he can also employ to his advantage. If he truly does not understand his financial situation, it is time to stop ignoring the reality and start focussing on how to structure his finances to meet his obligations.

[54] In summary, the following orders shall issue, consented as to form by counsel for the Respondent:

a. Divorce Order;

b. Corollary Relief Order containing provisions identifying:

   i. no prospective child support;

   ii. retroactive child support payable by the Husband representing the difference between the amount paid and the amount owed in the relevant period;

   iii. no arrears of child support owned by the Husband for the period October 2015 to August 2016 and no child support payable or owed by the Wife for the period September 2016 to September 2017;

   iv. prospective spousal support on the basis of the Wife's compensatory and non-compensatory entitlement, payable by the Husband effective October 1, 2017, based on an imputed income of $140,000 per year, in the amount of $2,000 per month;

   v. retroactive spousal support and arrears of spousal support in the combined total of $44,600 payable at the rate of $1,000 per month effective February 1, 2018.

   vi. credit to the Husband for any monthly child support paid by him after October 2015, to be applied against arrears of spousal support; and

   vii. an equal division of matrimonial property, with each party retaining the assets and personal property in their respective current possession, including but not limited to the matrimonial home and the Wife's pension plan.

[55] The Petitioner asked to be heard on the question of costs. I urge the parties to make every effort to reach a resolution on the matter; continued litigation is hardly in the interest of either party at this point. In any event, entitlement to and quantification of costs cannot be fully undertaken or assessed as the Court would need to know the nature of any offers to settle exchanged. Barring a resolution of the costs matter by **January 3, 2018**, counsel may then write the Scheduling Office to request one hour on my docket on the issue. In preparation for the appearance the Petitioner shall file brief submissions on the question no later than seven days prior to the date and the Respondent shall file the same two days prior.

Beaton, J.