

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Morrison v. Morrison*, 2018 NSSC 119

Date: 2018-03-06
Docket: No. 1206-6767
Registry: Sydney, NS

Between:

Cory Morrison

Applicant

v.

William Morrison

Respondent

LIBRARY HEADING

Judge: The Honourable Justice Robert M. Gregan

Heard: July 24, 25, 26, 27, September 7, and December 19, 2017,
Sydney, Nova Scotia

Oral Decision: March 6, 2018

Written Decision: May 15, 2018

Subject: Divorce

Summary: The Applicant seeks spousal support and division of assets.

Issues

- (1) Length of Cohabitation
- (2) Spousal Support
- (3) Division of Assets

Result: Spousal support granted and asset division.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.
QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.***

By the Court:

Background

[1] Like many couples, Cory Morrison and William Morrison have depended upon the boom and bust of the energy sector in Canada to provide for them economically.

[2] Also, as is the case in too many divorce proceeding, there has been allegations of abuse, mental, physical and financial, as well as addictions to alcohol, drugs and gambling.

[3] Against this backdrop, the court must determine the following issues:

- Length of cohabitation;
- Spousal support; and
- Division of property.

[4] It is not disputed that Cory Morrison, who is 39 years of age, and William Morrison, who is 58 years of age, were married on November 17, 2012. Although the exact date of separation is uncertain, it is acknowledged that the parties

separated in September / October 2014, and have remained living and apart since that time.

[5] A Petition for Divorce was filed August 28, 2015. The Petition did not specify the length of time the parties cohabitated, nor did it specify the date of separation, although as stated, the agreed date of separation is between September and October 2014.

[6] Grounds for divorce in the Petition sought were physical and mental cruelty. Counsel for Ms. Morrison has requested amendment to be on grounds of living separate and apart with no possibility of reconciliation. This was done by consent of the Parties.

[7] I find that all of the jurisdictional requirements have been met. The parties were married; they lived separate and apart since September or October 2014; there is no possibility of reconciliation; they were ordinarily residents of Nova Scotia at least one year prior to the commencement of the divorce proceeding; and that the divorce was for no improper motive.

[8] I would therefore grant the divorce, as well as the request of change of name by Cory Morrison to “Cory MacPhee”.

[9] I turn now to corollary relief matters.

[10] Cory Morrison sought in the Petition for Divorce the following relief:

- Spousal support both interim and final;
- Exclusive possession of the matrimonial home at Argyle Street, Glace Bay;
and
- Division of property.

[11] In William Morrison's Answer that was filed, he seeks:

- Unequal division of the matrimonial property; and
- Challenges entitlement to spousal support.

[12] An interim hearing was held in the matter on October 6, 2015. In a written decision, **Morrison v. Morrison**, 2015 NSSC 328, I ordered that Cory Morrison be granted exclusive possession of the matrimonial home, and based on an imputed income to William Morrison of \$200,000.00, I awarded spousal support payable to Cory Morrison in the amount of \$3,250.00 per month commencing on September 1, 2015, as well as costs against William Morrison in the amount of \$2,000.00.

[13] While the court found spousal support to be payable on both a compensatory and non-compensatory basis, the court placed emphasis on the interim nature of

the proceedings, and that the non-compensatory factors of means and needs were the most significant factors, as set out in **Richards v. Richards**, 2012 NSCA 7.

[14] In addition, findings at the interim hearing were made based upon the limited evidence provided at the interim hearing.

[15] Following the decision in January 2016, a fire occurred at the matrimonial home.

[16] At the time the fire occurred, Cory Morrison, though having been granted exclusive possession of the home, was not residing full time in the home. From the evidence, I accept she was staying back and forth between the matrimonial home and her parents' home.

[17] Cory Morrison said she was doing so because of the lack of financial support by William Morrison, both spousal support under the court order, and his refusal to pay utilities. All of which prevented her from being able to remain in the matrimonial home fulltime.

[18] The fire occurred while Cory Morrison and her brother, Patrick, were in the home late one evening checking on the home and the family cat. From the fire investigation, the fire started in the basement, and the cause of which remains unknown.

[19] The circumstances of the fire are relevant to these proceedings in so far as a fire occurred, requiring substantial renovations, and the renovations were covered by the insurer. Also, the agreed value of the home following renovations was \$106,000.00. In addition, it was agreed that there remains an outstanding claim with the insurer, as well as a claim regarding the contents of the matrimonial home.

[20] I also accept from the evidence, that William Morrison was the sole named insured on the insurance policy for the home.

[21] It was not disputed that Cory Morrison was advanced from the insurer, \$2,500.00 to cover incidentals for living expenses, as well as accommodations at a hotel up until May 16, 2016. At that time, Cory Morrison was advised by the insurer that she was no longer considered an insured. She has since resided with family and friends.

[22] The court heard evidence during the divorce hearing on July 24, 25, 27, 27, September 7 and December 19, 2017. A number of exhibits (20) were tendered and I have considered those, along with testimony from a number of witnesses.

[23] I turn now to deal with the outstanding issues.

LENGTH OF COHABITATION

[24] This is an important issue that requires analysis because it is a relevant factor in determining spousal support, and because William Morrison seeks an unequal division of matrimonial property.

[25] To reach a conclusion, I must review the evidence of the parties as well as other witnesses and make findings of credibility on this issue, as well as other issues raised. Guidance regarding findings of credibility can be found in **Baker-Warren v. Denault**, 2009 NSSC 59, and the cases cited therein. Those cases were referred to in the brief submitted by counsel for the Applicant.

[26] Cory Morrison testified that she met William Morrison in 2004 at the Main Event Club. She testified she knew him previously, because of her father and his work. Ms. Morrison said after they met at the Main Event Club, she and Mr. Morrison dated for two weeks and from there, within 4 months they were living together. Ms. Morrison said that when she met Mr. Morrison, she was working full time at Stream Call Center for 2 years, but quit her job and went on Employment Insurance and followed Mr. Morrison to Sarnia, Ontario, while he sought work.

[27] That was Ms. Morrison's evidence at the hearing. That evidence however, was different than what she provided in her Statement of Contact Information, Exhibit 1 – Tab 6, where 2002 was listed as the date at which they began cohabitating.

[28] Also, in her testimony from the interim hearing, she had said that they began living common law in 2002, and I also note that 2002 was also referenced in Ms. Morrison's counsel's submissions.

[29] Mr. Morrison acknowledges that when he met Ms. Morrison, she was working at Stream, however, he said it occurred in 2007. He acknowledged also that at some point after they met, he did go to Sarnia, Ontario, and that Ms. Morrison "followed him".

[30] Both parties acknowledged that when Ms. Morrison moved in with Mr. Morrison, her son, Austin would stay with the parties on the weekends, but would reside primarily with his grandparents through the week.

[31] Austin testified in these proceedings as well. Austin was 16 years old at the time he testified. He said he was 4 or 5 years old when he met Mr. Morrison.

[32] In addition, Ms. Morrison's father, Gordon MacPhee, during his testimony, said that when Austin was 5 or 6, child welfare became involved and Austin was

no longer permitted to stay with the parties at the home, though Austin continued to do so on a limited basis on the weekends.

[33] I accept the evidence of both Austin and his grandfather on these points. If Austin met Mr. Morrison when he was 5 or 6, it would have been in 2005 or 2006, and not 2004 or 2002, as testified to by Ms. Morrison at the interim hearing and in her statement of contact information filed with the court on August 28, 2015.

[34] Further problematic, is as stated by Gordon MacPhee, if Austin was 5 or 6 when child welfare was involved, than it would have been in 2006 or 2007.

[35] I have also reviewed Exhibit 15, which is the income tax returns of Ms. Morrison between 2000 and 2015. Ms. Morrison's income tax returns reveal that the only two years she received income during that time period, according to the T4's and EI, was from 2005 to 2007. Except for 2008 when she reported \$1.00 on the T4 return.

[36] If Ms. Morrison, as she testified, was working two years at Stream when she met Mr. Morrison, it must have been two years after 2005, and therefore, either 2006, or 2007 as testified by Mr. Morrison.

[37] I find cohabitation therefore began in 2007 as testified to by Mr. Morrison. Where his evidence on this point differs from Ms. Morrison, I accept his evidence

for the reasons stated above. His evidence is in keeping with all of the other evidence.

[38] In addition, Ms. Morrison's evidence on the point differs from the interim hearing as I stated, and also her statement of contact information. Also, Ms. Morrison had acknowledged on the stand and as testified through Dr. Munshi, gave conflicting information to him and Dr. Ali, which was attributed to difficulty recalling dates.

[39] I therefore prefer the evidence of Mr. Morrison on this issue.

[40] Having established that the parties began cohabitating in 2007, now long did the cohabitation last and when did it cease? This is the next question I must answer.

[41] Mr. Morrison stated that they moved to Sarnia, Ontario, returned to Cape Breton and moved back and forth between Cape Breton, Flin Flon, Edmonton, Saskatchewan, and during that time they were not common law, and that Ms. Morrison followed him to the job sites and would often leave to "party". This argument was advanced at the interim hearing and was rejected. I have heard nothing from the evidence at this hearing to overturn this determination. In fact, Mr. Morrison, at this hearing, confirmed even if there were periods of time he and

Ms. Morrison were not together, it would only be for a few days or weeks and she would return to their residence.

[42] Mr. Morrison also said that he delayed in relocating to Saskatoon from Edmonton, because he did not want to leave without Ms. Morrison. I therefore accept that the length of the cohabitation was from 2007 to September 30, 2014.

[43] It is not clear from the evidence when they began cohabitating in 2007, and therefore for the purposes of both spousal support and division of property, I will round it up to 7 years.

[44] Having established 7 years as the length of cohabitation, I now turn to the issue of spousal support.

[45] Analysis of spousal support requires consideration of 3 elements:

- Entitlement;
- Quantum; and
- Duration.

[46] I begin with section 15 of the *Divorce Act*. Section 15.2(4) reads as follows:

Spousal support order

15.2 (1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse.

Factors

(4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including

(a) the length of time the spouses cohabited;

(b) the functions performed by each spouse during cohabitation; and

(c) any order, agreement or arrangement relating to support of either spouse.

[47] Section 15.2(6) of the *Divorce Act* reads as follows:

Objectives of spousal support order

(6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should

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

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

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

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

[48] Under the case authorities as well of **Bracklow v. Bracklow**, [1999] 1 SCR 420 and **Moge v. Moge**, [1992] 3 SCR 813, the courts have determined the 3 categories of spousal support on the basis:

- compensatory - which has been described as support to address economical advantages and disadvantages flowing from the marriage and the role adopted during the marriage;
- non-compensatory support which has been described as being to address the disparity between the needs and means of the parties and arising from the marriage breakdown; and
- contractual spousal support obligation either expressed or implied (which does not apply here).

[49] I will now review compensatory and non-compensatory claims as it relates to this matter.

NON-COMPENSATORY CLAIM

[50] At the time of the interim hearing, I found that Ms. Morrison had a need for spousal support. As referenced earlier in my decision, Ms. Morrison was unable to remain in the matrimonial home on Argyle Street, due largely to non-payment of support by Mr. Morrison. As a result, Ms. Morrison had to rely on social

assistance and help from family members. I am satisfied that a need for spousal support exists and has been borne out by the evidence.

[51] I now turn to the issue of means. Again at the interim hearing, I found Mr. Morrison had the means to pay spousal support. It was based upon an imputed income to Mr. Morrison of \$200,000.00. At the time, Mr. Morrison had suffered a sudden and unexplained lay off. From the evidence at this hearing, I find Mr. Morrison can no longer maintain an income of \$200,000.00 as attributed to him.

[52] Nonetheless, between EI and income from the Maritime Link Project, Mr. Morrison continues to have the means to pay spousal support. Mr. Morrison's sister, Ms. Atkinson, testified that she paid a number of bills on Mr. Morrison's behalf. She classified those payments as a loan for which she expected to be repaid. The court was provided no documents as evidence of a loan or promissory note, but rather a summary. Courts have consistently been cautious in ascribing loans to family members in the context of matrimonial property proceedings.

[53] In addition, while Mr. Morrison may very well have "tapped" family members to cover debts while awaiting processing of an EI claim either when he returned from British Columbia, or awaiting payment between jobs, based upon his bank records, he has had ample reserves to cover his living expenses.

[54] In addition, through cross examination, it was established that he made regular withdrawals of significant amounts from his bank accounts. A large number of these withdrawals went on unexplained items. Others were purported to pay off recurring credit card purchases by Mr. Morrison for which no receipt was provided.

[55] As well it was conceded that there were a number of online gambling purchases, as well as a weekend at the Casino in Halifax. All while minimum spousal support payments were made involuntarily by garnishee.

[56] I therefore find that Mr. Morrison has the means to pay spousal support.

[57] Before turning to the issue of compensatory claim, I would also say this about need. I find based upon the evidence of Dr. Munshi, that Ms. Morrison presently suffers from psychological conditions that prevent her from working. I will have more to say about Dr. Munshi's evidence under the category of quantum.

COMPENSATORY CLAIM

[58] I turn now to issue of compensatory claim for spousal support. At the interim hearing I found Ms. Morrison was entitled based on the limited evidence for a compensatory claim. I found that the parties had agreed that Ms. Morrison

would give up employment in Cape Breton to travel with Mr. Morrison during his travel to work sites. Both Ms. Morrison and Mr. Morrison would have been aware that the move would not be a permanent relocation and would, as in the past, be only for the duration of Mr. Morrison's work on the project, and that they would return to Cape Breton when the project was completed. Mr. Morrison continued with the same Union and with same benefits , security and seniority and pension. Ms. Morrison on the other hand, would take temporary employment and had none of those benefits.

[59] In addition, the court found that at the interim hearing that Mr. Morrison retained complete control and absolute authority over the parties finances. Nothing from the evidence at this hearing has led me to conclude otherwise.

[60] The activities of Mr. Morrison post hearing confirmed this. Mr. Morrison did not pay the ordered spousal support until his wages were garnished. He did not pay the costs that were awarded against him, nor did he advance Ms. Morrison interest with respect to the insurance claim on the home from the fire damage.

QUANTUM

[61] I turn now to the issue of quantum. This requires me to look at the circumstances of each party and determine their respective incomes and the appropriate level of spousal support.

POSITION OF CORY MORRISON

[62] Ms. Morrison through her counsel, said that she is unable to work at the present time and should be attributed zero income. She relies on the evidence of Dr. Munshi for this assertion. She also says that Mr. Morrison should have a high level of income and that it should be imputed in the amount of \$185,000.00 owing to previous patterns of income.

POSITION OF WILLIAM MORRISON

[63] Mr. Morrison says through his counsel that Ms. Morrison is trained as an esthetician and is capable of working. He urges the court to impute an income based on (Exhibit 9 – Tab 16 – Page 164) Job Bank and Statistical Information of an hourly wage between \$10.85 and \$21.63 per hour, which translates into a projected annual income of \$25,000.00.

[64] Mr. Morrison says regarding his income, that given the lack of available work and his age, that his potential income should be imputed at \$40,706.00 on a prospective basis.

ANALYSIS

[65] I turn now to deal with the income of Ms. Morrison. As stated, Ms. Morrison relies upon the evidence of Dr. Munshi to establish that at the present time, she has no income. Counsel set out their position with respect to the evidence of Dr. Munshi in their written submissions and I will refer to them briefly.

[66] Mr. Conohan, for Ms. Morrison, says that Dr. Munshi categorized Ms. Morrison as suffering from generalized anxiety disorder, panic disorder, opiate use disorder, and alcohol use disorder. Mr. Conohan says on behalf of his client, that Dr. Munshi indicated that Ms. Morrison's situation is chronic and she is not capable of being employed, and he also noted that Dr. Munshi noted lack of financial support contributed to and perpetuated her condition.

[67] Mr. Barry and Mr. MacPhee , on behalf of Mr. Morrison, take issue with much of Dr. Munshi's evidence for reasons set out at pages 4 to 9 of their written submissions. Counsel cited a number of authorities, and as well referenced Civil Procedure Rule 55.13.

[68] Mr. Barry and Mr. MacPhee say that Dr. Munshi's report should be struck in its entirety. Although as I said, they listed a number of authorities, those authorities speak to the limiting of direct evidence, and do not, in my view, stand for the proposition that the report should be excluded in its entirety.

[69] As well, counsel for Mr. Morrison says that Dr. Ali's notes should not have been considered and Dr. Munshi's evidence was corrupted to the point that, also for that reason, Dr. Munshi's evidence should be excluded in its entirety. Again, no authorities were cited for this proposition.

[70] In my view, the issues raised by Mr. Morrison's counsel goes to the weight to be placed upon Dr. Munshi's evidence. This is the proper approach given the rulings I made regarding Dr. Munshi's evidence during the hearing.

EVIDENCE OF DR. MUNSHI

[71] Dr. Munshi, FRCPC, prepared a report. The report was marked as Exhibit 1 – Tab 4, attached to the report was a copy of Dr. Munshi's CV. Dr. Munshi also testified in these proceedings and after a review of his report and questions regarding his CV, Dr. Munshi was qualified to "provide expert opinion on the diagnosis of psychiatric conditions and the extent to which psychiatric conditions impact ability to work".

[72] In his testimony, Dr. Munshi confirmed much of the information contained in his report (Exhibit 1 – Tab 4). Dr. Munshi acknowledged that he was not Ms. Morrison’s treating physician. His assessment consisted of a 3 hour / 5 minute interview with Ms. Morrison on June 24, 2017, 3 affidavits filed by Ms. Morrison in these court proceedings, and the records of Ms. Morrison’s treating physician, Dr. Ali.

[73] Dr. Munshi conceded that these were the only materials he considered for his clinical assessment of Ms. Morrison. He also conceded that he did not do a CPP disability or permanent disability assessment on Ms. Morrison. Dr. Munshi stated in his evidence that he disagreed with some of the findings of Dr. Ali. He disagreed for example with Dr. Ali’s finding that Ms. Morrison suffered from PTSD. Dr. Munshi diagnosis and opinion was that Ms. Morrison suffered from generalized anxiety disorder and panic disorder. He also diagnosed Ms. Morrison with opiate and alcohol use disorders. Dr. Munshi also stated that Ms. Morrison gave different information to Dr. Ali regarding her ability to function and work in 2011.

[74] Dr. Munshi concluded in his report “given the chronicity of Ms. MacPhee-Morrison’s condition being unemployed for a long time and the relapsing nature of her condition she would need ongoing therapy and **at this stage** she is not capable

of gainful employment. Lack of financial support is contributing and perpetuating **her current condition**". [emphasis added]

[75] I accept the opinion evidence of Dr. Munshi that Ms. Morrison presently suffers from psychological conditions that result in her being unable to work at the present time. I also accept his opinion that lack of financial support is a contributing factor and perpetuating her current condition. I therefore accept that at present, she has no ability to earn income. In reaching this conclusion I would wish to make the following clear:

- While I accept Dr. Munshi's opinion regarding diagnosis of generalized anxiety disorder and panic disorder, I do not accept his opinion and conclusions of opiate and alcohol use disorders.
- One of the factors in determining spousal support is a requirement of economic self-sufficiency. Therefore, it is important for future possible variations and determination of continued entitlement that the record reflect that based upon the evidence of this hearing opiate and alcohol use disorders were not established.
- I take this approach because; Dr. Munshi was not qualified to give an expert opinion on drug or alcohol abuse or diagnosis in these areas; that Dr.

Munshi was not Ms. Morrison's treating physician, and Dr. Ali on whose evidence Dr. Munshi relied upon on these issues, did not testify.

[76] I turn now to the income of Mr. Morrison. As stated, Mr. Morrison is 58 years old and has been employed through IBEW Union for many years. The pattern of his income has been one of flux and has been either term or contract positions, which result in employment ranging from weeks to months, and in some instances, years, followed by EI. At the time of the interim hearing, Mr. Morrison was employed on a project in British Columbia and earned for 2014 the sum of \$234,684.00.

[77] The court heard extensive evidence regarding the machinations and inner workings of the process of hiring for projects for local unions. Included in that evidence, was a project known as the Maritime Link Project. The evidence was presented through Stan Gillis, manager for the site, Brian Tobin, manager of Local Union 1852, and to a limited degree, by Gordon MacPhee and of course by Mr. Morrison himself.

[78] Mr. Tobin provided viva voce evidence, as well as supplemental evidence marked as Exhibit 16 in these proceedings. Mr. Tobin also testified to clarify his affidavit. He said that on one of occasions wherein Mr. Morrison had refused

work, it was because he was not able to work due to court proceedings. While I accept that explanation, there remained 5 other occasions, when Mr. Morrison was contacted regarding potential work through Local Union. Neither Mr. Tobin nor more importantly, Mr. Morrison, were able to provide an explanation as to why he was not available to work.

[79] Mr. Morrison was able to secure some work on the Maritime Link Project through the Local Union. According to the evidence that project which is now completed.

[80] Also, according to Mr. Morrison, he has now exceeded the maximum number of hours which results in him being, according to union policy, delegated to the bottom of the work list. Ms. Morrison takes the position that his lack of response to job offers should be interpreted as being under employed. Mr. Morrison takes the position that notwithstanding the missed calls, he continues to be employed to the best of his abilities.

[81] Mr. Morrison's ROE from Northern Canada Constructors shows an insurable income of \$37,365.53, which is contained at Exhibit 20A. Exhibit 20B showed receipt of EI benefits weekly from October 29 to December 2, 2017, ranging from \$0.00 to \$270.00 a week. Exhibit 20C was a paystub with year to

date income of \$37,355.53, which was the same as the ROE and also Mr. Morrison earns significant EI benefits for 2016 and 2017.

[82] Income for Mr. Morrison for the purposes of establishing appropriate spousal support can be divided into two categories; (1) income for Mr. Morrison for the date of the interim order, and appropriate retroactive amount of spousal support , ie – arrears; and (2) spousal support on a go forward basis.

[83] With respect to spousal support since the interim order, as referenced, I ordered spousal support of \$3,250.00 a month commencing September 1, 2015. That amount was based on an imputed income to Mr. Morrison of \$200,000.00 a year. As counsel would be aware, a number of factors were considered in arriving at that decision. The fact that Mr. Morrison has no explanation of lack of documentary evidence to support the cessation of employment, the timing of the lay off in relation to the court proceeding, lack of financial disclosure, and limited testimony with respect to means and needs. It is not for this court to go behind the interim order to overturn or second guess it. The order was deemed to be correct and the starting point.

[84] Given that it started in September 2015, when Mr. Morrison had ability to pay that level, I find that he had the ability to pay that amount for the remainder of

the taxation year, given that following his layoff, he received high EI benefits.

There is nothing in the evidence to dissuade me from the fact that it was appropriate for it to continue at that level for the months of September, October, November and December 2015, and that there was no material change in circumstances. There is no convincing or cogent evidence of his inability to pay during those months.

[85] Arrears for 2015 are therefore set at \$3250.00 x 4 months minus credits for amounts paid through MEP.

[86] What is the appropriate level of income to be attributed to Mr. Morrison from 2016 onward? Based on the evidence I am satisfied from January 1, 2016 there was a material change in circumstances in Mr. Morrison's income. While he continued to have the ability to earn income, it was from January 1, 2016, not capable of being earned as that stated at the level of \$200,000.00. I am also not satisfied that EI alone should be considered his only source of income. This is because I accept the evidence of Mr. Tobin as already stated that there were 5 or 6 occasions where Mr. Morrison did not respond and he was therefore under employed. Again, from the evidence once Mr. Morrison accepted work in 2017, he was able to receive employment income and EI benefits.

[87] In my view, it would not be a proper approach to try to piece together Mr. Morrison's income for the year based solely on reported income. This is because as already stated, Mr. Morrison turned down employment on 5-6 occasions. It is also not clear if the job offers were for the Maritime Link Project or other projects.

[88] In my view, the proper approach is to average out the income for Mr. Morrison from preceding years. Such an approach takes into account the cyclical nature of Mr. Morrison's employment, and is the most accurate and fair record of his earning potential.

[89] Evidence of his past income is found at Exhibit 9 – Tab 6 – Page 45. There his income for each year was set out in his affidavit from December 2016. It is a full accounting of his previous employment income from 2002-2015. I have thrown out the income for 2009 and 2014, being the lowest and highest income years and kept the remaining years for the purposes of my calculations.

[90] I have done so because the two years that I have thrown out, do not reflect an average year. Averaging the remaining 12 years, by adding them and dividing by 12, produces an income of \$81,494.50. I will use this figure for purposes of income to calculate spousal support from January 1 2016 to February and including February 1, 2018.

[91] Using the spousal support advisory guidelines, this produces a range of support of \$713.00, \$832.00 and \$951.00. I have used zero for Ms. Morrison's income because for the reasons I have already set out I find at the present time, she is unable to work.

[92] I must next determine what is the appropriate range having set out the three ranges above for spousal support. The courts have considered a number of factors and the court have consistently said that the court should not default to the mid-range. In my view, spousal support should be set at the lower range of those three for the following reasons:

- I find that Ms. Morrison does not have significant needs. It has been indicated that she has been able to get some support, although relying on social assistance, some support from family members.
- I find as well, that Mr. Morrison has been paying a significant number of the debts, that is the taxes and other items in relation to the upkeep of the matrimonial home, insurance and the like.
- Also, in generating the income that Mr. Morrison is going to have, there will be costs associated with going to and from work.

- There must be an incentive for the recipient to make greater efforts towards self-sufficiency.

[93] All of these factors in my view, put spousal support at the lower range, which is \$713.00 month.

[94] I turn now to the issue of prospective spousal support. This requires the court to make two determinations, quantum and duration – i.e. definite or indefinite.

[95] The court is required to look at the circumstances of both parties. For the reasons I have already set out, I prefer the approach of setting the prospective amount also using the average of Mr. Morrison's previous years income to \$81,494.50. While it could be argued that Mr. Morrison is presently not employed, and no work on the horizon, I reject such an argument.

[96] It is true that Mr. Tobin provided some evidence that there are currently no projects involving the local union, but Mr. Morrison's track record of employment shows consistent earning potential throughout the years. The evidence contradicts assertions of a down turn in the economy as the basis of lower projected income. I refer to counsel to **Locke v. Bramwell**, 2016 NSSC 300.

[97] The court must look at Ms. Morrison's circumstances. The court has found that at present Ms. Morrison is unable to work and has zero income. The result is that prospectively her income is set at zero. The range produced results in the same range as stated for calculations for the 2016 to 2018 amounts. That is not to say however that the issue of economic self-sufficiency amounts should not or cannot be revisited. It may well be that with treatment for these diagnoses and financial support by Mr. Morrison (ie. spousal support), will result in economic self-sufficiency. This will be discussed further under the issue of duration.

DURATION OF SPOUSAL SUPPORT

[98] One of the factors the court must consider in ordering prospective spousal support, is duration of the obligation to pay. The court has authority to order that the indefinite or for a limited duration applies. In deciding, the court must consider the circumstances of the parties, including the length of cohabitation.

[99] Here the court has determined the length of cohabitation to be 7 years. Under the spousal support advisory guidelines, which are not mandatory, it is suggested that spousal support be payable for .5 to 1 year for each year of cohabitation. Other factors that I take into consideration are as follows:

- Mr. Morrison is 58 years old and therefore, in his twilight years of employment.
- Ms. Morrison is 39 years old and has the potential of earning many years of employment income. Although unable to work at present, I have not found that she suffers from a permanent disability.
- Also, it is unclear based upon the evidence of Dr. Munshi whether or not, as I have said above, Ms. Morrison's ability to earn income is permanent or not, and the court is not satisfied based upon the evidence of the diagnosis that was provided that it is permanent.

[100] For all of the above reasons, I find spousal support on a limited duration is appropriate. Based upon the length of cohabitation and the spousal support advisory guidelines, I will order spousal support payable for a total of 4 years. Spousal support commenced on September 1, 2015 and will terminate with the last payment on September 1, 2019. It will be payable at the same low end of the guidelines for the reasons I have already set out and will be taxable in the hands of Ms. Morrison and deductible by Mr. Morrison.

DIVISION OF MATRIMONIAL PROPERTY

[101] The parties having been married in November 2012 , the *Matrimonial Property Act* applies. The Act is clear under section 12 that there is a presumption of equal division. Ms. Morrison takes the position that the presumption applies and that all assets of the parties should be divided equally. Mr. Morrison says there should be an unequal division of the assets in his favor owing to the fact that many of the assets were acquired by Mr. Morrison prior to marriage and without contribution by Ms. Morrison. Therefore, an analysis is required to consider a review of the legislation and case law and findings regarding acquisition of property.

[102] Counsel has referred to section 12 and 13 of the *Matrimonial Property Act* and I have considered those sections. As stated, there is a presumption of equal division of matrimonial assets and the onus of proving that there should be an unequal division and that the factors set out in section 13 exists, rests upon the party seeking an unequal division. In this instance, Mr. Morrison.

[103] An excellent review of the case law entailing what is required was stated by Justice Forgeron in **Gouthro v. Gouthro**, 2017 NSSC 246 at paragraph 39:

Before giving my decision, I will provide an overview of the law so that the parties have a better appreciation of the legal foundation upon which my order is based. The legal principles which I considered include the following:

- *The MPA must be given a liberal interpretation in keeping with its remedial purpose: Clarke v. Clarke, 1990 CanLII 86 (SCC), [1990] S.C.J. No. 97 (S.C.C.).*
- *The MPA affords significant rights to spouses. Asset division is not based on a strict economic analysis. To the contrary, the MPA recognizes the intrinsic value of noneconomic contributions and views marriage as a partnership. In Young v. Young, supra, Bateman, J.A. confirmed that the “predominant concept under the Act is the recognition of marriage as a partnership with each party contributing in different ways” para 15.*
- *All real and personal property acquired by either spouse is presumed to be a matrimonial asset, unless falling within certain narrow exceptions, and is subject to a presumptive equal division: Morash v. Morash, 2004 NSCA 20 (CanLII), per Bateman, J.A. at para 16.*
- *The burden of establishing entitlement rests upon the spouse who seeks an unequal division.*
- *An unequal division is only permitted where “there is convincing evidence that an equal division would be unfair or unconscionable”: Bateman, J.A., Young v. Young, supra, para 15; or where there is “strong evidence showing that in all the circumstances an equal division would be unfair or unconscionable on a broad view of all relevant factors:” Harwood v. Thomas (1981), 45 N.S.R. (2d) 414 (A.D.) at para 7 per MacKeigan, C.J.N.S.*
- *Although “‘unfair’ and ‘unconscionable’ do not have a precise meaning”, “unfair” “evokes ethical considerations and not merely legal ones:” para 18, Young v. Young, supra, per Bateman, J.A.*
- *Unconscionable means “unreasonable”, “unscrupulous”, “excessive” and “extortionate” and when “coupled with the requirement that “strong evidence” must be produced to support an unequal division, the burden upon the party requesting an unequal division of matrimonial assets is somewhat onerous:” Jenkins v. Jenkins (1991), 1991 CanLII 4342 (NS SC), 107 N.S.R. (2d) 18 (T.D.), per Richard, J. at para 10.*
- *The question to be asked is “whether equality would be clearly unfair – not whether on a precise balancing of credits and debits of factors largely*

imponderable some unequal division of assets could be justified:” Harwood v. Thomas, supra, para 7 per MacKeigan, C.J.N.S.

• *Courts are instructed to examine all the circumstances and not to simply weigh the respective material contributions of the parties except in unusual circumstances: Young v. Young, supra, paras 15 and 19, per Bateman. J.A. Marriage is not a business arrangement.*

• *When focusing on claims grounded in s. 13 (d) of the MPA, the length of cohabitation is a reference to short term, not long term unions: Briggs v. Briggs (1984), 64 N.S.R. (2d) 40 (N.S. T.D.) as affirmed at (1984), 65 N.S.R. (2d) 126 (N.S. C.A.) and Donald v. Donald (1991), 1991 CanLII 2563 (NS CA), 103 N.S.R. (2d) 322 (N.S. C.A.).*

• *The determination of whether an equal division will produce an unfair or unconscionable result is a fact-based decision.*

[104] Applying the principles from **Gouthro**, I find as follows:

- The marriage in this case was a two year marriage, and the total period of cohabitation is 7 years. It was therefore in my view, at the higher range of a short term marriage.
- Further, given that it was a short term marriage, it requires an analysis and differing approaches to division of each of the matrimonial assets.
- As well, a review of the circumstances of the parties and not just contributions.

MATRIMONIAL HOME

[105] The matrimonial home has an agreed value of \$106,000.00. From the evidence it was acquired by Mr. Morrison and his former wife, in June 1987. I also accept the evidence of Mr. Morrison that the mortgage was paid off prior to his relationship with Ms. Morrison.

[106] I also accept however, there were a number of renovations that occurred at the home both pre and post cohabitation with Ms. Morrison. For example, the parties put a pool in and a deck addition to the house. Improvements were done together and contributed to by both. While based upon the evidence, the majority of financial input was by Mr. Morrison, clearly there was input to a limited extent financially, but also to a larger degree in the planning, and labour by Ms. Morrison.

[107] In addition, I accept that Ms. Morrison contributed to the home in other ways while Mr. Morrison was away working. It is not disputed that after the project in Saskatoon was completed, that Ms. Morrison no longer accompanied Mr. Morrison to his job sites.

[108] While Ms. Morrison may have spent some time at her parents' home, from the evidence, I accept that the majority of her time was spent at 15 Argyle Street, where she cohabitated with Mr. Morrison and did the upkeep and maintained the

matrimonial home and where her and Mr. Morrison's step son, resided on the weekends.

[109] I therefore find that Mr. Morrison has not met the heavy burden of establishing that an unequal division would be unfair or unconscionable and will be divided and the matrimonial home will divided equally.

[110] I also accept the evidence of Ms. Morrison that having been granted exclusive possession of the matrimonial home, and any possession of it at the time of the fire, all of her belongings and some of her son's belongings were in the matrimonial home. Mr. Morrison, after the fire, was determined to be solely the named insurer. In my view, given that 15 Argyle was matrimonial property and given Ms. Morrison had exclusive possession, Mr. Morrison had a positive duty to advance Ms. Morrison's property interest in 15 Argyle with the insurer. Mr. Morrison failed to do so. Instead, he took the same approach as he did with the order for interim spousal support. He failed to live up to his obligations.

[111] Therefore, I order that any of the proceeds from the claim from the insurance and contents, minus legal costs and disbursements, are to be upon receipt, held in trust by Mr. Morrison's counsel and divided equally.

MR. MORRISON'S PENSION AND RRSP'S

[112] I turn now to the issue of pensions and RRSP. As an electrician with Local Union 1852 Mr. Morrison contributed to a pension plan. According to Exhibit 2 – Tab 40B – Page 445-447, it had a value as of June 30, 2016 of \$104,182.14. There are also a number of RRSP's that were referred to at Tab 40. Two of those, one was acquired post separation and is found at Page 440 at a value of \$1,849.75. I do not consider that matrimonial property, nor do I consider the GIC which was in the name Mr. Morrison and his Mother to be considered matrimonial property.

[113] The assumption once again with respect to the remaining pension and other RRSP's is again, it is matrimonial property and subject to equal division. Also, once again the burden is on Mr. Morrison to establish unequal division and the court must look at the entire circumstance.

[114] Here, in relation to these assets, a substantial portion of those were made prior to cohabitation. Based on the evidence that I heard, there is no evidence that Ms. Morrison made any contributions to these assets. Significantly, there is no evidence of household funds having been diverted or used to contribute to these assets. Given that Mr. Morrison is 58 years of age, retirement is in view of his horizon, whereas for Ms. Morrison at age 39, it is not.

[115] To divide a pension income equally in these circumstances would therefore be unfair and unconscionable.

[116] What is the appropriate amount of division? Guidance is found in a number of authorities dealing with both division of pension income and valuation. In

Morash v. Morash, 2004 NSCA 20, the Court of Appeal set out the approach to be taken in dividing pensions at paragraphs 15 to 18 and 22:

[15] I am respectfully of the view that the judge erred in failing to include as a matrimonial asset subject to equal division, the pension benefits earned prior to marriage.

[16] Under the scheme of the Matrimonial Property Act, R.S.N.S. 1989, c. 275, all assets of the parties, whether acquired before or during the marriage, are "matrimonial assets" and subject to prima facie equal division, unless falling within certain narrow exceptions:

4 (1) In this Act, "matrimonial assets" means the matrimonial home or homes and all other real and personal property acquired by either or both spouses before or during their marriage, with the exception of . . .

[17] Section 13 permits an unequal division in circumstances where dividing the assets equally would be unfair or unconscionable, taking into account certain enumerated factors.

[18] Pension benefits and pensions in payment are matrimonial assets subject to division. (Lawrence v. Lawrence (1981), 47 N.S.R. (2d) 100 (C.A.) and Clarke v. Clarke, 1990 CanLII 86 (SCC), [1990] 2 S.C.R. 795).

...

[22] The trial judge's remarks set out at ¶ 14, above, reveal that he assumed that pension benefits were routinely divided only for the period of the marriage, up to the time of separation. The cases which he cites do not support that proposition which is inconsistent with the requirements of s. 4(1) of the Matrimonial Property Act. As a matrimonial asset subject to prima facie equal division (leaving aside consideration of valuation date), pension

benefits earned before and during the marriage may only be divided other than equally in accordance with s. 13 of the Matrimonial Property Act. The trial judge did not purport to divide the matrimonial assets unequally but rather excluded the pre-marriage pension benefits from consideration.

[117] Therefore, the correct approach is to as stated, include all assets in the division and consider the factors in section 13 of the *Matrimonial Property Act*.

[118] If an unequal division is appropriate regarding the pension it should specify the division of the entire asset, or in other words, the entire pension.

[119] This was the approach applied in **Bishop v. Bishop**, 2005 NSSC 20. There the parties met and began cohabitating in 1990. They married in 1991 and separated in June of 2003. It was the second marriage for both parties. The total duration of cohabitation was therefore, 12 years. The parties had no children. The facts are contained at paragraphs 5, 6, 8 and 10:

[5] Mr. Bishop, the petitioner, is a corporal in the Canadian Armed Forces. He has been a member since 1977 and was in the second year of a three year contract at the time of trial. He is stationed at Greenwood as an Airborne Electronic Sensor Operator aboard Aurora aircraft. Ms. Bishop, the respondent, is a high school graduate. She was 48 years of age at the time of trial. When the parties met and began cohabiting, she was a cleaner at CFB Greenwood. Before that she had worked at a nursing home and hospital and as a general worker at motels. The parties met in early 1990 and started to cohabit later the same year. Mr. Bishop said they began cohabiting in May, but I accept Ms. Bishop's statement that it was actually February 1990 when they moved in together. They lived in the vicinity of the base in rented premises. In 2000 they bought a house in Middleton, which they sold in 2003.

[6] *The parties agree that initially they had a happy relationship, which deteriorated due to Mr. Bishop's consumption of alcohol and (according to Mr. Bishop) Ms. Bishop's abuse of drugs. Mr. Bishop said he was not aware of her dependency on narcotics when they married. Mr. Bishop stated that Ms. Bishop demanded that he buy drugs for her. He claimed that they were spending upwards of \$600.00 each month on narcotics near the end of their cohabitation. Mr. Bishop said he did not want Ms. Bishop's drug habit to become a public issue because it might have a negative impact on his career. Consequently, he purchased marijuana for her. Ms. Bishop denied that she had a strong addiction to narcotics, although she did some drugs, as she said Mr. Bishop did, but not excessively, as he claimed. She stated that she can no longer afford as much marijuana, although she has smoked marijuana and handmade cigarettes since the separation.*

...

[8] *Ms. Bishop's employment terminated shortly after the parties began cohabiting due to a change in contractor. She received employment insurance for a period and returned to work part-time as a cleaner at the credit union. Ms. Bishop testified that shortly after the start of cohabitation, Mr. Bishop told her that he did not want her to work as a cleaner, as it would not look good with his being a member of the flight team. She claimed that he told her on one occasion that if she continued to work as a cleaner, he would leave her. Therefore, she said, she decided not to work as a cleaner, despite the resulting financial difficulties. Mr. Bishop claimed he never told her not to return to work but to do so once work became available. He said he was prepared to support her until she obtained alternate employment.*

...

[10] *Ms. Bishop stated that she is unable to return to work because of health problems, including irritable bowel syndrome, depression, obsessive compulsive disorder, sore back, and osteoporosis. She said she was diagnosed with obsessive compulsive disorder in 1992. Around the same time, there were marital problems due to Mr. Bishop's drinking. Ms. Bishop agreed that this caused arguments, which resulted in her being depressed. Due to depression, she ceased doing house work, which duties were assumed by Mr. Bishop. She denied that "doing marijuana" prevented her from taking on gainful employment or homemaking. She reported her medical problems including loss of sleep, lack of eating and frequent crying episodes to Dr. Yafai, her doctor, shortly after the separation. She reported that she had suicidal ideation. Ms. Bishop claimed that she is unable to do any of the employment she previously performed. She also claimed that she has a fractured vertebrae. She also said she would be unable to do heavy lifting. She could not lift patients or trays in a nursing home to which are*

requirements for a personal care worker. She said she also has difficulty with concentration and a poor memory.

[120] In **Bishop**, Ms. Bishop had issues with abuse of drugs. Mr. Bishop said he was not aware of her dependency on narcotics when they were married. He stated that Ms. Bishop demanded that he buy her drugs. He claimed they were spending upwards of \$6,000.00 a month on narcotics near the end of their cohabitation. Mr. Bishop did not want Ms. Bishop's drug habit to become a public issue because he was in the Forces. At paragraph 10, Ms. Bishop stated that she was unable to return to work because of health issues, including irritable bowel syndrome, depression, obsessive-compulsive disorder, sore back and osteoporosis. She was diagnosed with obsessive-compulsive disorder in 1992. Around the same time there were marital problems due to Mr. Bishop's drinking.

[121] Due to depression she ceased doing housework which was assumed by Mr. Bishop. She denied doing marijuana. There was report by Dr. Yafai shortly after separation claiming she was unable to be employed. At paragraphs 46, 48, 49 and 52 the court said:

[46] I am satisfied that an unequal division of the pension is justified. Mr. Bishop contributed to the pension for 13 years prior to the parties cohabiting, and for a similar length of time during cohabitation. This was a medium-length marriage, a second marriage for both parties, and there were no

children. The circumstances here are unlike those in Morash, supra, Falkenham, supra and Rutherford v. Rutherford (2004), 2004 NSSC 148 (CanLII), 225 N.S.R. (2d) 293 (S.C.), where the parties had cohabited for most of the period while the pension entitlement was being earned, except for four to six years. In this case half the pension contribution period pre-dated cohabitation. This is not to say that in all cases where there is a lengthy pre-cohabitation contribution period there will be an unequal division. But in the circumstances I am satisfied that an equal division of this asset would be unfair or unconscionable. Ms. Bishop is not entitled to half of the pension, but to a lesser share, whose determination requires a consideration of the factors set out in s. 13.

...

[48] As to the date and manner of acquisition of the pension (s. 13(e)), a significant portion of the contributions was made prior to cohabitation, which I find commenced in February 1990. I acknowledge that a significant growth or increase in the pension entitlement occurred during the period of cohabitation. I have no accounting of the value of the pension as of the date the parties commenced cohabitation.

[49] Ms. Bishop did not leave her employment to take care of any children. Nor did she leave her employment to advance Mr. Bishop's career; while I conclude that he did ask her not to work as a cleaner at the base, this does not mean he did not want her to work at all. With respect to s. 13(I), I find that initially, Ms. Bishop contributed to the welfare of the family by taking care of the property and home. However, the evidence established that Mr. Bishop did most of the work in the home during the latter part of the marriage on account of Ms. Bishop's depression.

...

[52] I award 35% of the pension entitlement to Ms. Bishop and 65% to Mr. Bishop, from February 1977 to the date of separation of June 29, 2003.

[122] Applying this approach to the instant case, I award pension entitlement to Ms. Morrison of 30% and 70% to Mr. Morrison.

VALUATIONS OF ASSETS

[123] What is the appropriate date of valuation? Using **Simmons v. Simmons**, 2001 NSSF 35, and applying it to the instant case, the IBEW pension shall be divided as I have indicated with 30% to Ms. Morrison and 70% to Mr. Morrison and the value is to be calculated by the pension administrator as of September 30, 2014 (the date of separation).

[124] With respect to the RRSP's, all of the RRSP's with the exception of the two noted above, are to be divided between the parties as well. The valuation for the RRSP's will be as of the date of division. This approach is in keeping with **Simmons**, and is fair to both parties given that (1) the court does not know what the value of the RRSP's was as of the date of separation, (2) it will allow both parties to share gains or losses between now (the date of my decision) and the date they are to be divided and (3) allows the administrator of the RRSP's to provide more efficiency without having to do the calculations based on debits/credits between the date of this decision and the division.

[125] The court has already dealt with the matrimonial home and the proceeds of the insurance. The home was valued at \$106,000.00 and will be divided equally

and for clarification, \$106,000.00 less disposition costs, legal fees, real estate fees and 15% HST on the legal fees.

[126] Mr. Morrison will have 90 days to buyout Ms. Morrison's interest.

[127] If Mr. Morrison purchases Ms. Morrison's interest in the home, the amount of both vehicles will be added to Mr. Morrison's payout and upon payment, Mr. Morrison will be the sole owner.

[128] If Mr. Morrison elects to buyout Ms. Morrison, upon payment Ms. Morrison will release any claims and upon receipt of payment of the proceeds from the matrimonial home, Ms. Morrison will sign a Quit Claim Deed releasing her interest in the property.

[129] In the event that Mr. Morrison is unable to retain financing for the matrimonial home, it is to be listed and sold for \$106,000.00 and any offers within 10% of the purchase price will be accepted and the proceeds of the sale less disposition costs that are referred to above, and Ms. Morrison shall be paid the amount set out above and the remainder to Mr. Morrison.

[130] I am not providing credit to Mr. Morrison for taxes and upkeep paid on the matrimonial home or utilities paid because I am denying the claim for occupational rent. Mr. Morrison had other family members or persons he could have stayed

with, however he opted to get a hotel. Offsetting that however, applying rough justice, while I accepted earlier in my decision that there were a number of withdrawals made by Mr. Morrison for gambling, I am also satisfied that a number of withdrawals were made to pay for the property and some of the costs associated with it, so I will not order division of the saving account. Mr. Morrison will be entitled to retain savings accounts as of the date of separation. That in my view, offsets any claim for occupational rent and any credit for taxes that have been paid on the upkeep of the home.

[131] I will now deal with ancillary issues. The court will set a review date to deal with retroactive spousal support, sale or buyout of the matrimonial home, and also the sale or buyout of the two vehicles.

[132] I am setting a review on the issue of retroactive spousal. I have indicated above the amounts to be paid from September to December 2015 for Mr. Morrison ($\$3,250.00 \times 4 = \$13,000.00$) and also from January 1, 2016 to February 1, 2018 ($\$713.00 \times 25 = \$17,825.00$) for a total of $\$30,825.00$. MEP records in evidence show that there was $\$5,775.00$ paid to July 19 2017, plus $\$900.00$ that was given just prior to Christmas of 2015. This would leave an obligation of somewhere around $\$24,150.00$. I do not however have the exact amount because I do not know what was paid in between, so part of the reasoning in setting a review to deal

with that issue is to obtain that information. It is important that the court know what those amounts are and also, important to know that amount because it is going to determine whether or not as requested by Mr. Conohan, on behalf of Ms. Morrison, whether or not the arrears should be paid out of the proceeds of the matrimonial home.

[133] I will set a review time to deal with that issue at the same time of determination of disposition of matrimonial home and motor vehicles because it will allow Mr. Morrison time to see if he can do so and I am doing that again because it is unclear whether or not Mr. Morrison is going to be able to buyout Ms. Morrison. It is not clear what the values are on the vehicles at this time.

[134] Also, this review will give time for Mr. Morrison to determine whether he wishes to buyout or sell the matrimonial home and if he buyouts, whether or not he wishes to have that pay the amounts for the arrears. It will ultimately be up to the court to determine that amount, but this will give him time to determine that.

[135] In the interim there are three orders that I am going to put in place. Mr. Morrison is to be given exclusive possession of the home. I do so because if Mr. Morrison decides to buyout, he should enjoy the possession of the home, and secondly, if it is to be sold Mr. Morrison is in a better position given that he has

been paying the bills to continue to maintain the upkeep on the home until the home is sold.

[136] Also, I am ordering so because the fire occurred while Ms. Morrison had been granted possession of the home, and possession of the home by Mr. Morrison will ensure that the home is safe.

[137] The fact that criminal charges are no longer before the court, and they were part of the basis for awarding Ms. Morrison possession of the home on an interim basis.

[138] From the evidence which I do accept that Ms. Morrison was not staying in the home and has other suitable accommodations.

[139] The second order that I am going to put in place is that Mr. Morrison will pay spousal support prospectively in the amount of \$713.00 per month commencing April 1, 2018, however, until the matter returns for review, that he also pay arrears in the amount of \$287.00 per month, equating to a total payment each month of \$1,000.00 per month commencing April 1, 2018. I do so because Mr. Morrison has the ability to pay and he has made minimal payments by the garnishee through EI and there has been money which has been squandered in my view with online gambling and trips to the casino, which means he would have the

ability to pay \$1,000.00 per month spousal support and it will allow Mr. Morrison to gage his finances between now and the date of review as his ability to pay on higher monthly spousal support.

[140] The third Order will be with respect to the proceeds of the insurance and the contents claim are to be held in trust less legal fees pending review. The court is doing so as it has yet to determine whether the retroactive will be a lump sum payment or continue periodically.

[141] The three motor vehicles; Ford Focus, Corvette and GMC Truck are to each be appraised by two local automobile dealerships.

[142] Mr. Morrison shall have the option to pay Ms. Morrison half of the value of the vehicles and retain them, or in the alternative, the vehicles are to be sold and the proceeds (less disposition costs), divided equally.

[143] Mr. Morrison shall provide proof of a life insurance policy with Ms. Morrison as a beneficiary in the amount of \$24,150.00 and the policy will be kept in place until September 1, 2019.

[144] Mr. Morrison must continue to maintain Ms. Morrison on any medical plan available to him through his employment and he shall cover the employee costs of any such benefits.

[145] Mr. Morrison shall have exclusive possession of the matrimonial home on Argyle Street, Glace Bay, Nova Scotia, commencing March 7, 2018, at 5:00 pm until otherwise ordered by the court.

[146] Upon Mr. Morrison obtaining exclusive possession, all personal property has been divided to the mutual satisfaction of the parties with the exception of those items which have been listed by the court and are set for a review.

ISSUE OF COSTS

[147] Costs may also be determined at the review hearing in June 2018.

Gregan, J.