SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: C.F.F. v. M.R.F., 2012 NSSC 426

Date: 20121217
Docket: SFH-D 077905; 1201-065693
Registry: Halifax

Between:

C.F.F.

Petitioner

v.

M.R.F.

Respondent

Judge: The Honourable Justice Elizabeth Jollimore

Heard: November 22, 2012

Counsel: C.F.H. (formerly C.F.F.), on her own behalf
Graydon D. Lally for M.R.F.

By the Court:

Introduction

[1] Ms. H and Mr. F separated in 2007. They litigated the issues of child and spousal maintenance, in Ms. H's application under the *Maintenance and Custody Act*, R.S.N.S. 1989, c. 160. At that time they also dealt with claims under the *Matrimonial Property Act*, R.S.N.S. 1989, c. 275. Justice Lynch heard these applications in June 2009: she found that Ms. H was entitled to spousal maintenance on a compensatory basis and decided that Mr. F had no ability to pay spousal maintenance at that time. She "deferred" the determination of the quantum and duration of spousal maintenance or an appropriate lump sum amount

[2] Just a few months after the terms of Justice Lynch's decision were formalized in an order, Mr. F applied to vary the order. Particularly, he wanted to adjust child maintenance payments to reflect the fact that the couple's younger son had come to live with him. In her Response, Ms. H asked that the quantum and duration of spousal maintenance be determined. Justice Lynch heard this application in September 2010. She made findings as to each party's income and dismissed Ms. H's application on the basis that Mr. F remained unable to pay spousal maintenance.

[3] In October 2011, Ms. H petitioned for divorce. In her Petition, she claimed relief relating to custody, access, child and spousal support and costs. Mr. F responded, seeking to change the residential arrangements of the couple's youngest child to a shared parenting arrangement. Each parent lived with one of the two older children and the youngest child lived with Ms. H.

[4] Ms. H and Mr. F participated in a settlement conference where they were able to resolve all claims except Ms. H's spousal support claim. The parties were divorced and a partial Corollary Relief Order was granted which noted that Ms. H's spousal support claim was outstanding.

The hearing

[5] Before I address Ms. H's application, I want to identify the issues I am resolving and the issues I'm not resolving.

[6] As a result of the parties' settlement, the hearing was narrowed to focus on the issue of Ms. H's spousal support claim. In fact, the issue is even narrower: Ms. H wants me to determine the quantum and duration of spousal support or a lump sum amount.

[7] In October 2012, Ms. H and Mr. F began to work out the adjustment to their child support payments. They'd agreed on a method for doing this in their Corollary Relief Order. As they worked on calculating the adjustment it became apparent that there was a problem: they had agreed that they would equally share certain costs relating to "extraordinary extra-curricular activities", but they didn't agree on which, if any, extra-curricular activities were extraordinary.

[8] In the days before the hearing, the couple's older son moved to his father's home. In the past, he'd stayed at his father's for brief periods when he and his mother were having a disagreement. This time, he brought his belongings with him. Mr. F feels the move is a permanent one.

[9] The Corollary Relief Order contains the problematic provision about sharing costs for extraordinary extra-curricular activities. Ms. H wants this varied.

[10] The Corollary Relief Order provides for child support payments based on two children living with Ms. H and one child living with Mr. F. Since two children now live with Mr. F, Mr. F wants this varied.

[11] Neither party gave the other notice of an application to vary the child support provisions of the Corollary Relief Order. While each wants me to hear his or her variation application, each objects to my hearing the other's.

[12] It was clear in Mr. F's testimony that he wasn't prepared to address questions relating to the children's extra-curricular activities. It would be prejudicial to him to deal with Ms. H's variation request. Similarly, the first indication that the oldest child's move was an issue came as hearing was beginning and Ms. H was unaware that she'd need to respond to this. Each party is entitled to know the claims that are being adjudicated so she or he can adduce evidence about those claims. As a result, I am not addressing these claims relating to child support.

Spousal support

Analytic approach

[13] The application before me is pursuant to the *Divorce Act*, R.S.C. 1985 (2nd Supp.), c. 3. It is Ms. H's first claim for spousal support under the *Divorce Act*.

[14] Ms. H and Mr. F approached this hearing as an application to vary, focusing on whether there'd been a material change in circumstances and Mr. F was now able to pay spousal support.

[15] The British Columbia Court of Appeal recently released its reasons in *Yu v. Jordan*, 2012 BCCA 367. Mr. Jordan and Ms. Yu had entered into a consent order addressing custody and child support. The application which gave rise to the consent order had referenced both the *Divorce Act* and British Columbia's *Family Relations Act*, R.S.B.C. 1996, c. 128, but the order didn't specify the legislation pursuant to which it was made. At paragraph 5 of the Court's reasons, Justice Smith said that there were practical consequences that flowed from whether the consent order was under the *Divorce Act* or the *Family Relations Act*:

> In this case, if the impugned provisions of the Consent Order were made under the *FRA* (which the father now contends) they are final orders and the mother had the legal burden of demonstrating a material change of circumstances to support a variation of those provisions. If, however, they were made pursuant to the *Divorce*

> *Act*, they are interim orders (as the order for divorce had not yet been granted) and the mother would have had no legal burden to establish a material change of circumstances in order to change the provisions.

[16] The British Columbia Court of Appeal determined that the consent order was an interim order pursuant to the *Divorce Act* so Ms. Yu was not required to prove there'd been a material change in circumstances before the consent order could be varied.

[17] Justice Lynch's 2010 order was a final order under the *Maintenance and Custody Act*. Applying the reasoning in *Yu v. Jordan*, 2012 BCCA 367, I approach this application as a variation application rather than as a brand new application for spousal support.

[18] I should be clear that I am treating the 2010 order as the order that Ms. H seeks to vary. While her application was dismissed, the 2010 order is the most recent judicial consideration of her claim. The 2010 order is the baseline against which Ms. H must prove that there has been a material change.

Subsection 17(4.1) of the *Divorce Act*

[19] Subsection 17(4.1) of the *Divorce Act* governs variation applications. It contains a number of prerequisites to granting a variation.

[20] Subsection 17(4.1) provides that before I vary a spousal support order, I must be satisfied that there's been a change that has occurred since the order that is sought to be varied was granted.

[21] To succeed in proving there's been a change, there must be proof of the baseline circumstances and proof of the current circumstances which are alleged to be sufficient to warrant varying that order.

[22] Another prerequisite is finding that the change is one which "if known at the time [of the baseline order], would likely have resulted in different terms". This requirement was explained in the Supreme Court's decision in *Willick*, 1994 CanLII 28 (SCC) at paragraph 20. While *Willick* addressed child support under the *Divorce Act*, in *G. (L.) v. B. (G.)*, 1995 CanLII 65 (SCC), both the majority (Justice Sopinka, at paragraph 73) and the minority (Justice L'Heureux-Dubé, at paragraphs 49 – 51) opinions confirmed that *Willick*'s analysis is applicable to spousal support variation applications. This sort of change is commonly referred to as a "material change": the word "material" underscores the fact that it cannot be just any change, but it must be one which would likely have resulted in a different order if it had been known when the baseline order was granted.

[23] As well, in *L.M.P. v. L.S.*, 2011 SCC 64, at paragraph 35, Justices Abella and Rothstein said that "In general, a material change must have some degree of continuity, and not merely be a temporary set of circumstances."

[24] If I determine there's been such a change, I am to take that change into consideration in making the new order.

Has there been a material change?

[25] Subsection 17(4.1) of the *Divorce Act* directs me to look for a change that has occurred since the making of the baseline order in 2010. Ms. H identifies a number of circumstances which she says constitute a material change:

a. She has paid Mr. F an "equalization payment";

b. Mr. F has chosen to purchase a home with his new partner;

c. Mr. F shares expense with his new partner in such a way that he is unable to pay spousal support;

d. The couple's oldest child will complete his education soon and Mr. F will no longer be required to pay child support for him;

e. Mr. F's expenses for the couple's younger son have decreased; and

f. Mr. F has a "significant" annual income.

"Equalization payment"

[26] Ms. H argues Mr. F's receipt of an "equalization payment" enables him to pay spousal support.

[27] In 2009 Justice Lynch ordered the division of the parties' property. When she held that Mr. F had "no ability to pay" spousal maintenance in 2010, she did so knowing that she had ordered the property division one year earlier. The property division is not a change occurring since Justice Lynch granted her order in 2010. In fact, it was part of her order in 2009.

Mr. F's new home

[28] Ms. H says Mr. F's acquisition of a home with new partner is a material change. The home was acquired prior to the hearing in September 2010 and Justice Lynch's order in October 2010: it isn't a change which occurred since that order was granted.

[29] Having eliminated these two circumstances, I'm left to consider whether the remaining circumstances outlined in paragraph 25 constitute a material change.

Mr. F's sharing of expenses

[30] Ms. H argues that Mr. F shares expenses with his new partner in such a way as to limit his ability to pay spousal support. Mr. F filed an Income Statement and an Expense Statement.

His new partner filed an Income Statement. These documents show how the couple currently shares expenses.

[31] In *R.P. v. R.C.*, 2011 SCC 65, Justice Abella identified "crucial evidentiary gaps" which caused the failure of Mr. C's application to terminate his pay spousal support payments. One evidentiary gap was the absence of evidence about Mr. C's ability to pay spousal support when the baseline order was made. Without this evidence it wasn't possible to prove Mr. C's ability to pay spousal support had materially changed.

[32] In determining whether there's been a material change I must know the circumstances at the time of the baseline order. At paragraph 44 of her reasons in *R.P. v. R.C.*, 2011 SCC 65, Justice Abella said that an applicant should provide evidence of "specific financial circumstances at the time of the original order". She admitted a trial judge may, on occasion, be able to make findings about those circumstances "based on non-documentary, circumstantial or indirect evidence".

[33] Ms. H didn't provide evidence of Mr. F's expense sharing at the time of the 2010 order. There was no documentary, circumstantial or indirect evidence on this point. While I do know that Mr. F and his new partner were cohabiting in their new home at the time of the 2010 order, I don't know if or how they shared expenses. Mr. F wasn't cross-examined about this issue.

[34] Since I don't know how (or even if) Mr. F and his new partner shared expenses in 2010, I cannot conclude that their current financial circumstance is any different.

Child support for the couple's oldest child will end

[35] The couple's oldest child is taking a welding course which is scheduled to end in February 2013. After the course is completed, the child must complete approximately six thousand hours of work as an apprentice. The exact number of hours will depend on the province in which he works. Ms. H says that when the course is completed Mr. F won't be required to pay support for this child any longer.

[36] Mr. F was required to apply to the court to terminate his child maintenance payments for the couple's younger son when this child came to live with him. This meant that Mr. F continued to pay maintenance to Ms. H for three children almost one year after one child had left her home. At the same time, Mr. F supported one child in his home and received no child maintenance from Ms. H. Ultimately, this was resolved by Justice Lynch's 2010 order.

[37] I am not resolving Mr. F's application to adjust child support payments for the reasons explained at paragraph 12 of this decision. As a result, the current child support arrangement will continue where Mr. F pays child support to Ms. H as if two children live with her and he receives support as if only one child lives with him, though he is providing for two children and Ms. H is providing for one. Where a court order has been needed to adjust child maintenance in the past and Ms. H was unwilling to see child support adjusted at this time, I can't anticipate the termination of child support payments for one child to be a material change in circumstances. Child support has not terminated and it's not known when it may terminate.

[38] The parties will need to resolve the outstanding issues relating to the children's extra-curricular activity costs and the oldest child's support. To assist them in doing so, I want to be clear: Mr. F is paying child support for two children to Ms. H. Until this obligation is adjusted, there is no change in circumstances.

The younger son's expenses have decreased

[39] The younger son began to play hockey in the Quebec Major Junior Hockey League (QJMHL) approximately one year after the 2010 variation order. Ms. H argues that this son's expenses have decreased since he began to play in the league, so Mr. F is now able to pay spousal support. Her argument has two parts: first, the son no longer has any expenses for hockey which saves Mr. F money; and second, the hockey team provides the son and Mr. F with various payments that decrease what Mr. F must pay to provide for the son even beyond his hockey costs.

[40] Viewed in the context of a variation application, Ms. H must prove that Mr. F now has fewer expenses for this child and greater financial resources to pay the child's expenses than he had at the time of Justice Lynch's 2010 order.

[41] At the outset of my analysis of this point, I will say that the presentation of evidence did not assist my considerations. At paragraph 44 of her reasons in *R.P. v. R.C.*, 2011 SCC 65, Justice Abella said that an applicant should provide evidence of "specific financial circumstances at the time of the original order". This was not done. Justice Abella acknowledged that it may, on occasion, be possible to make findings about those circumstances "based on non-documentary, circumstantial or indirect evidence". As will be seen from the reasons that follow, I've tried to work with indirect evidence. I am mindful that the burden of proof is Ms. H's and it cannot satisfied by insufficient evidence.

The child's hockey expenses

[42] In 2010, Justice Lynch ordered that Mr. F contribute equally to each child's costs "charged by the league or organization".

[43] Ms. H filed a Statement of Special or Extraordinary Expenses on October 11, 2012. She prepared charts which she attached to the Statement, outlining the annual expenses for each child's extra-curricular activities. Each child's expenses were broken down on an annual basis from September of one year until August of the following year. In some cases, the chart specified "registration" or "fees" or "camp". Other times, the chart simply referred to "tournament", "championship" or "meet" and, for some of these, a location was named. As well, there were entries for "equipment". There was no evidence explaining which of these various expenses were charged by the sports league or organization. This is where I've tried to work with indirect information.

[44] To determine Mr. F's expenses for his son's hockey, I've considered those expenses described as "registration" or "fees" to be expenses charged by the sports league or organization.

Other costs (equipment and tournament participation, particularly tournaments which were out of town) were not treated as being charged by the team or organization.

[45] At the time of the baseline order, Ms. H outlined costs of $885.00 for U17 Team Atlantic camps and $2,100.00 for Halifax Titans registration for their younger son. All other amounts appear to be costs for participating in tournaments and there's no indication that these costs were "charged by the league or organization" and shared by Mr. F, so I limit my consideration to the $2,985.00 for camps and registrations. These costs would be reduced by $500.00 for the Child Fitness Tax Credit, leaving Mr. F to pay an equal share of $2,485.00 or $1,242.50. On a monthly basis, Mr. F's obligation was to pay $103.54.

[46] Mr. F didn't respond to this information in his affidavit of October 25, 2012. When cross-examined by Ms. H, he testified that he looked at Ms. H's affidavit but he "didn't even look at" her Statement of Special or Extraordinary Expenses. When questioned, he disagreed with the amounts that Ms. H said had been spent on their younger son.

[47] In terms of Mr. F's current obligations for hockey, Mr. F itemized a monthly expense of $150.00 for extra-curricular activities in his Expense Statement, describing this as an "average" for all three children in his Expense Statement. Nowhere else in Mr. F's Expense Statement does he itemize any cost for this child's hockey. The "average" was not allocated among the children.

[48] In an effort to determine how much of Mr. F's current costs relate to the younger son, I turn to Ms. H's chart. According to her chart, the older son's league or organization-charged costs for 2011 - 2012 were $440.00. He wasn't eligible for the Child Fitness Tax Credit. Mr. F's equal share of these costs would be $220.00 or $18.33 per month. Ms. H's chart shows league or organization charged costs of $622.50 for their daughter for 2011 – 2012. These costs were offset by the Child Fitness Tax Credit, so Mr. F's equal share would be one-half of $122.50 or $61.25 ($5.10 per month).

[49] Mr. F says that he pays $150.00 each month for the children's extra-curricular activities. According to Ms. H's chart and Justice Lynch's order, Mr. F contributes $5.10 each month to their daughter's expenses and $18.33 to their older son's expenses. The remaining amount of $126.57 would be for their younger son and is slightly more than Mr. F was required to pay for him at the time of Justice Lynch's order.

[50] I have undertaken the analysis outlined in paragraphs 42 to 49 with some trepidation. Ms. H represents herself. She has not provided me with evidence of Mr. F's cost for their younger son's hockey at the time the last order was granted and she has not provided me with evidence of Mr. F's current cost for his hockey. It might be sufficient to say that she simply hasn't proven there's been a material change. Regardless, I've attempted to use the information she's provided to perform some analysis of the issue. Because the evidence didn't directly meet the requirements of the proof to be made, the analysis isn't as robust as I would like. However, I am satisfied that the evidence doesn't prove a material change has occurred with regard to a reduction in the hockey expenses that Mr. F must pay.

The child's other expenses

[51] The second aspect of Ms. H's argument that Mr. F's expenses for their younger son have decreased is based on the fact that the hockey team provides him and his father with various payments. This, she argues, means that Mr. F is able to pay spousal support.

[52] Money is paid to Mr. F for billeting during the months the team plays: these payments stop when the team is out of the play-offs. Mr. F estimates an annual sum of approximately $3,700.00 for billeting. Additionally, the child receives a monthly allowance of $165.00 and a weekly gas allowance of $40.00. Assuming these amounts are also limited to the hockey season, they provide an additional $2,705.60 annually. In total, the team provides approximately $6,500.00 to Mr. F and his son.

[53] Additionally, the child is given hockey equipment, some school supplies and some clothing which Mr. F says is hockey-related. When the team travels, the child's meals and accommodations are provided.

[54] Mr. F says that providing for an elite athlete is a costly undertaking. Mr. F wasn't prepared to agree that the child had spent twenty-four of the first sixty days of the hockey season on the road, but he did say that the child had been away "a lot". Mr. F says that, as a high performance athlete, the meals and snacks provided by the team aren't sufficient and Mr. F provides additional money for food and protein bars for road trips.

[55] Mr. F buys vitamins and supplements. Their son is "very regimented" in his diet, eating every two hours. In the circumstances, Mr. F's Expense Statement shows a modest monthly expense of $300.00 for food.

[56] Mr. F says that there are additional costs for his son's use of a vehicle. In his Expense Statement, Mr. F claims a monthly expense of $240.00 for gas for the car used by both sons, $200.00 to maintain this car and some amount less than $135.00 for its insurance (the notation on his Expense Statement is unclear). The entire transportation cost for both sons is $575.00. Allocating one-half of this cost to the younger son, the weekly gas allowance leaves Mr. F to pay $114.30 for this son's transportation.

[57] Ms. H denies that it's necessary for their younger son to have a car available for his use: Mr. F maintained a second car before their son joined the QMJHL and the child was able to play his first season without use of a car (he didn't have a driver's license at the time).

[58] While Mr. F receives money for billeting, he said he continued to "place as much of the billeting money as possible in a trust account" to be used for future education.

[59] The $40.00 weekly gas allowance isn't used to defray the cost of travel back and forth to the local rink: it's being saved. Currently there are negotiations to determine who will pay for the personal trainer hired during the summer months. This cost $800.00. If the team won't pay

this cost, the weekly gas allowance will be used to pay the trainer. (The trainer has agreed to defer payment until these negotiations are concluded.)

[60] To determine whether there's been a material change I must know the circumstances at the time of the baseline order. I wasn't provided with direct evidence of Mr. F's costs for the couple's younger son at the time of the 2010 order. Mr. F is saved from having to purchase hockey equipment, some school supplies and some clothing for the child. Against these savings, he has new costs for vitamins, protein bars, supplements and travel money. I wasn't told how much these new costs were, beyond being told that a tub of supplements which would last the summer cost $100.00 and, accepting Mr. F's Income Statement, that there are unreimbursed monthly transportation costs of $114.30 and that there may be an $800.00 expense for a personal trainer during the off season. Together, the known amounts total $1,814.30.

[61] Mr. F remains able to bank the gas allowance and some of the billeting payments. Whatever additional expenses may exist, Mr. F is able to pay them without exhausting all the money provided by the team. I conclude that, whatever costs arise from playing in the QJMHL, they are more than fully compensated by the payments Mr. F and his son receive and the costs which are directly paid by the team.

[62] Mr. F says that if their son is transferred to a different team the billeting money will stop. The billeting money's been paid for over one year, so I accept these funds are a continuing circumstance, rather than a temporary one.

Mr. F's income

[63] In 2010 Justice Lynch found that Mr. F had an annual income of $54,385.00.

[64] According to his Statement of Income, Mr. F's annual income is derived from his earnings and "overtime/commissions/bonuses" from full-time employment, money he earns refereeing volleyball games and the money paid for billeting.

[65] Ms. H cross-examined Mr. F about his income, with particular reference to his paystubs. These show that Mr. F has receives overtime payments and a performance bonus and that he is paid for working on statutory holidays.

[66] Mr. F says that his annual base salary is $55,000.00. This isn't exactly correct, though it isn't far wrong: according to his paystubs, Mr. F's regular bi-weekly pay is $2,146.15. This calculates to an annual base salary of $55,800.00.

[67] The performance bonus is paid once annually, so the amount shown on Mr. F's paystub ($958.92) is the total bonus he will receive for 2012.

[68] Mr. F's statutory holiday payments are for working New Year's Day, Easter Monday, Victoria Day, Canada Day, Natal Day, Labour Day, Thanksgiving, Remembrance Day and Boxing Day. Accordingly, his October 12 paystub reflects his payments for seven of nine statutory holidays: all of the statutory holidays except Remembrance Day and Boxing Day. In

order to properly calculate his total earnings for statutory holidays, I need to add the amount he'd earn for two additional statutory holidays.

[69] Based on payment of $2,371.27 for seven statutory holidays, I calculate that Mr. F will earn a total of $3,048.77 for working all nine statutory holidays.

[70] Mr. F is paid overtime for attending meetings. Until October 12, 2012 he earned $680.69 for overtime work. Extrapolating this amount to an annual figure generates annual overtime earnings of approximately $885.00.

[71] Based on these calculations, Mr. F's annual employment earnings are $60,692.69.

Source	**Amount**
Base salary	55,800.00
Performance bonus	958.92
Statutory holidays	3,048.77
Overtime	885.00
Total earnings	**60,692.69**

Additionally, he earns $360.00 for refereeing volleyball games, bringing his total annual earnings to $61,052.69. This is almost $6,700.00 more than his income when Justice Lynch made her decision in 2010.

[72] Mr. F's compensation arrangements are a continuing circumstance. His base salary is fixed and his payments for overtime, statutory holidays and bonuses are ongoing.

Conclusion regarding to material change

[73] Of the circumstances Ms. H has suggested, most do not constitute a material change: the circumstances pre-dated the baseline order or no change has been proven to have occurred.

[74] By the end of May 2012, Mr. F had been able to save approximately $3,700.00 from the billeting money for their son's future educational costs. The money is invested in mutual funds offered by an insurance company. Mr. F holds the investments in trust for their son. Mr. F argues that since the money is saved it doesn't provide him with means to pay spousal support.

[75] Mr. F's choice to save the billeting money indicates that he is able to afford his current needs without recourse to it. His Statement of Expenses shows a monthly deficit of $165.74. My calculation of Mr. F's income is $65,793.65 (his earnings from all sources, calculated at paragraph 70, plus the billeting payments of $3,684.96 and the Canada Child Tax Benefit of $1,056.00) which exceeds his monthly expenses by nearly $100.00. This amount is slightly understated because neither the billeting payments nor the CCTB are taxable to Mr. F.

[76] Together, the billeting money and Mr. F's increased income are a material change in circumstances.

Quantifying Ms. H's entitlement to spousal support

[77] Justice Lynch has already determined that Ms. H is entitled to receive compensatory spousal support.

[78] Most of the evidence I heard related to the question of whether circumstances had changed. Little evidence related to quantifying Ms. H's spousal support claim.

[79] Mr. F argues that Ms. H is unreasonably prolonging her need for spousal support by continuing to work on a part-time basis, though they have been separated for five years and their youngest child is now in junior high school. If she worked full-time, he says she could earn an annual income that exceeds his. In her current part-time position, Ms. H earns $45,117.00.

[80] Ms. H continues to work part-time as she has since their first child was born, saying their younger son "still needs" her. This child is seventeen and has lived with Mr. F for two years. She says she'd like to get their daughter "through junior high if not high school". This child is twelve years old and attends junior high school. Ms. H's part-time employment is not required by these two children. Ms. H cohabits with a new partner whose annual income is almost $88,000.00. Together they have a child, now aged two. Ms. H says that this new relationship "has not resulted in a significant change" in her financial circumstances.

[81] When questioned specifically, Ms. H explained her part time-work as being based on the needs of the children she has with Mr. F, particularly her younger son and daughter. She said that when her partner isn't "on the road, he can care for the baby" as if there was no need for her to care for the baby when her partner is away. Mr. F argued that it was "much more likely" that Ms. H was home for her new baby and that this was "certainly so, on a longer term basis" as their daughter enters her teens. He said that this "life choice had nothing to do" with their marriage or its breakdown.

[82] Mr. F argued that since 2007 there's been no evidence that Ms. H has done anything to pursue the career she feels she's lost. In 2007, when the couple separated Ms. H was thirty-nine years old. As a nurse who'd worked her entire career at the same institution, she didn't need to re-qualify or to search for work. He said that any financial detriment that Ms. H has experienced since the couple separated has resulted from her choice to continue to work part-time.

[83] In terms of financial disadvantages Ms. H experienced during the marriage, Mr. F argued that the equalization of the couple's property has addressed most of these. All the assets they accumulated were equally divided. Where Ms. H's diminished employment meant that she had a smaller pension and less to contribute to the acquisition of assets, then each bore the consequence of this in the property division.

[84] Ms. H says that she lost wages of $400,000.00 to the point of the separation and a further $100,000.00 following the separation. It appears these amounts have been estimated by determining the difference between the income of a full-time nurse and her own position. Ms. H

didn't provide any calculations to support this assertion, which ignores the deductions she'd be required to pay and the fact that, during the marriage, the fruit of these earnings would be shared with Mr. F. She asserted that her choice to work permanent nights affected her career development, though she didn't explain how her career development had been impeded or what current obstacles she faced. She didn't offer evidence of any other economic consequences arising from the marriage, its breakdown or her child-rearing responsibilities. I was not told that she'd lost seniority, promotions or access to employment benefits.

[85] Ms. H had no suggestion to make with regard to the quantum or duration of periodic payments. When asked, she suggested that Mr. F should pay lump sum support of $50,000.00, though there was no particular evidentiary basis for this amount. She believed that there was "more ability to make [a lump sum award] work".

[86] Periodic payments of spousal support are the norm. Lump sum support is unusual and generally reserved for situations where there's an immediate need that must be satisfied such as financing retraining or repaying debts. On occasion, lump sum support is ordered where there's some risk that the payor will default on the obligation. Here, there's no identified immediate need and there's no history of non-payment.

[87] The objectives of an order for spousal support focus on identifying and relieving the economic consequences of the marriage for each partner, apportioning financial consequences of child care that aren't addressed through the payment of child support, and promoting each partner's economic self-sufficiency within a reasonable period of time. These objectives are stated in subsections 15.2(6) and 17(7) of the *Divorce Act*. No single objective is predominant. Where Justice Lynch has already determined that Ms. H's entitlement is to compensatory support, my attention is on the economic consequences of the marriage and child rearing.

[88] Ms. H's is a permanent part-time employee. She's a member of a professional association and a union. Except when the children were born, she has worked. Her professional skills haven't atrophied. There's no evidence that she's paid a lesser wage as a part-time employee: she earns a shift differential because she's chosen to work nights. The ongoing financial disadvantage arises because she chooses to continue to work on a part-time basis. There's no evidence that full-time work is unavailable. Mr. F disputes the need for part-time work and I have found that the needs of Mr. F's and Ms. H's two younger children don't require her to work part-time.

[89] The economic disadvantage that Ms. H has identified is her post-separation failure to contribute to non-pension retirement savings. In her evidence, Ms. H says she's contributed nothing into her retirement fund since separation in September 2007 and this "looks pretty bleak". She says she is "going to do something for [her] retirement" and that this she'll "probably have to pick up some extra shifts". By virtue of her employment pension, Ms. H's ability to contribute to an RRSP (her "retirement fund") is limited. To the extent that they were provided, I've reviewed her tax returns from 2007 to the present to determine the extent to which Ms. H has underfunded her retirement fund.

Year	Contribution eligibility	Pension adjustment	Amount Ms. H could deposit
2007			
2008	No tax returns		
2009	8,098.00	5,691.00	2,407.00
2010	7,596.40	5,309.00	2,287.40
2011	6,376.00	4,496.00	1,180.00
2012	6,974.84	8,077.42	-
Total			8,874.40

[90] My calculations lack information for the last four months of 2007 and the entirety of 2008. So that I am not underestimating her unfunded RRSP contributions, I've assumed that she was able to contribute the same amount in 2007 and 2008 that she was able to contribute in 2009. I've pro-rated the 2007 contribution to the period of four months following the separation. This brings the unfunded contributions to $9,083.33.

[91] In 2012, Ms. H's pension contributions and those of her employer exceed eighteen percent of her previous year's earned income, so she isn't eligible to contribute.

[92] To compensate Ms. H for the retirement savings she hasn't made since the couple separated, I order Mr. F to pay spousal support of $250.00 per month for forty months. His payments will start in January 2013 and continue until April 2016. Ms. H's Notices of Assessment indicate that she is eligible to contribute more than $20,000.00 to her RRSP. If she chooses to deposit her spousal support payments into her RRSP then she will have made those contributions that she has missed and she will delay the taxes due on the payments until she withdraws them.

[93] Mr. Lally will prepare the order.

Elizabeth Jollimore, J.S.C. (F.D.)

Halifax, Nova Scotia