

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

**Citation:** *N.B. v. S.O.*, 2023 NSSC 216

**Date:** 20230706

**Docket:** *SFH* No. 1201-073945

**Registry:** Halifax

**Between:**

N.B.

Petitioner

v.

S.O.

Respondent

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**LIBRARY HEADING**

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**Judge:** The Honourable Justice C. LouAnn Chiasson

**Heard:** June 12, 13 and 14, 2023 in Halifax Nova Scotia

**Summary:** The evidence showed a high level of conflict between the parties. The father claimed an unequal division of matrimonial property as well as undue hardship. Both claims were dismissed. The property was equally divided and the father was ordered to pay the table amount of child support. Adjustments were made to the property division to account for the payment of matrimonial debt. The wife's claim for occupational rent was dismissed.

**Key words:** Child protection, Corollary Relief Order, Divorce, Family- unequal division of assets, Family- child support, Family- debt division, Family- child

support- undue hardship, Family- division of matrimonial property, Matrimonial Property Act.

**Legislation:** Divorce Act, RSC, 1985, C.3 (2nd Supp.); Federal Child Support Guidelines, SOR 97/175; Matrimonial Property Act, R.S.N.S. 1989, c.275

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**Written Release:** July 6, 2023

**Counsel:** N.B., Self-Represented  
Meaghan Johnston, counsel for S.O.

**By the Court:**

[1] This matter has been acrimonious, volatile, and conflictual. Since the separation of the parties in June 2021, every issue, every step taken before the court has been contested. There have been countless documents and letters filed with the court, some filed almost daily if not weekly.

[2] The conflict has recently expanded to include the involvement of the Department of Community Services. Criminal charges have been laid and a criminal trial concluded. All of this to say that this proceeding involves a number of complex and significant issues.

[3] Of primary importance to both parties is the parenting arrangements for their two daughters, G. and C.. As a result of an ongoing and open file before another justice involving child protection, I am estopped from addressing any parenting arrangements. The issues before the court relate to the financial arrangements and the granting of a divorce.

[4] There were a significant number of pre-trials held in this matter to address the process and procedure. NB was self-represented and every opportunity was afforded to him to ensure that he was fully able to present his case and have evidence considered. Despite non-compliance with filing deadlines, NB was provided further opportunities to file evidence to be considered by the court.

[5] An adjournment was granted in March, 2023, to ensure that the criminal trial was concluded prior to commencing the trial. NB had vehemently argued that he should be provided the opportunity to lead evidence related to the criminal matter. When an adjournment was granted, however, NB vehemently argued that his rights were infringed by the matter not proceeding in a timely manner.

[6] When the child protection matter was commenced, a telephone conference was immediately convened. The conference was convened to address the trial which was scheduled to commence in June. Counsel for SO wished to proceed to trial on the financial issues. NB indicated that he wished to proceed on his undue hardship application which was tied to the matrimonial debt. He indicated that all other matters should be set over. This despite his repeated requests to address the financial issues at the earliest opportunity.

[7] Both parties wished to address the issue of a divorce.

[8] When the Petition for Divorce was filed by NB he was represented by counsel. The Petition noted a request to divide the matrimonial property pursuant to section 12 of the *Matrimonial Property Act*, R.S.N.S. 1989 c. 275, (“MPA”). Section 12 provides for an equal division of matrimonial property.

[9] The reference to an unequal division was made in the affidavit filed by NB on May 1, 2023. It wasn’t until NB was on the witness stand during the trial that he clearly indicated his intention to request an unequal division of matrimonial property. He did not specify any particulars related to the request for an unequal division nor did he specify the legislative basis for his request.

[10] In accordance with the principles set out in *Bellefontaine v. Slawter*, 2012 NSCA 48, it may be an error of law for a judge to decide a case on issues the parties had no opportunity to argue. Proceedings in the Family Division are not trials by ambush. The issues before the court are fully canvassed and particularly so in this matter where the parties appeared before the court on numerous occasions. To allow a party to orally amend their substantive relief in the middle of a trial would contravene the principles of natural justice.

[11] The parties are to know the case before them. It is that simple. To do otherwise would place both parties at risk of not providing the court with appropriate evidence. Court decisions are based on the evidence presented. Principles of natural justice require parties to state their position on the issues well before trial.

[12] The trial was heard over three days. The parties were the only witnesses. Twenty seven exhibits were tendered. All admissible evidence before the court was considered.

[13] The issues can be summarized as follows:

- 1) The request to grant a divorce.
- 2) The appropriate division of matrimonial property and matrimonial debt.
- 3) NB’s application for undue hardship and his request to reduce the arrears owing.

**ISSUE #1: THE DIVORCE**

[14] In addressing the issue of divorce, both parties requested a divorce be granted based on their separation exceeding one year. I find that the jurisdictional requirements have been met to grant the divorce. The parties resided in Nova Scotia for at least one year prior to the filing of the Petition. The parties were living separate and apart for over one year and there is no possibility of reconciliation. The divorce is granted and the request of SO to change her surname is to be included as a provision in the Divorce Order.

**ISSUE #2: DIVISION OF MATRIMONIAL PROPERTY**

[15] As noted in the case of *McCrate v. McCrate*, 2016 NSSC 6, it is appropriate to deal with the division of property before addressing the issue of support claims (see also the Appeal Court decision of *Harwood v. Thomas* (1981), 45 N.S.R. (2d) 414 (N.S. C.A.)).

[16] The legislative framework for the division of matrimonial property is the *MPA*. The *MPA* dictates an equal division of matrimonial property pursuant to s.12 or an unequal division pursuant to s. 13.

[17] The *MPA* is silent on the issue of matrimonial debt. There is, however, considerable case law addressing the issue of matrimonial debt.

[18] SO wishes to divide all matrimonial property equally. She disputes that some of the debts claimed by NB are matrimonial.

[19] NB wishes to equally divide some of the matrimonial property (vehicles, pensions), but does not wish to address the equity in the matrimonial home. He is seeking credit for payments made on debts since separation and indicates that the debts paid by him were all matrimonial.

**MOTOR VEHICLES**

[20] Both parties acknowledge that the motor vehicles should be sold. There is a Ford truck in the name of SO and a Ford Explorer in the name of NB. SO argues that a private sale will maximize the proceeds of sale for the parties. NB's position is that the vehicles should be returned to the dealership and the trade in values of the vehicles be applied to the outstanding debt owing on the Explorer. There is no debt on the Ford truck.

[21] The ability of the parties to communicate and cooperate is non-existent. Although a private sale may garner more money, the sale would be fraught with difficulties. The parties would need to agree on the sale price, agree on advertising, sign the appropriate documentation in a timely way, and cooperate to effect the sale. Although trading the vehicles in may result in less money for the parties, it is the only viable solution. The parties will need to deal with an arms length third party to ensure the vehicles are disposed of as quickly as possible.

[22] The outstanding balance owing on the Explorer, if any, will be divided equally between the parties.

[23] SO had exclusive use of the Explorer between June 2021 until March of 2022. NB testified that he learned that SO had brought the vehicle back to the dealership in April 2022.

[24] SO will be responsible for eleven months of payments on the Ford Explorer (for the period June 2021 to April 2022). The motor vehicle payments are \$834.02 per month. She is responsible for \$9,174.22 of the motor vehicle debt. As NB paid all expenses for the Ford Explorer, he will receive a credit of \$9,174.22 on the division of the matrimonial property.

[25] NB continued to make the payments on the Explorer but had use of the vehicle since that time. He will not receive further credit for the motor vehicle payments as he had exclusive use of the vehicle after May 2022. Each party is solely responsible for the payments on the Ford Explorer during the periods of time each had it in their possession.

[26] The other vehicle was a Ford F150. SO is seeking to be reimbursed for the insurance expense of \$1,389.50. This amount included insurance for both vehicles (as noted in SO's Statement of Expenses). The amount attributable to each vehicle is not broken down so it is impossible to know how much insurance related to the F150 versus the Explorer.

[27] The motor vehicle insurance payments made by SO will be divided equally between the parties such that she will receive a credit for 50% of the \$1,389.50, for a credit of \$694.75.

## **PENSIONS**

[28] The parties confirmed their agreement to divide their pension credits equally up to the date of separation, June 1, 2021. The division of pension credits will be a division at source. Both parties will immediately execute documentation to confirm the equalization of their pension credits and separate pension division orders will be prepared.

## **BANK ACCOUNTS**

[29] The bank accounts of each of the parties will be equalized as of the date of separation. The itemization of the bank accounts as noted in the submissions of SO's counsel are accepted. Appropriate credits will be provided to both parties in order to equalize accounts as of separation.

## **HOUSEHOLD ITEMS**

[30] The affidavit filed on behalf of SO notes that she is seeking the list of items noted in her Statement of Property (ref. Exh 23, para 128). The Statements of Property are found at tabs 10 and 11 of Exhibit 22. Although both Statements reference a previous list, there is none included in the evidence before me on this trial.

[31] Each party shall retain sole ownership of the items currently in their possession without further claim by the other.

## **MATRIMONIAL HOME**

[32] NB seeks an unequal division of the matrimonial home. The request for an unequal division was referred to in an affidavit filed May 2023, contrary to the pleadings filed by counsel in 2021. No specific detail was provided as to what NB was seeking.

[33] At the hearing of this matter, NB wished to delay dealing with the matrimonial home. Postponing a division of matrimonial property is considered an unequal division (*Rossiter-Forrest v. Forrest* (1994) 129 N.S.R. (2d) 130, *Nolet v. Nolet* (1985), 68 N.S.R. (2d) 370, *Robski v. Robski*, 1997 CanLII 1999 (N.S.S.C.)).

[34] On the witness stand, NB requested an unequal division of matrimonial property. The basis for this claim was not clearly stated. Although relying on



inference is to be avoided, it is assumed a factor he wishes to be considered is the transfer of the matrimonial home from his parents to himself and SO.

[35] NB testified that his parents sold the property to the parties at considerably below fair market value in July 2015. There was no documentation provided by NB to confirm his assertion. His parents did not testify.

[36] SO provided documentation confirming the transfer into the parties names in July 2015. At that time the tax assessed value was \$312,500. The parties had a mortgage on the property registered at the same time as the transfer of title. The mortgage renewal in July 2019 indicated a principal amount owing of \$320,000. There is no evidence to support the assertion that the parties were conveyed the property below fair market value.

[37] There is evidence that NB's parents provided \$35,000 to the parties at the time of the transfer. SO provided a letter signed by Stephen Brunt and Sharon Brunt dated June 15, 2015 (ref Exhibit 23, exhibit Q). The letter provided that the parties were the recipients of a gift of \$35,000 and that "these funds are a genuine gift of Equity in the Home from the Donors and don't ever have to be repaid." The gift was provided to both parties, not simply to NB.

[38] NB further points to the fact that he has paid the expenses related to the matrimonial home since separation. As noted in the case of *Gates v Gates*, 2016 NSSC 49, at paragraphs 30 and 31:

30 ...while it may be true that Mr. Gates has paid all the expenses for the matrimonial home after the parties separated in June 2012, he has also has received the benefit of living in the home during this entire time. Ms. Gates, on the other hand, has had to find alternative accommodations at her own cost, or by depending on the financial assistance of others.

31 Finally, it is also worth noting that, until fairly shortly before the trial, Mr. Gates had steadfastly refused Ms. Gates' request that the home be listed for sale on the basis that he wished to keep it for himself. Thus, to the extent he wished to not list the home for sale until recently, and has had the benefit of living there from the date of separation to the present time, I conclude that his payment of the expenses associated with the home do not give rise to any conclusion that it would be unfair or unconscionable to equally divide the net proceeds from its sale.

[39] The payment of the expenses for the home by NB are insufficient to warrant an unequal division. He has been the party with exclusive possession of the home. SO has not resided in the home since separation.

[40] One of the most cited decisions related to unequal division is *Young v. Young*, 2003 NSCA 63 (N.S. C.A.). At paragraph 15, the court held that:

“ ... the division of matrimonial assets is prima facie equal, with unequal division permitted only in limited circumstances. The inquiry under s. 13 is broader than a straight forward measuring of contribution. The predominant concept under the Act is the recognition of marriage as a partnership with each party contributing in different ways. A weighing of the respective contributions of the parties to the acquisition of the matrimonial assets, save in unusual circumstances, is to be avoided. Since the introduction of the *Act*, it has been repeatedly stressed by this Court, that matrimonial assets will be divided other than equally, only where there is convincing evidence that an equal division would be unfair or unconscionable.

[Emphasis added]

[41] As noted at paragraph 18:

“It is not sufficient, for an unequal division of matrimonial assets, that one of the s. 13 factors be present. The judge must make the additional determination that an equal division would be unfair or unconscionable.

[42] As noted in the case of *Cunningham v. Cunningham*, 2017 NSSC 244, at paragraph 27:

Unconscionable has been held to mean "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.), at para 10, per Richard, J.

[43] The claim for unequal division cannot be made at trial. Even if I were to consider the claim, NB has not discharged the burden of proving that an equal division of matrimonial assets (including the matrimonial home) would be unfair and unconscionable. The parties resided in the matrimonial home for years. The children were both born while the parties resided in the matrimonial home. As in most traditional marriages, the expenses for the home were paid for by the income earner.

[44] All matrimonial property will be divided equally between the parties in accordance with s.12 of the *MPA*.

[45] As it relates to the matrimonial home, the following conditions will apply:

1. Should NB wish to list the matrimonial home for sale, it will be listed immediately and the conditions noted herein will apply to the listing and the sale of the home.
2. Should NB wish to retain the matrimonial home, he will engage the services of Boutilier and Associates, the company that provided an appraisal of the home for re-finance purposes in 2019. If the appraisal company is not prepared to conduct the appraisal, SO will be at liberty to choose the appraisal company. NB will have thirty days from the date of the decision to secure an appraisal of the property if he wishes to retain the property.
3. He will have a further 30 days from receipt of the appraisal report to secure financing to buy out the interest of SO. Failing confirmation of re-financing within that time frame, the home will be listed for sale.
4. Should the home be listed for sale, the following conditions will apply:
  - a. The home will be listed for the appraised value (if an appraisal has been conducted). If there is no appraisal report, the home will be listed at the value suggested by the real estate agent.
  - b. NB will provide the name of three real estate agents to list the property within 7 days of the deadline in paragraph 1 or 3 herein. Should none of the three listed agents be acceptable to SO, the court retains jurisdiction to appoint a real estate agent to effect the sale of the home and a motion should be brought to court within 14 days of disagreement.
  - c. NB will cooperate to ensure that the home is ready for viewing by potential buyers and will cooperate to effect a sale.
  - d. The parties will accept the recommendations of the real estate agent related to any adjustments to the sale price and conditions to ensure a sale within a reasonable period of time.
5. Upon the sale of the home, the net proceeds of sale shall be divided equally between them. Adjustments related to the division of other matrimonial assets and debts shall be made from the proceeds of sale (if the division of those assets/ debts has not already been done at the time of sale). Any amounts owing related to child support shall be deducted from the proceeds of sale owing to NB.

6. The net proceeds of sale, or the equity in the home owing to SO (should NB keep the home), will be calculated in accordance with the principles laid out in *Simmons v Simmons*, 2001 NSSF 35. The mortgage owing as of the date of division/ transfer shall be equally divided. Both parties will have the benefit of the mortgage pay down since separation. (During that period NB paid mortgage and SO paid rent.)
7. As noted in the case of *Crowe v Crowe*, 2012 NSJ 244, the value of the home and the value of the mortgage shall be calculated as of the date of division or sale.

[46] The claim of SO for occupational rent fails. She is receiving the benefit of the pay down on the mortgage. To allow her to also claim occupational rent would be accounting for the financial benefit twice.

#### **MATRIMONIAL DEBTS**

[47] The *MPA* is silent on the issue of matrimonial debt. The preamble of the *MPA* notes that "...household management and financial support are the joint responsibilities of the spouses." As such, debt incurred for household management and financial support is to be shared equally between the spouses.

[48] Case law has developed such that debt incurred for the benefit of the family should be considered in the division of matrimonial property and the overall equalization payment owing. Debt incurred for the unilateral benefit of one of the parties will not be divisible between the parties (*Moseychuck v. McNeil*, 2018 NSSC 184, *Arthur v. Arthur*, 1985 CarswellNS 345 (N.S. T.D.) and *Cameron v. Cameron*, 1995 CarswellNS 103 (N.S. S.C.)).

[49] There ought to be no distinction in the characterization of a matrimonial debt as to whether the debt is secured or not secured. Case law has referenced the division of matrimonial property on a net or liquidated basis. That analysis involves a deduction of the debt secured as against an asset.

[50] Although an accurate method of calculation, it ignores the growing unsecured debt held by most families today. At the heart of the analysis is whether the debt was incurred for the benefit of the family.

[51] *McCrate v. McCrate*, 2016 NSSC 6, addressed the issue of matrimonial debts. As noted by Justice Jollimore at paragraphs 44-45:

44 According to Justice Roscoe in *Bailey v. Bailey* [1990 CarswellNS 214 (N.S. T.D.)], 1990 CanLII 4116 at paragraph 23, when determining if a debt is "matrimonial", I must decide whether it was incurred for the family's benefit, whether it is an ordinary household debt, and, if it arose after the couple separated, whether it was necessary to meet basic living needs or to preserve matrimonial assets. This decision was approved by the Court of Appeal in *Ellis v. Ellis* [1999 CarswellNS 124 (N.S. C.A.)], 1999 CanLII 4274. In *Cameron v. Cameron* [1995 CarswellNS 103 (N.S. S.C.)], 1995 CanLII 4433 at paragraph 24, affirmed at *Cameron v. Cameron* [1996 CarswellNS 122 (N.S. C.A.)], 1996 CanLII 5598, Justice Goodfellow said that indebtedness incurred after separation and for the debtor's sole benefit is generally not "matrimonial", but personal.

45 At paragraph 26 in *Cameron*, 1995 CanLII 4433 (NS S.C.), affirmed at *Cameron*, 1996 CanLII 5598 (NS C.A.), Justice Goodfellow noted that a debt is not automatically shared simply because the debt has been characterized as "matrimonial". Whether the debt will be shared depends on whether the equal division of matrimonial assets would be unfair or unconscionable. At paragraph 26, Justice Goodfellow said, "In most conceivable situations fairness and conscience dictate a sharing of matrimonial indebtedness."

[52] Up to one month before separation, NB was the sole income earner in the household. The evidence is uncontroverted that he was solely responsible for all the household bills and expenses without financial contribution from SO. There is no evidence that NB incurred debt solely for his benefit. The evidence reveals that he earned the income and paid the bills for the benefit of the family.

[53] Both parties acknowledge some matrimonial debts should be shared equally: the Costco Mastercard (in SO's name), the PC Financial Mastercard (in NB's name).

[54] SO did not dispute the MBNA Mastercard was matrimonial debt. NB provided the statement for the account May 5, 2021 to June 17, 2021. During that period \$5,888.05 in new purchases were made. It is not known if those purchases were made before or after separation. Should NB provide the statement itemizing the purchases post separation to be deducted from the debt, the balance of the MBNA will be shared. If NB cannot provide a statement detailing and confirming the amount owing as of separation, there will be no adjustment for this debt. He will have 30 days to provide the statement for the debt to be considered.

[55] The Triangle Mastercard statement for the period May 27, 2021 to June 26, 2021 was provided by NB. The amount owing was \$1,289.81. Purchases of \$110.28 were on charged in that period. NB will have 30 days to provide a statement confirming the purchases of \$110.28 were pre-separation. If no

documentation is provided, this amount will be deducted and the balance of \$1,179.53 will be equally divided. If the documentation is provided to confirm the purchases were made pre-separation, the entire amount of \$1,289.81 will be divided equally between the parties.

[56] There is a Best Buy loan financed through Fairstone. A statement was provided for the period commencing July 2021. The statement discloses a bi-weekly payment of \$76.17 with a previous balance owing of \$1,066.18. The parties will equally share the debt of \$1,066.18.

[57] The TD Line of Credit statement was provided confirming the amount owing as of separation was \$22,990.25. Counsel on behalf of SO concedes that some of the line of credit was used for matrimonial purposes. Despite this, she indicates that NB should retain the entirety of this line of credit because he did not prove that the entire balance was used for matrimonial purposes.

[58] The transactions on the line of credit indicate transfers to and from the parties' joint account, payment for the Canadian Tire Mastercard, and payment of interest and insurance. The TD Line of credit will be divided equally between the parties.

[59] Despite pointing to the lack of documentation confirming separation date values of debts, SO did not provide a statement for the line of credit in her name as of separation. Further, the statements contained in her affidavit of May 2023, disclose two separate account numbers: \*\*023 and \*\*015.

[60] The Statements and documents provided on account \*\*015 clearly show payments on credit cards and payments related to construction on the matrimonial home. Similar to the obligation on NB, SO will have 30 days to provide documentation to confirm the amount owing as of separation. Once documentation has been provided to confirm the amount outstanding as of separation, the amount will be shared equally between the parties.

### **ISSUE #3: UNDUE HARDSHIP**

[61] The legislative framework for a claim of undue hardship is found in s 10 of the *Federal Child Support Guidelines*, SOR 97/175 (“*FSG*”). Section 10(1) of the *FSG*, *supra*, provides that:

“On the application of a parent, a court may award an amount of child support that is different from the amount determined under any of Sections 3 to 5, 8 or 9 if the court finds that the parent making the request, or a child in respect of whom the request is made, would otherwise suffer undue hardship.”

[62] The *FSG* s.10(3) provides that the standards of living of the households must be considered:

“(3) Despite a determination of undue hardship under subsection (1), an application under that subsection must be denied by the court if it is of the opinion that the household of the parent who claims undue hardship would, after determining the amount of child support under any of Sections 3 to 5, 8 or 9, have a higher standard of living than the household of the other parent.”

[63] One of the leading cases in undue hardship is the case of *Reid v. Faubert*, 2019 NSCA 42. At paragraph 45 of the decision our Court of Appeal noted:

“Applying s. 10 engages a two-step process. Firstly, a payor seeking to rely on the provision must establish that the payment of support as otherwise directed by the Guidelines (ss. 3 to 5, 8 or 9) would create an undue hardship as a result of one of the non-exhaustive factors in s. 10(2). Only if the court is satisfied that an undue hardship exists, does it proceed to the second step, namely, a consideration of whether the payor's household standard of living is lower than the recipient's (s. 10(3)).

[64] NB filed a Statement of Undue Hardship on May 31, 2022 (Exhibit 4). In that document, he asserts the basis of his claim for undue hardship related to “an unusually high level of debts...” At paragraph 5 of that document, NB states “I would suffer undue hardship in paying the required amount of child support because: I am making mortgage, vehicle, insurance and debt servicing payments that were incurred prior to separation on behalf of [SO] as she has refused to do so post separation.”

[65] A further Statement of Undue Hardship was filed on November 24, 2022 (Exhibit 6). NB reiterates one of the grounds for claiming undue hardship was “an unusually high level of debts” as well as “unusually high expenses in relation to exercising parenting time with my child.”

[66] NB alleges two grounds of hardship: access costs and unusually high debts. Even if the court were to consider the access costs, the court is cognizant of the fact that the parties shared the access costs equally. The financial impact of the

transportation costs are borne equally by the parties despite the vast discrepancy in incomes.

[67] With respect to the matrimonial debts, NB was paying the expenses related to the matrimonial home and SO was responsible to pay her accommodation costs. Payments were made on one of the parties' motor vehicles. Further, NB paid the insurance related to the home and the vehicles.

[68] These expenses are not found to be significant enough to warrant a finding of undue hardship. The matrimonial debts were not unusually high particularly given the income of NB. The Statement of Expenses filed on behalf of NB in November 2022, indicate a deficit of only 83 cents per month.

[69] As noted above, this does not include any contribution to expenses from Ms. P during periods when she stayed at the home with NB. NB was paying a motor vehicle expense of approximately \$834 per month on a vehicle that he had use of from the spring of 2022 onward. The other debts noted in his Statement of Expenses total approximately \$616. It is unknown whether these were the minimum payments due.

[70] Even if the payment of debts and access costs were significant enough to warrant a finding of undue hardship, the application of NB fails. The necessary second step in the process is to compare household standards of living. This could not be calculated given the lack of financial disclosure of NB.

[71] As noted in the Statements of Undue Hardship, NB confirmed his understanding that the request of undue hardship "must be denied by the court if [his] household standard of living is higher than the standard of living of the other party..."

[72] The Statement of Undue Hardship signed by NB acknowledges that he is required to calculate the household standards of living in accordance with Schedule II of the Guidelines. The comparison of household incomes was never calculated by NB.

[73] NB filed a Statement of Income in November of 2022. That statement did not include pay stubs after May of 2022. At the time of the hearing, NB had not provided a 2022 tax return, Notice of Assessment, nor any updated pay stubs.



[74] SO filed Statements of Income in September 2022 (which included pay stubs up to July 2022), and a further Statement of Income on May 16, 2023 (which included pay statements to May 2023 and her 2022 Notice of Assessment).

[75] In addition to the lack of up to date financial disclosure, the difficulty in assessing NB's claim is compounded by his contradictory and confusing evidence. He indicated that Ms. P was "his partner" during some periods of time but testified that they did not "cohabit". NB testified that Ms. P had her own apartment but conceded that she lived primarily with him until February 1, 2023.

[76] On cross examination, NB was provided a letter he sent to the court in January 2023. The letter (Exhibit 19) indicated in part: "An application for undue hardship was submitted but has not been heard to date. This financial burden has placed significant financial strain and has placed in jeopardy **our home, the home of my partner and 2 step children...**" (emphasis added).

[77] On cross examination NB further confirmed that he wrote a further letter to the court in January 2023. That letter stated that the children benefitted from a two parent household. He advised the court that he and his partner, Ms. P worked full time. NB indicated that this situation changed in February 2023. His testimony concedes that for some period of time up to February 2023, Ms. P resided with NB.

[78] Despite evidence of periods of cohabitation, Ms. P's income was not disclosed. To the contrary, NB confirmed that Ms. P did not contribute to household expenses. There would clearly be a financial benefit to Ms. P in residing with NB without financial contribution from her.

[79] Non-disclosure of a party with whom the payor resides may be fatal to an undue hardship application. It is impossible to conduct a comparison of household incomes without disclosure of all members of the household (including Ms. P).

[80] Even if Ms. P's income were not to be considered by the court, and the court accepted that Ms. P did not cohabit with NB, the undue hardship application would fail. NB's T-4 slip for 2021 discloses an income of \$97,731.99 (with union dues of \$1,201.12) (ref Exh 8). SO's 2021 income as noted in her Notice of Assessment was \$22,380. Her tax assessment in 2022 revealed total income of \$30,963. There is no 2022 tax information for NB.

[81] Given that SO had significantly less income than NB, in addition to having primary care of the children, it is difficult to imagine that his household income

calculation (pursuant to schedule II) would be lower than SO's. His gross income is more than three times that of SO's. Unless a party can satisfy they would have a lower standard of living, the request to consider undue hardship fails.

[82] NB has thirty days to produce his income tax return for 2022, whether filed or unfiled with the Canada Revenue Agency. The income tax return will include all appropriate attachments as noted therein. Child support will be adjusted commencing July 1, 2023, in accordance with the Federal Child Support Guideline table amount.

[83] There will be no retroactive adjustment in relation to child support owing by NB to SO.

### **CONCLUSION**

[84] The jurisdictional requirements have been met for the granting of a divorce.

[85] The matrimonial property will be divided equally as between the parties as noted herein.

[86] NB's claim for undue hardship fails.

[87] If he has not already done so, NB shall prepare his 2022 income tax return and provide it along with all attachments within thirty (30) days. Ongoing child support commencing July 1, 2023, will be adjusted in accordance with line 150 of NB's 2022 income tax return (whether such return is filed or not filed with the Canada Revenue Agency).

Chiasson, J.