

**IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES**

**BETWEEN:**

MARINA CLAUDETTE-JACQUELINE POWLESS-JONES, also known as  
MARINA CLAUDETTE-JACQUELINE ST. CROIX, and also known as  
MARINA CLAUDETTE-JACQUELINE POWLESS

Petitioner

-and-

GARRET MARSHALL WAYNE JONES

Respondent

**MEMORANDUM OF JUDGMENT**

[1] This is an application for property equalization under the *Family Law Act*, SNWT 1997, c 18 and for spousal support under the *Divorce Act*, RSC 1985, c 3 (2<sup>nd</sup> Supp).

**PROCEDURAL HISTORY**

[2] Child support was ordered in December of 2015 for support of the parties' two children under the *Children's Law Act*, SNWT 1997, c 14 in action number S-1-FM-2013-000026 (the "child support action"). It requires the Respondent to pay ongoing child support of \$1,374.43 per month based on an income of \$92,032.00. That order remains in place and for that reason the Petitioner, Ms. Powless, did not seek child support as corollary relief in this divorce action.

[3] A divorce judgment has been granted, so all that remains to be determined are the issues of property equalization and spousal support.

[4] The evidence before me came in the form of affidavits, including those filed in the child support action and those which Ms. Powless filed in support of her motion in this action, and in the form of testimony from Ms. Powless during a special chambers hearing.

[5] The hearing commenced December 7, 2016. Mr. Jones had notice of this but did not attend. Part way through that hearing, however, he contacted the Supreme Court Registry and requested to appear by telephone. He was granted permission to appear briefly by telephone, but he was advised he would be required to appear in person to give evidence or cross-examine Ms. Powless. The matter was adjourned over to February 6, 2017 and the Court directed Mr. Jones be provided with a transcript of Ms. Powless' evidence to that point.

[6] On February 6, 2017 the hearing was continued. Mr. Jones did not appear, nor did he request an adjournment. Therefore, the matter proceeded in his absence.

## **FACTS**

[7] The parties lived in a common law relationship from 2006 to 2008, when they married. They separated on March 21, 2011. They have two children who live with Ms. Powless. Ms. Powless indicated both children have special needs, although the exact nature of these needs was not specified. Ms. Powless home-schools the children as a means of accommodating their needs. She has been their primary caregiver since birth.

[8] When the parties separated, they had a house in Hay River, Northwest Territories, which was subject to a mortgage. They also had a truck, which was encumbered by a loan, RRSPs in the amount of \$28,171.00 and a rare coin (the "King George V Nickel") which Ms. Powless estimates has a value of \$17,125.00.

[9] The parties had a Visa credit card debt. Ms. Powless testified that Mr. Jones did not allow her to use the Visa during their relationship, nor review the bills with any regularity. Based on bills she did see before leaving, however, she estimates the Visa debt was \$6,000.00 at the time of separation and that the charges against the account arose primarily from cash advances taken by Mr. Jones.

[10] According to Ms. Powless, the parties agreed that the combined value of the equity in the house and the truck was \$14,420.00. Mr. Jones agreed to pay Ms. Powless half of this, being \$7,210.00. He paid her \$3,590.00 of that, leaving a balance of \$3,620.00 still owing.

[11] In accordance with what they had agreed, Mr. Jones retained the family home and Ms. Powless retained the truck. Each was to transfer those respective assets into their own names and assume responsibilities for the encumbrances. Ms. Powless transferred the truck into her own name and ultimately retired the debt on it.

[12] Ms. Powless testified that when she left the family home it was in very good condition. Unfortunately, Mr. Jones had allowed it to fall into a state of significant disrepair, which ultimately resulted in its value being reduced. Mr. Jones also fell behind in the mortgage payments and foreclosure proceedings were undertaken by the Bridgewater Bank.

[13] The parties could not transfer the home into Mr. Jones' name alone until the mortgage was brought into good standing. Mr. Jones asked Ms. Powless to consent to use the parties' RRSPs to effect this. She did so, but Mr. Jones did not use the money to bring the mortgage into good standing. Ultimately, the Bridgewater Bank obtained a deficiency judgment jointly against Ms. Powless and Mr. Jones in the amount of \$74,641.68 in this Court in action number S-1-CV-2012-000132. It remains outstanding.

[14] Ms. Powless holds a teaching certificate, but she says she has not worked in this field, nor any other, for a significant period of time. She says there are a number of reasons for this. As noted, both children have special needs which have been met by Ms. Powless home-schooling them. Ms. Powless says she has a number of health conditions which have interfered with her ability to resume her former career. These include depression and anxiety, post-concussion syndrome and post-traumatic stress disorder. There is no evidence about the severity of these conditions, what is being done to manage them, or what the prognosis is for each.

[15] Ms. Powless is now taking courses to become a registered nurse. It is unclear just how long it will take her to complete her studies and obtain her certification, due primarily to her personal health. Among other things, at the time of this hearing Ms. Powless was pregnant with a child by her current husband. Ms. Powless indicated there were some medical complications associated with the pregnancy.

## **PROPERTY DIVISION**

[16] Property division is governed by the *Family Law Act*. It presumptively imposes a regime in which property and debt are divided equally, regardless of the contribution made by the spouses. Typically, one party will pay an equalization payment to the other.

[17] As noted, Ms. Powless and Mr. Jones agreed the net value of the home and the truck at the date of separation amounted to \$14,420.00. This figure was based on the equity in each of these assets, net of the encumbrances. Ms. Powless seeks payment of \$3,620.00, being the balance owing to her for equalization of these two items, *per* the parties' agreement.

[18] With respect to the remaining property, Ms. Powless seeks half the value of the RRSPs at the time of separation, being \$14,085.00 and half the value of the King George V Nickel, being \$8,562.50. Alternatively, she seeks possession of the King George V Nickel, plus a cash payment of \$5,523.00.

[19] I see no reason that this relief should not be granted. Accordingly, Mr. Jones shall pay Ms. Powless the following amounts:

ITEM	AMOUNT
50% of RRSPs at date of separation	\$14,085.00
50% of the value of the King George V Nickel	\$8,562.50
<b>SUBTOTAL</b>	<b>\$22,647.50*</b>
Amount outstanding from house and truck equalization	\$3,620.00
<b>TOTAL</b>	<b>\$26,267.50</b>
	*(or possession of the King George V Nickel plus \$5,523.00)

[20] Ms. Powless seeks an order declaring Mr. Jones entirely responsible for the debt relating to the home. The *Family Law Act* provides that in certain circumstances, property and debt can be divided on an unequal basis. Specifically, s. 36(6) provides that the Court may make an order for unequal division where it is of the opinion that it would be unconscionable not to do so, having regard to certain factors. These include intentional or reckless depletion of family property.

[21] Unconscionability is a very high threshold, requiring more than mere unfairness. It has been described as, *inter alia*, "outrageous", "shocking",

“shockingly unfair” and “repugnant to anyone’s sense of justice”: *Anderson v. Antoine*, [2006] NWTSC 38 (CanLII) at para 25.

[22] In this case it is appropriate that Mr. Jones bear the entire responsibility for the Visa debt and for the deficiency judgment resulting from the foreclosure action. With respect to the Visa debt, the evidence is that Mr. Jones was the sole user of the card and there is nothing to support a finding that he used it to purchase items to support the family. Indeed, those bills which Ms. Powless happened to see showed the card was used primarily to obtain cash advances.

[23] With respect to the deficiency judgment, Mr. Jones not only failed to maintain the mortgage in good standing, but he failed to bring it into good standing after Ms. Powless consented to the use of the RRSPs to allow him to do so, thus dissipating this resource as well. Moreover, he failed to maintain the property and allowed it to fall into such a state of disrepair that the equity in the home was eroded and the deficiency judgment correspondingly larger. It would be unconscionable to require Ms. Powless to bear any of this debt.

[24] It is important to point out that I cannot set aside or alter the deficiency judgment the Bridgewater Bank holds against Mr. Jones and Ms. Powless within the context of this action. Nor can I make an order to prevent the Bridgewater Bank or its assignees from taking steps to enforce the judgment. I can, however, order Mr. Jones to indemnify and hold harmless Ms. Powless in relation to the deficiency judgment and I will do so.

[25] Finally, Ms. Powless seeks an order for division of the parties’ respective Canada Pension Plan credits. An order is not required for this as it is a matter of simply applying to the Canada Pension Plan through Service Canada.

## **SPOUSAL SUPPORT**

[26] The *Divorce Act* provides authority for a court to make an order for spousal support. An order may be made definitely or indefinitely and the Court may impose terms and conditions as it deems appropriate.

[27] A claim for spousal support can be based on contractual, compensatory or non-compensatory (i.e. needs and means) grounds: *Bracklow v Bracklow*, 1999 CanLII 715 SCC, 1999 1 SCR 420. Ms. Powless appears to be seeking support for herself on both the compensatory and non-compensatory grounds. The former appears to be based on the role she played during the marriage and the parties’

prior cohabitation, and the latter on her health and the need to home-school the children.

[28] There are a number of problems and/or insufficiencies in the evidence which make it difficult to determine the threshold question of entitlement. Accordingly, I am unable to grant an order for spousal support based on what is before me. The problems with the evidence are set out below.

[29] First, the specific needs of the children – and why they cannot be accommodated other than through home-schooling – have not been identified with sufficient particularity to allow me to draw the conclusion that they prevent Ms. Powless from earning income.

[30] Second, there is insufficient evidence to demonstrate why Ms. Powless' health issues and parental responsibilities would keep her from working as a teacher, but would not prevent her from both training to be and becoming a registered nurse.

[31] Third, although Ms. Powless testified her current husband makes very little money, there was no evidence about what he is *capable* of earning and contributing to the support of the current family unit.

[32] Fourth, there are significant inconsistencies between the evidence Ms. Powless provided in this proceeding about her ability to work as a teacher or related capacity and the evidence she gave in the child support action. There are also inconsistencies in the evidence as between the two actions about how much she worked. In making this statement I do not mean to suggest Ms. Powless has been untruthful; but the inconsistencies are such that I am unable to rely on the evidence in this case to draw conclusions about entitlement to spousal support.

## **ORDER**

[33] I make the following order:

- a. The Petitioner's application for spousal support is dismissed;
- b. The Respondent shall within 30 days of service of this order upon him deliver up possession of the King George V Nickel to the Petitioner and provide payment in the amount of \$5,523.00;

- c. Alternatively, the Respondent shall pay the Petitioner \$22,647.50 for her share of the parties' RRSPs at the date of separation and the value of the King George V Nickel;
- d. The Respondent shall pay the Petitioner the further amount of \$3,620.00, representing the remainder of the Petitioner's share of the equity in the family home and the truck;
- e. As between the Petitioner and the Respondent, the Respondent will bear all responsibility for the deficiency judgment in action number S-1-CV-2012-000132 and will indemnify and save harmless the Petitioner from any liability in relation to same;
- f. The Respondent shall bear sole responsibility for the Visa credit card debt;
- g. Other than as specified herein, each party shall bear responsibility for the debts each has incurred following the date of separation;
- h. The Respondent shall pay the taxed party-party costs of this action to the Petitioner in accordance with Column 2.

K. Shaner  
J.S.C.

Dated at Yellowknife, NT, this  
5<sup>th</sup> day of June, 2017

Ms. Powless, Petitioner:  
Mr. Jones, Respondent:

Self-represented  
Self-represented

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-and-

GARRET MARSHALL WAYNE JONES

Respondent

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MEMORANDUM OF JUDGMENT OF  
THE HONOURABLE JUSTICE K. M. SHANER

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