

CITATION: Docherty v. Catherwood, 2013 ONSC 5220
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ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

Paul Martin Docherty

Applicant

- and -

Debra Michelle Catherwood

Respondent

)
)
) Audrey A. Shecter and Sheila
) Holmes, for the Applicant
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)

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)
) Linda Joe and Rasmin Misheal, then
) Debra Michelle Catherwood, acting
) in person for part of the trial, and
) Geoffrey Wells, for the Respondent
)
)
)

) **HEARD:** November 20, 21, 22, 23,
) 26, 27, 28, 29, and 30, 2012 and
) continued January 21, 22, and 23,
) 2013

REASONS FOR JUDGMENT

M. J. Donohue J.

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BACKGROUND

[1] The parties met in the spring of 2005. They began to live together in either the spring of 2005, or the spring of 2006. E.P.D., their son, was born September 12, 2006, and is now six years old. G.G.D., their second son, was born February 12, 2008, and is now five years old.

[2] Mr. Docherty is a mechanic who runs a trade service business. He is 43 years of age. Ms. Catherwood had been a support worker before having her children. She is 40 years of age.

[3] The parties married on July 25, 2009. Their time together in cohabitation was rife with argument. They separated on March 1, 2011, after only a year and a half of marriage. The litigation has been highly conflicted. The matter took 12 trial days and each party did lengthy written closing submissions. There was very little common ground.

[4] Their time together has been punctuated by various physical assaults between them. Foul language in their communication has been a common occurrence. At times, they would reconcile and enjoy a comfortable home with a pool, a cottage, and vacations away.

[5] The trial proceeded with each providing testimony and other evidence essentially demonizing the other parent.

ISSUES

[6] Custody and parenting is disputed between the parties:

- (a) What access should be in place for the non-custodial parent?;
- (b) What Child Support is payable?;
- (c) What Spousal Support is payable?;
- (d) What section 7 Expenses are payable?;
- (e) What Equalization payment is to be made?;
- (f) Should personal items be returned to Mr. Docherty?;
- (g) Should Ms. Catherwood pay Mr. Docherty's costs for the Failed Mediation-Arbitration?;
- (h) What Life Insurance is to be in place?;
- (i) Does Mr. Docherty owe monies to Ms. Catherwood on the joint Line of Credit?;

(j) Should a Restraining Order be in place?; and,

(k) Divorce (Agreed).

CUSTODY

[7] Ms. Catherwood has been a stay-at-home mother with both boys since their birth. Initially she was ill with rheumatoid arthritis and required a nanny's assistance with her first son's care. She was in receipt of disability income from her employer's plan for a time. When that ended, she continued to stay home with the boys to parent them.

[8] Since the parties separated, in March 2011, the children have lived primarily with Ms. Catherwood and Mr. Docherty has exercised regular access with the boys.

[9] Each parent seeks an order from the court for sole custody. In the alternative, Mr. Docherty seeks an order for joint custody with parallel parenting. His submission is that Ms. Catherwood is determined to marginalize his parenting.

MR. DOCHERTY'S EVIDENCE

[10] Contrary to Ms. Catherwood's evidence, Mr. Docherty states that he did not assault Ms. Catherwood at any time.

[11] Mr. Docherty's friend, Monty Guest, testified. He has known Mr. Docherty for over 20 years. Mr. Guest runs a karate school and has trained Mr. Docherty. He described the discipline of karate instilling respect, non-violence, and control. He told how much Mr. Docherty is liked in the school and how helpful he has been fixing things at the Dojo, doing lighting and plumbing without charge. Mr. Guest said although Mr. Docherty is so large and confident that his image can be menacing, he is really the opposite, and is gentle, giving, and not violent.

[12] Michelle McPee, Mr. Docherty's first wife, testified that there was no physical violence between them. She described his drinking, when they were together some years ago, to be "normal" in social situations.

[13] Kathleen Henry, mother to Mr. Docherty, testified. She described Mr. Docherty to be an affectionate father with his boys, but strict. They follow him about the house. He cooks for them. She described a number of arguments she experienced where Ms. Catherwood was screaming and hysterical. Ms. Henry

was critical of Ms. Catherwood's housekeeping; she found old food in the fridge and cupboards.

[14] On access visits, Ms. Henry was concerned that the children were not clean, with dirty nails and hair, and socks that had not been changed. She would bathe them when they arrived on access visits, put them in fresh clothes, and then launder their clothes.

[15] Ms. Henry asked her grandson, E.P.D., about his friends. She said E.P.D. said he won't tell them what goes on as he is "not allowed" to tell them.

[16] Ms. Henry did not feel Mr. Docherty drinks to excess.

[17] John Henry, step-father to Mr. Docherty, testified. He described an incident in August 2009, when he heard the parties arguing. He entered the kitchen and heard a smack and saw Mr. Docherty holding the left side of his face. He described Ms. Catherwood hitting a fry pan against Mr. Docherty's shoulder.

[18] Anna Goddard is Mr. Docherty's cousin who resides in England. She testified that she first met him in 2008. She met Ms. Catherwood in 2009 as well as the two children on a visit to Canada. Ms. Goddard observed that the couple argued frequently and did not appear to be very affectionate as expected for

newlyweds. She described some of their arguments would escalate to screaming and shouting with Ms. Catherwood being hysterical.

[19] Ms. Goddard thought that Ms. Catherwood was not providing sufficient structure and discipline for the children's daily routine. They chatted together about suggestions as to how to get the children into a disciplined routine. Ms. Catherwood had a book titled, "The Baby Whisperer". Ms. Goddard agreed it had good advice in it. Under cross-examination, Ms. Goddard agreed that as Ms. Catherwood had that book, it indicated that Ms. Catherwood was trying to learn better parenting skills.

[20] Ms. Goddard described Ms. Catherwood's parenting approach to be more unstructured and laid back, whereas Mr. Docherty's approach was to instill discipline. She thought the two needed to find a happy medium. Ms. Goddard said that Ms. Catherwood was late for an African Lion Safari trip and she considered Ms. Catherwood to be disorganized.

[21] Ms. Goddard did not observe any violence displayed by Mr. Docherty toward Ms. Catherwood, but she did come to the house one day in August 2009, and observe that Mr. Docherty had two black eyes and swelling nose. He explained that Ms. Catherwood had hit him with a pan. She saw the dented pan.

[22] Ms. Goddard described Mr. Docherty's current home to be "homey" with nice furnishings, a Superman throw on one bed and a Batman throw on the other. She admires Mr. Docherty's structure and discipline that he provides the boys when they are with him.

[23] Mr. Docherty called Bob Davison, former boyfriend of Ms. Catherwood, to testify. Mr. Davison described arguments they had when they lived together. At the end of the relationship, he testified that she slapped and scratched his face and body. He said she had ripped and torn books apart. He called the police who took her away.

[24] Mr. Docherty testified that his business provided skilled tradespeople to the commercial sector. He has approximately 40 employees. He had travelled for business about three times a month, but lately it had been minimal. He testified that his schedule is flexible enough for him to provide care for the two boys.

[25] Although it was submitted that Ms. Catherwood interrupted his access, the only evidence was one night when E.P.D. was to have his father take him to his dance recital. When Mr. Docherty went to pick the boy up, Ms. Catherwood refused to release him into Mr. Docherty's care.

[26] Since separation in March 2011, Ms. Catherwood has called the police several times regarding Mr. Docherty, although very little detail was provided to me. One time involved him rolling a pumpkin toward her.

OFFICE OF THE CHILDREN'S LAWYER'S EVIDENCE

[27] Eileen Spraggart, clinical investigator, for the Office of the Children's Lawyer ("OCL") testified and was cross-examined by both parties.

[28] Ms. Spraggart conducted her investigation and recommended sole custody to Ms. Catherwood and unsupervised access to Mr. Docherty.

[29] The evidence of the OCL investigation is that the children did not exhibit signs of alienation, that they have a strong relationship with both parents.

[30] Ms. Spraggart did two interviews with the children. She interviewed some collateral witnesses. She had read the extensive Children's Aid Society ("CAS") records. She concluded that the children had witnessed domestic violence.

[31] Her concern was the violence that Mr. Docherty had shown in front of both boys. G.G.D. had told her that he saw his father throw a remote at his mother.

[32] Ms. Spraggart described Mr. Docherty as a “competent and caring parent”. She found that he has a good relationship with his children and appropriately used boundaries.

[33] On her observation visit with Ms. Catherwood she found both children had a “strong and loving relationship with Ms. Catherwood who seemed attuned to the children’s needs.”

MS. CATHERWOOD’S EVIDENCE

[34] Ms. Catherwood described, at length, various times when Mr. Docherty was angry, violent, and threatening to her. Most of the incidents were in the presence of the crying children. She described bruising on her neck on one occasion and bruising on her leg on another occasion. Another time she testified that he backhanded her face while she was driving the family home from the cottage. Her lip bled and this caused E.P.D. to begin to cry.

[35] Much of the violence described was when Mr. Docherty had been drinking.

[36] With respect to Mr. Davison’s evidence, Ms. Catherwood’s evidence is that, in the argument, it was Mr. Davison who threw the books around, and that

he dug his own fingers into his face. The criminal charges against her were, afterward, withdrawn.

[37] A number of these incidents are detailed in the CAS file that was filed with the court, on consent.

[38] Her boyfriend Sean Dryer testified that Mr. Docherty called him and made threats over the phone in January 2012.

[39] The family's nanny, Pauline Bakowski, testified that she observed Mr. Docherty have a number of drinks as soon as he came home from work. She said she did not see much parenting by Mr. Docherty with his boys. Her description was that he sat with them for about five minutes.

[40] Ms. Catherwood's mother, Doris Catherwood, testified. She commented on the foul language that Mr. Docherty used around the children. When she was present in their home or at the cottage during the marriage she said he was never without a drink. She testified that Mr. Docherty would often call her when he was drunk and chat about his problems. The next day he would email her an apology.

ANALYSIS OF THE EVIDENCE

[41] Mr. Docherty's evidence and that of his family and friends described a man who was gentle, not a heavy drinker, and the victim of a hysterical wife who constantly called the police and the CAS to create the illusion that he was an abusive husband.

[42] Ms. Catherwood described, in contrast, a powerful man who used physical aggression against her, in the presence of the children, often under the influence of alcohol.

[43] To discern which description is most likely the most accurate one I look to Mr. Docherty's plea of guilty to facts read into criminal court and admitted on June 29, 2011:

Between January 16, 2011, and January 31, 2011, Mr. Docherty and complainant were in the master bedroom of their residence at 975 Lancaster Drive, in the Town of Milton, watching television with both children lying in bed with them. While they were watching T.V., a person on the show they were watching called another character in the show a "bitch" and upon hearing this, their son stated, "That's what daddy calls mommy when he's mad." Mr. Docherty began to laugh, which upset his wife and she told Mr. Docherty it wasn't funny, and Mr. Docherty told his wife to "shut up". The verbal argument escalated and the two argued over who would get out of the bed. Mr. Docherty then walked around and pushed two fingers into the complainant's clavicle bone with force, causing her pain. He then raised his fist in a motion that made the complainant believe that he was going-about to punch her. Both

the children were crying and asking their father to stop as they were both awake and still in the bed. The wife fled the bedroom and stated that she was going to call the police. Mr. Docherty followed and took away the phone, and began to plead with her not to call the police. She then attempted to get the phone in their office, and Mr. Docherty continued to follow, asking her not to call the police. Mr. Docherty then fell to the floor, claiming that he was having a heart attack, and due to all the drama and how upset the children were, the complainant decided not to call the police. As a result of the assault, the complainant suffered bruising to her arm and leg, and she advised the police that during the incident her husband was intoxicated. *[Mr. Docherty admitted the facts were substantially correct with a "very minor variation"; the children were crying; but not crying for him to stop. They were present in the room at the time].*

[44] Mr. Docherty admitted in one courtroom these facts were true. In this courtroom he denies them. I do not find him credible particularly as he gave no other presentation to the facts of each of the violent incidents recounted by Ms. Catherwood other than to say "they did not happen".

[45] In closing submissions, Mr. Docherty correctly points out that there was no medical evidence to support the abuse, even when Ms. Catherwood claims she was assaulted to the point of bleeding. However, there is corroborating documentation of that incident in the text message by Ms. Catherwood to Mr. Docherty on February 24, 2009.

[46] Deb - "I will tell u what drama is ... you ordering me to drive where u want yelling at me in a car with our children in the back, bad roads and calling me names and then if that's not

bad enough hitting me in the face. Then while I'm bleeding down my face tell me 'see what you made me do' keep driving and 'can't u talk to this kid to get him to stop crying' and [E.P.D.] saying 'daddy don't hit mommy' that is Drama."

[47] Paul - "I need you to come home. I'm not feeling well."

[48] Mr. Guest's description of karate, making Mr. Docherty more controlled and disciplined, is not compatible with this behaviour.

[49] A text message between the parties on June 2, 2008, is also illuminating.

[50] Paul - "Are you coming home tonight?"

[51] Deb - "No, you strangled me right in front of [E.P.D.]. And by the way u know he pushes me away because of the way you treat me and that's why I'm not coming home. Because you are calling me names and yelling at me. Not to mention all of the physical violence. You have to recognize you have a problem."

[52] Paul - "Deb, I realize you push my buttons as I do you. The other night, things got out of hand, again, I am sorry for my party. It takes the two of us to fix this. I need your co-operation as well. There will be no shouting or arguing. We can order in some dinner, I would just like to see you all before I go. Will you please come on? The new bed came, you can sleep in our room and I will sleep in the front room, K?"

[53] Deb - "No I didn't want [E.P.D.] around you, badmouthing me like usual. U have anger issues and you have to make changes. No matter what I ask of you, you can't lay your hands on me. Or for that matter yell at me for calling u or asking you to help me or anything. There is appropriate behaviour and you do not talk like an adult. You are not

committed to me or the kids as a responsible adult. I deserve better.”

[54] Paul - “Your right, we both deserve better. There is a strain with these two kids and we have both acted inappropriately. I usually take the crown though, I am sorry for that, come home with the kids and let’s have a nice night before I leave.”

[55] In this intimate correspondence I see Mr. Docherty admitting to bad behaviour within the marriage.

[56] Although Mr. Docherty submitted evidence that there was no concern over excessive alcohol, I note the report of Dr. Roman Jovey dated September 15, 2011. He saw Mr. Docherty at the Addiction and Concurrent Disorders Program on three occasions. Two appointments were before separation and one appointment was after. The appointments were regarding, “his concerns over his alcohol consumption and anxiety issues.” They discussed the impact of:

[H]is anxiety issues and his own concerns over his occasional use of alcohol as a coping strategy to manage his anxiety. He reported that his anxiety became significantly worse in the midst of his recent marital breakdown; however he is currently managing this by taking prescribed medication rather than alcohol.”

[57] Dr. Jovey goes on to state:

“Based on my three assessments, at no time would he have met diagnostic criteria for alcohol abuse or dependence. At most, at his appointment of November 8, 2010, I noted a diagnosis of ‘early problem drinking’”.

The doctor states they discussed disulfiram to discourage drinking during stressful times and gave a prescription to Mr. Docherty to try in November 2010. Mr. Docherty advised Dr. Jovey by September 15, 2011, that he had managed without having to take any of the disulfiram prescribed.

[58] Those records support Ms. Catherwood's evidence of Mr. Docherty abusing alcohol.

[59] There was uncontradicted evidence at trial of Mr. Docherty calling Ms. Catherwood a "bitch" and a "fucking retard" on more than one occasion.

[60] I am satisfied on a balance of probabilities that the history as presented by Ms. Catherwood to the police, the CAS, and the OCL, is largely correct.

JOINT CUSTODY

[61] Joint custody is encouraged and sought by the courts as much as possible as long as it is consistent with the children's best interests. Parallel parenting divides up various areas of responsibilities in the children's lives to allow each parent the final say in a particular area.

[62] Mr. Docherty did not suggest what areas should be split up between the two parents. These children do not have unusual health problems. Neither parent testified to special religious, academic or sport goals that they had for the boys.

[63] Joint custody with parallel parenting was ordered in *Ursic v. Ursic* (2006), 32 R.F.L. (6th) 23 (Ont. CA), where the mother was deliberately cutting the father and his family out of the child's life.

[64] I do not find Ms. Catherwood to be doing so. There was evidence of only one access visit being denied and some difficulty with phone access which Inderjit Grewal, the CAS worker, noted had been resolved. The only suggestion of evidence of alienation was Ms. Henry's evidence that her grandson said he was "not allowed" to tell her about his friends. That one comment is insufficient to support a finding of alienation.

[65] The issue of sole or joint custody was considered by MacKinnon J. in *Alden v. Thomas*, 2011 ONSC 7003, at para. 39:

The driving consideration in cases where courts have ruled against joint decision making appears to be the imperative to reduce parental conflict and the children's exposure to it as much as possible. For example in *V.K. v. T.S.* [2011] O.J. No. 4046 (SCJ) D.L.Chappel J. stated at paragraphs 74 and 76:

74 The existence of conflict and strife between the parties from time to time will not necessarily preclude the court from making an Order for joint custody. The

question to be determined is whether the conflict between the parties is impacting or likely to impact on the well-being of the children. If the evidence indicates that the parties, despite their conflict with each other, have been able to communicate, shelter the children from the conflict reasonably well, and put the children's interests ahead of their own when necessary, an order for joint custody may be appropriate. [Footnote omitted.] The question for the court to determine is "whether a reasonable measure of communication and cooperation is in place, and is achievable in the future, so that the best interests of the child can be ensured on an ongoing basis. [Footnote omitted.]

76 In analyzing the ability of the parties to communicate, the court must delve below the surface and consider the source of the conflict. The Ontario Court of Appeal has clearly stated that one parent cannot create conflict and problems with the other parent by unreasonable conduct, impeding access, marginalizing the other parent, or by any other means and then claim sole custody on the basis of lack of cooperation and communication. [Footnote omitted.]

[66] As noted above, I have concluded that Ms. Catherwood has not created the background of violent confrontations for the police and CAS.

[67] I find that Ms. Catherwood has not alienated the children from their father, nor did the OCL.

[68] Mr. Docherty and Ms. Catherwood have not been able to shelter the children from the conflict.

[69] A reading of this couple's text messages while they were together demonstrates an inability to communicate respectfully between them. It is not simply a function of this litigation and the separation.

[70] Mulligan J. reviewed the case law on joint custody with parallel parenting and sole custody in *Lynn v. Lynn*, 2012 ONSC 1224 at paras. 91-92, (available on CanLII), and cited Pazaratz J. in *Izyuk v. Bilousov*, 2011 ONSC 6451 (available on CanLII), at para. 504:

But joint custody will only work if the parents have the desire *and the capacity* to make it work. It is not a risk-free option. In the wrong family circumstances, a joint custody order can perpetuate hostilities, indecision, and power struggles. Children-particularly children already exposed to the upset of family breakdown-look to their parents for love, guidance, stability, protection, and consistency. They need to have confidence that adult decisions will be made quickly, properly and uneventfully. [Emphasis in original.]

[71] At para. 518, Pazaratz J. stated that, "Courts have declined to order parallel parenting where parents were unable to agree on important decisions and their lack of cooperation meant that parallel parenting would cause conflict for the children."

[72] In light of my findings of the violence and conflict between these parents the proposal for joint custody with parallel parenting is not appropriate. Such a custody order is likely to bring these two parents back into more conflict.

[73] I consider only the clearest and cleanest decision from the court will bring back at least an uneasy peace between these parties and for these children.

[74] Sole custody will serve the children's best interests. These children need an end to the bickering that has marked their early years.

SOLE CUSTODY

[75] Since separation in March 2011, the children have resided with Ms. Catherwood. Mr. Docherty has exercised access on alternate weekends.

[76] The evidence of Ms. Grewal, the CAS worker was that, by September 2012, the parents still had conflict of access and exchange, but phone issues had diminished.

[77] The children were reporting a stable environment, there was no more abusive language, and they were not afraid of their dad.

[78] Neither the CAS nor the OCL noted any issue with the children being unwashed as mentioned by Kathleen Henry, Mr. Docherty's mother.

[79] Ms. Catherwood criticized Mr. Docherty for not taking their son, E.P.D. to the doctor after a fall. Mr. Docherty criticized Ms. Catherwood for not following a

doctor's advice to have G.G.D.'s tonsils removed after several infections. I found these faults not determinative of whom is best for sole custody.

[80] Neither the CAS nor the OCL suggested the children were unsafe with either party.

[81] However, Mr. Docherty has demonstrated domestic violence in the past under family stress. His relationship with his sons will thrive best if he were not the parent with the children in his care for the bulk of the time.

[82] The OCL recommended the sole custody to Ms. Catherwood. That has been the status quo.

[83] Ms. Catherwood shall have sole custody of the two boys with liberal access to Mr. Docherty.

[84] Mr. Docherty struck me as a, dynamic, and purposeful man. He is no pushover. I anticipate that as long as he retains the steady contact with his sons that he will not be alienated from their lives.

[85] In *Gordon v. Goertz* [1996] 2 SCR 27, the Supreme Court of Canada stated that the best interests of the children are the ultimate and only relevant issue in determining custody.

[86] I consider the best interests of the children to be best served by granting sole custody to Ms. Catherwood, but taking measures to ensure ample access with their father.

[87] With generous access time, Mr. Docherty will have the opportunity to schedule extra-curricular activities and be involved in their lives to their benefit.

ACCESS

[88] The principal that the children should have as much contact with each parent as possible is consistent with the best interest of the child: see the *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.), s. 16(10).

[89] Each party proposed final orders for restricting mobility for the children's residence. Mr. Docherty proposed 20 kilometers from Hawthorne Public School. Ms. Catherwood proposed 30 kilometers from Milton. I find the restriction of 30 kilometers from Milton will ensure the children remain in reasonable contact with their community and their father and so adopt that restriction.

[90] Each party in their submissions gave suggested parenting and access wording for the court order. I consider the wording for parenting issues, as proposed by Ms. Catherwood, to be the most generous and helpful in the

children's lives and have adopted most of her proposals for parenting orders. They are also largely consistent with the recommendations by the OCL.

[91] To ensure that both children profit from as much time as possible with their father I find it appropriate to make an order for access as proposed by Mr. Docherty which will generally provide five overnights and one evening, in a two week period, for the children to spend with their father.

IMPUTED INCOME TO MR. DOCHERTY

[92] Mr. Docherty did not commission an income report, although he did retain Melanie Russell of Kalex Evaluations to give expert testimony on the value of his business. In closing submissions, it was raised that there had been an endorsement by Justice Hourigan on September 20, 2011, at a case conference, for Mr. Docherty to obtain an income report. Ms. Catherwood seeks to have me draw an adverse inference against Mr. Docherty for failing to produce such a report. This court order was never mentioned at trial. There was no evidence on the issue. It would be unfair to consider it now.

[93] Ms. Catherwood obtained an income report by Michael Carnegie and had him testify.

[94] Mr. Docherty's business was growing through the years when the family was young. It peaked in 2008. He described changes in the economy that

affected his construction division and caused it to begin to lose money. He had to close down the construction division in April 2011.

[95] He described other financial challenges he has had with the business, and his goal to take a salary of approximately \$200,000 per annum. He expected his 2012 salary would be about \$180,000. He recognized there would be an entertainment add-back and an add-back for his vehicle for personal use.

[96] Ms. Russell was sent an email on his past income levels dated April 26, 2010. When dividends were included, Mr. Docherty's income was as follows:

- 2004: \$84,463.
- 2005: \$69,087.
- 2006: \$92,307.
- 2007: \$164,759.
- 2008: \$369,668.
- 2009: \$330,076.

[97] Mr. Docherty's tax returns showing T4 income plus dividends show income levels somewhat consistent with those noted above:

- 2006: \$92,308.
- 2007: \$164,616.
- 2008: \$402,139.

- 2009--\$366,827.
- 2010--\$158,503.
- 2011--\$160,842.

[98] Ms. Catherwood's witness, Mr. Carnegie, testified that the income should be a three or four year weighted average income using weights of 1, 2, and 3 on the income shown from 2008 to 2010. He concluded that the income was in the range of \$308,700 to \$361,020.

[99] Mr. Carnegie's averages included a portion of Mr. Docherty's business that is no longer generating income. I do not see that that approach will reflect the reality of what Mr. Docherty is reasonably able to earn at this time.

[100] I prefer to use the income levels as set out by submissions for Mr. Docherty. His 2011 income line 150 income was \$160,000. In 2012 he anticipated his income would be \$180,000.

[101] Both parties relied on the evidence that add-backs of \$18,000 for personal expenses would apply. Gross-up for tax of \$8,700 on those expenses would bring his 2012 income to \$206,700. This is the amount I find is most appropriate to consider for child and spousal support purposes.

[102] In the event the company does better and dividends are paid then continued disclosure of Mr. Docherty's personal and business tax returns will allow adjustments to be made for support purposes.

CHILD SUPPORT

[103] Although Mr. Docherty sought joint custody, he reassured the court that he would not seek to reduce the child support table amount if the children were in his care 50 per cent of the time or less.

[104] I order Mr. Docherty to pay the table amount of child support under the *Child Support Guidelines*, O Reg 391/97, of \$2,658 on income of \$206,700.

SPOUSAL SUPPORT

[105] The court may make a support order under s. 15 of the *Divorce Act*. I note that such an order must take into consideration the condition, means, needs, and other circumstances of each spouse, including the length of time the spouses lived together, and any arrangement relating to support of either.

[106] A support order should recognize any economic disadvantages to the spouses arising from the marriage or its breakdown; apportion between the

spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for child support; relieve any economic hardship of the spouses arising from the breakdown of the marriage; and, in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time: see s. 15.2(6) of the *Divorce Act*.

[107] In closing submissions Mr. Docherty conceded a co-habitation of five and a half years. Ms. Catherwood submitted it was six years co-habitation from the spring of 2005. I am satisfied that in the fall of 2005, Ms. Catherwood had evidence that she was renting her house, which is a strong indication that her residence was officially moved to Mr. Docherty's residence. I find five and a half years cohabitation to be a realistic time-frame.

[108] Ms. Docherty has been at home with children since early maternity leave in July 2006. She took the role of traditional wife and mother in part due to her illness, which left her incapacitated for a period of time.

[109] Both parties recognize an entitlement to spousal support. Mr. Docherty's closing position is that a period of four years support be payable, less the two years he has already paid..

[110] Ms. Catherwood's position is that support be paid a further three years to January 1, 2016, and then be subject to review on her efforts to become self-sufficient given her physical circumstances and financial consequences of the breakdown of the marriage.

[111] In closing, Ms. Catherwood raised an issue of physical limitations for employment, however, there was no evidence of her illness other than in 2006. She demonstrated stamina and focus in handling much of the trial on her own and I am not persuaded that she is in any way impaired from full time employment.

[112] This was a brief marriage and short period of co-habitation.

[113] Accordingly, I find it appropriate to make the period of spousal support to be to a date certain.

[114] The *Spousal Support Advisory Guidelines* indicate the spousal support range to be between 3 to 15 years.

[115] Neither party presented evidence nor argument directed at assessing the means and needs for each party, but rather relied on the mid-range spousal support guideline amounts.

[116] I am satisfied that a period of five years to January 1, 2016, is appropriate. I order mid-range spousal support in accordance with the *Spousal Support Advisory Guidelines*.

IMPUTED INCOME TO MS. CATHERWOOD

[117] Ms. Catherwood has been out of the workforce since 2006.

[118] She is not without education and experience. She has a high school education and nearly completed a three-year creative arts program at Georgian College. She has held a number of jobs and rose to be supervisor in a traffic control position for the Ministry of Transportation. She has done graphic design and receptionist work. Before the children were born, she was employed as a support worker in autism services for Kerrie's Place.

[119] She was diagnosed with rheumatoid arthritis in October 2006. As noted above there was no medical evidence at trial of any current limitations she has. She presented herself with vigour at trial, while representing herself. She is an attractive and articulate young woman with a long work life ahead of her.

[120] Ms. Catherwood's position is that she be attributed with either \$0 or \$10,000 in income.

[121] Before the children were born Ms. Catherwood demonstrated the ability to earn in the area of \$40,000, when she was employed with autistic children. Mr. Docherty urges me to attribute that income to her for the purposes of support.

[122] I anticipate that it may take her time, on re-entry to the work force, to meet and or surpass her prior income level. Reasonably I see her with the strengths and abilities to garner an hourly wage of \$15 for a 36-hour work week over 50 weeks for an annual income of \$27,000.

[123] Accordingly, I impute income to Ms. Catherwood of \$27,000 for the purposes of support.

SECTION 7 EXPENSES

[124] In light of the imputed incomes above, each parent shall share the costs of extraordinary expenses. Mr. Docherty's share is 69.2 per cent based on his imputed income of \$206,700. Ms. Catherwood's share is 30.8 per cent based on her imputed income of \$27,000.

[125] Neither party appears to have contemplated a child care cost. As Mr. Docherty seeks to impute full time employment income to Ms. Catherwood, then this is a likely expense that will be incurred, should Ms. Catherwood enter schooling or the work force.

[126] The parties agree that medical and health expenses not covered by insurance are proper extraordinary expenses.

[127] Ms. Catherwood argued a number of other special and extraordinary expenses:

- Kumon tutoring for E.P.D. of \$1200 (\$100 per month);
- Swimming - \$525;
- Basketball - \$400;
- Baseball - \$300; and,
- Gymnastics - \$300, for a total of \$2,725 per annum.

[128] Mr. Docherty's position is that such expenses are normal activities and do not qualify as extraordinary expenses pursuant to s. 7 of the *Child Support Guidelines*. He argues that I should find such expenses are ordinary expenses.

[129] However, at trial, there was no evidence led as to why the expense was necessary and whether it was reasonable as set out in s. 7 and the definition of "extraordinary" under s. 7(1)(1.1) of the *Child Support Guidelines*.

[130] This claim for swimming, basketball, baseball, and gymnastics is dismissed.

EQUALIZATION

[131] Ms. Catherwood's Net Family Property ("NFP") Statement was a moving target. It was filed late, then corrected, and in closing submissions, a different NFP statement was provided. Ultimately she agreed with a number of the values as set out in Mr. Docherty's NFP. The court will accept her concessions to the values agreed upon.

[132] Part 4a: Land values are agreed at \$269,632.93 for each party. The matrimonial home has been sold and divided. I have no particulars.

[133] Part 4b: General Household items and vehicles were disputed.

[134] Mr. Docherty valued the furniture acquired during the marriage at \$70,000 to be split \$35,000 between them. In evidence, Ms. Catherwood placed values of \$20,000 to be split \$10,000 between them. In closing Ms. Catherwood gave no value and simply stated that all contents were divided on sale of the house. Mr. Docherty insured the contents of the house for a replacement value of \$454,425. A photo binder of the house contents certainly showed a wealth of new and elegant furnishings. I am satisfied that a value of \$35,000 for both parties is reasonable to ascribe to these assets.

[135] The cottage contents were agreed to be valued at \$11,000 for each party.

[136] The Bayliner was agreed to be valued for Mr. Docherty at \$20,000.

[137] Mr. Docherty claims to have owned \$15,000 in jewellery; \$4,000 in art; and, \$5,000 in sports and hobby items. He ascribed \$2,000, for jewellery owned by Ms. Catherwood.

[138] Ms. Catherwood's position is that each party is to retain their own items. She does not put a value on any of these items claimed by her husband and argues that Mr. Docherty did not provide evidence of these values.

[139] Although there was insurance for \$454,425 on the contents, there was no special riders insuring \$15,000 in jewellery, or \$4,000 in art, or \$5,000 in sports and hobby items. There was no evidence of value given by Mr. Docherty apart from the statement of the value in the NFP Statement. There was also no evidence or particulars of the \$2,000 of jewellery assigned to Ms. Catherwood.

[140] Without such evidence, I will not place a value on these items.

[141] Part 4(c): Bank accounts, savings, securities and pensions are now agreed. Mr. Docherty had \$109,863.09 and Ms. Catherwood had \$9,646.16.

[142] Part 4(e): Business interests are disputed. Mr. Docherty relies on the reports and evidence of Ms. Russell for the mid-range value of the business he owned to be \$439,944. In her evidence, Ms. Catherwood took the high range value of the business in Ms. Russell's reports and said it would be \$525,000. In closing Ms. Catherwood assigns a value to his business of \$515,944. No reason or argument is given for the alteration.

[143] Ms. Catherwood criticizes Ms. Russell's preparation of her report at the lowest form of assurance. The valuation report is not disputed, except in closing submissions without the opportunity for the witness to respond. Ms. Russell gave sensible answers in cross-examination as to how she prepared her valuations and what amendments she made to make them as fair and accurate as possible. Choosing arbitrarily the highest value in the valuation report is not reasonable.

[144] I find the business, Rising Two Sons, value at the date of separation to be \$439,944.

[145] In addition, Ms. Catherwood claims that at valuation date the business owed Mr. Docherty \$17,944, and so adds that as an asset for him. Mr. Docherty argues that it does not belong in the business valuation.

[146] This figure comes from Mr. Docherty's financial evidence and is noted by the valuator, Ms. Russell, as a debt owed to Mr. Docherty at valuation date.

[147] I find it appropriate for debt owed by the business to Mr. Docherty, to be shown as an asset for him. Part 5: Debts and Liabilities are agreed. Mr. Docherty owes \$162,825.49 at valuation date and Ms. Catherwood owes \$135,051.34.

[148] There is an issue as to net values of property held by both parties on the date of marriage.

[149] Mr. Docherty claims to have general household items and vehicles at the date of marriage of \$180,000. The party seeking to establish the value of contents owned at the date of marriage has the onus of proving their value and must adduce reliable evidence: see *Stefanou v. Stefanou*, 2012 ONSC 7265, at para. 48, (available on CanLII).

[150] His evidence is that he fully furnished the home with the help of his first wife, Michelle McPhee. This witness reviewed photos of the house furnishings. She did not recognize much of anything that was in the home at the end of the marriage in 2011. I conclude that the current lovely furnishings were purchased during the marriage with Ms. Catherwood.

[151] Ms. Catherwood argues that Mr. Docherty had no proof of the value of the house contents. She originally claimed that he owned contents of \$45,000 and in closing submissions reduced it to \$25,000. No reason was given for the change.

[152] During the trial, Ms. Catherwood's NFP evidence acknowledged \$45,000 in contents. I am not satisfied that Mr. Docherty has established the value of the contents beyond that amount which Ms. Catherwood conceded in trial.

[153] I find that at the date of marriage Mr. Docherty had household contents of \$45,000.

[154] Mr. Docherty argues that Ms. Catherwood owned no general household items and vehicles at the date of marriage. Ms. Catherwood claims she owned \$17,000. No evidence was adduced by Ms. Catherwood and Mr. Docherty's evidence is that she owned no general household goods. Without evidence by Ms. Catherwood or concession by Mr. Docherty, I am not persuaded that she brought this amount of household contents into the marriage. I find this amount to be zero on the evidence.

[155] The parties agree that at the date of marriage the Bank Accounts and Savings amounted to \$117,099.94 for Mr. Docherty and \$10,799.44 for Ms. Catherwood.

[156] The value of the business at the date of marriage is disputed. Mr. Docherty relies on the valuation done by Melanie Russell that the value of the business was \$644,000. At trial, Ms. Catherwood agreed with this value. In closing submissions, Ms. Catherwood changed her position to argue that the business was valued at \$515,944. (The same value she argued, in closing, for the value of the business at valuation date).

[157] I am satisfied that the careful analysis by Ms. Russell, an experienced expert valuator, is reliable. Her valuation was uncontradicted at trial. Choosing the mid-range values for both the date of marriage valuation and the date of separation is conservative and consistent. Ms. Russell originally had valued the business when a trust was being set up for Mr. Docherty's two sons as of March 1, 2009. This is four months before the date of marriage. Ms. Russell testified what adjustments she made to conclude what the value would be in July 2009.

[158] Ms. Catherwood critiques Ms. Russell's report and makes a number of queries and challenges that were not put to the witness in cross-examination,

and urges the court to find it unusual for the business to have such fundamentally differing values.

[159] Ms. Catherwood argues that the business should be valued at \$515,944 both at the date of marriage and at the date of separation. On review of the income that the family derived from the business it is clear that it peaked in 2008, and then began to decline. This is consistent with Mr. Docherty's evidence of his having to close the construction division of the business in 2011. I am satisfied that the value of the business did decline in value from the date of marriage to the date of separation.

[160] I find the value of the business on the date of marriage to be \$644,000, which is the mid-range of Ms. Russell's valuation report.

[161] Some debts were agreed for the date of marriage as being \$9,060.41 owed by Mr. Docherty and \$2,683.90 owed by Ms. Catherwood.

[162] Ms. Catherwood in closing submissions argues an additional debt owed by Mr. Docherty, as being 25 per cent disposition costs on some RRSPs, of notional taxes in the amount of \$29,969.15.

[163] Although this was a late consideration, in closing only, it is consistent with the handling of RRSPs at the date of separation. Mr. Docherty, in reply

submissions, did not argue that it was wrong in principal. I am prepared therefore to attribute the tax that ultimately would apply on this deferred income to be deducted on the Date of Marriage RRSPs owned by Mr. Docherty.

SUMMARY

VALUATION DAY ASSET

	MR. DOCHERTY	MS. CATHERWOOD
Land (Agreed)	\$269,632.93	\$269,632.93
House Contents	\$35,000	\$35,000
Cottage Contents (Agreed)	\$11,000	\$11,000
Bayliner (Agreed)	\$20,000	\$--0--
Jewellery	\$--0--	\$--0--
Art	\$--0--	\$--0--
Hobbies Equipment	\$--0--	\$--0--
Bank Accounts (Agreed)	\$109,863.29	\$9,646.16
Rising Two Sons Business	\$439,944	\$--0--
Monies Owed to Mr. Docherty	\$17,944	\$--0--
Total Assets Valuation Day	\$903,384.22	\$325,279.09
Debts Valuation Day(Agreed)	\$162,825.49	\$135,051.34

DATE OF MARRIAGE NET VALUE OF PROPERTY

Household Items	\$45,000	\$--0--
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Bank Accounts(Agreed)	\$117,099.94	\$10,799.44
Rising Two Sons Business	\$644,000	\$--0--
Total Assets Date of Marriage	\$806,099.94	\$10,799.44
Debts Date of Marriage (Agreed)	\$9,060.41	\$2,683.90
Notional Tax on RRSPs	\$29,969.15	
Net Value on Date Marriage	\$767,070.38	\$8,115.54

CONCLUSION

Property at Valuation Date	\$903,384.22	\$325,279.09
Debts and Liabilities	\$162,825.49	\$135,051.34
Date of Marriage Net Value	\$767,070.38	\$8,115.54
Total Net Family Property	\$--0--	\$182,112.21

[164] The Equalization Payment owed by Ms. Catherwood to Mr. Docherty is \$91,056.10.

RETURN OF PERSONAL BELONGINGS

[165] Mr. Docherty gave evidence that a number of his personal possessions should be returned to him as follows:

- (i) All Sports Equipment owned by Mr. Docherty;

- (ii) All tools;
- (iii) All artwork, including stone statue;
- (iv) All Beatles memorabilia;
- (v) All Sports memorabilia;
- (vi) All items previously owned by Mr. Docherty's father;
- (vii) All items owned by Mr. Docherty with his former spouse including crystal and glass collection;
- (viii) 250 CD music collection;
- (ix) Mr. Docherty's jewellery and watch collection;
- (x) Red chair;
- (xi) Armoire that had stood outside the laundry room; and,
- (xii) Cast iron patio set and barbeque owned by Mr. Docherty.

[166] Ms. Catherwood made no submissions on this issue. As noted by Bielby J. in *Truong v. Truong*, 2012 ONSC 3455 (available on CanLII), at para. 82, "This is the most problematic of all the property issues."

[167] I require brief submissions from Ms. Catherwood within 14 days of the date of this judgment.

DAMAGES FOR FAILED MEDIATION-ARBITRATION COSTS

[168] Mr. Docherty claims his costs thrown away for the aborted Mediation-Arbitration with Lee Ferrier of approximately \$92,000.

[169] The original Mediation-Arbitration agreement with Mr. Ferrier was signed by Ms. Catherwood on March 6, 2012.

[170] There was a certificate of Independent Legal Advice signed by her lawyer, Lisa Kadoory, on the same date which states: “My client *will be* separately screened for power imbalances and domestic violence and I am satisfied that my client is fully able to participate in this this mediation-arbitration and is doing so voluntarily” (italics added).

[171] The certificate of Independent Legal Advice for Mr. Docherty’s lawyer, Sheila Holmes, signed March 12, 2012, is slightly different and states: “My client *has been* separately screened for power imbalances and domestic violence...” (italics added).

[172] On March 14, 2012, Mr. Ferrier signed a Certificate of Arbitrator confirming that, “The parties *were* separately screened for power imbalances and

domestic violence and *I have* considered the results of the screening and will do so throughout the arbitration, if I conduct one” (italics added).

[173] The document signed by Ms. Catherwood’s lawyer contemplated that a screening was going to be done. Mr. Ferrier was stating that he reviewed the screening and he would keep the screening and power imbalances in mind throughout the arbitration.

[174] Ultimately the screening was done in June 2012 and recommended against arbitration. Mr. Ferrier therefore resigned as arbitrator. This occurred just three weeks before the scheduled arbitration.

[175] No reason was given why she did not take steps to arrange the screening earlier. Ms. Catherwood’s behaviour may have contributed to Mr. Docherty’s increased costs to some extent.

[176] The court was not given a bill of costs with respect to this claim.

[177] I find it more appropriate to consider this claim in the context of any claim for costs arising out of this trial proceeding as a whole.

LIFE INSURANCE FOR SUPPORT

[178] There was no evidence at trial as to whether Mr Docherty had life insurance during the marriage. There was no evidence or discussion of whether Mr. Docherty was eligible for life insurance and in what amount.

[179] I dismiss this claim.

LINE OF CREDIT

[180] Ms. Catherwood made a claim that Mr. Docherty forged her name on an application for the Royal Bank of Canada Homeline line of credit to be secured against the matrimonial home.

[181] Her evidence was that at the date of marriage, July 25, 2009, the line of credit was at \$69,736.06. Four months later, on November 26, 2009, it rose to \$233,943.22. She produced a letter she wrote to the bank dated November 26, 2009, demanding the bank freeze the account and no further funds be withdrawn.

[182] She produced a letter dated December 11, 2009, that Mr. Docherty acknowledged the line of credit was for the purpose of lending the business working capital to keep it running and he would be personally responsible for this

line until the business repaid the debt. It is typed at the bottom, "Paul Docherty-electronic Signature."

[183] Mr. Docherty's evidence is that the business repaid the debt in February 2010.

[184] The valuation by Ms. Russell and evidence of the business debt owed to Mr. Docherty at valuation date was only \$17,944. Ms. Catherwood relied on that figure in her NFP Statement.

[185] Therefore, the evidence supports Mr. Docherty's testimony that the debt had been earlier discharged.

[186] I decline to order Mr. Docherty to pay Ms. Catherwood damages of one half of the value of the line of credit at the date of separation, March 1, 2011.

RESTRAINING ORDER

[187] There was evidence in the past of Mr. Docherty's violent behaviour. There was insufficient evidence led as to any current need for a restraining order.

[188] I dismiss this claim.

DIVORCE

[189] Both claimed a divorce. I am satisfied that they have resided apart for more than one year and that there is no possibility of reconciliation. It is appropriate to grant a divorce.

[190] On filing of the clearance certificate, and the marriage certificate, a divorce may issue.

ORDERS

CUSTODY

[191] The Respondent, Ms. Debra Michelle Catherwood (“Ms. Catherwood”) shall have sole custody of the children of the marriage, namely, E.P.D., born September 7, 2006, and G.G.D., born February 12, 2008, (the “children”).

ACCESS

[192] The parent with whom the children reside shall make day-to-day decisions regarding their care.

[193] Mr. Docherty shall have access on the following schedule:

- (a) Week 1: Tuesday from after school (3:00 p.m.) to 7:30 p.m.; and Thursday from after school (3:00 p.m.) to Monday morning drop-off at school, daycare, or camp;
- (b) Week 2: Thursday from after school (3:00 p.m.) to Friday morning drop off at school, daycare or camp;
- (c) All mid-week pick-ups at school, daycare or mutually arranged location.
- (d) All weekend drop-offs shall take place at Ms. Catherwood's residence on the condition that Mr. Docherty remain curbside when dropping off the children;
- (e) The children shall spend Father's Day from 10:00 a.m. until 6:00 p.m. with Mr. Docherty and Mother's Day 10:00 a.m. until 6:00 p.m. with Ms. Catherwood;
- (f) Christmas: In even numbered years, Ms. Catherwood shall have the children in her care for the first half of the Christmas holidays including Christmas Day until 4:00 p.m. Mr. Docherty shall have the children in his care for the second half of the holidays including New Year's Day until 4:00 p.m. In odd numbered years, Mr. Docherty shall have the children in his care for the first half of the Christmas holidays including Christmas Day

until 4:00 p.m. Ms. Catherwood shall have the children in her care for the second half of the holidays including New Year's Day;

(g) Summer holidays: Each parent shall have three non-consecutive weeks during the summer. In odd numbered years, Ms. Catherwood shall have the first choice of weeks. In even numbered years, Mr. Docherty shall have the first choice of the weeks. The person with the first choice shall provide the dates by no later than March 30th of each year;

(h) Easter: In even numbered years Mr. Docherty shall have the children in his care from 10:00 a.m. until 6:00 p.m. on Easter Sunday and in odd numbered years, Ms. Catherwood shall have the children in her care from 10:00 a.m. until 6:00 p.m.;

(i) March Break: Mr. Docherty and Ms. Catherwood shall share the March Break evenly by adding on two and a half days to their weekend with the children, with the transfer occurring at 1:00 p.m. on the Wednesday of March Break;

(j) Family Day: In even numbered years Mr. Docherty shall have Family Day from 10:00 a.m. to 6:00 p.m., and in odd numbered years Ms. Catherwood shall have Family Day from 10:00 a.m. to 6:00 p.m.;

- (k) Thanksgiving Weekend: Shall be shared, such that the parent whose weekend it is, shall have the Sunday evening until 8:00 p.m. and the other parent shall have the children from Sunday at 8:00 p.m. to return to school Tuesday morning; and,
- (l) Other Holidays: For other holidays, including statutory holidays, and school professional development days on Monday, the children shall remain with the parent they were with on the preceding weekend until Tuesday morning.

[194] There shall be no make-up time for either parent in the event of missed visits or holiday time.

[195] The children shall speak by phone with Mr. Docherty sometime between 7:30 p.m. and 8:00 p.m. when they are in Ms. Catherwood's care and shall speak by phone with Ms. Catherwood sometime between 7:30 p.m. and 8:00 p.m. when they are in Mr. Docherty's care. Mr. Docherty and Ms. Catherwood shall not telephone, text, email or otherwise contact the children during their time with the other parent. The children may communicate with either parent as desired.

[196] Mr. Docherty and Ms. Catherwood may make inquiries and be given information by the children's teachers, school officials, doctors, dentists, health

care providers, summer camp counsellors or others involved with the children. Ms. Catherwood shall sign and provide each other with any information and/or documentation necessary to enable this, including providing notice of all appointments at the time of scheduling.

[197] In the event of an emergency, Ms. Catherwood or Mr. Docherty, as the case may be, shall notify the other parent immediately.

TRAVEL

[198] Mr. Docherty and Ms. Catherwood may take the children on vacations within or outside of Canada. The non-travelling party shall execute a travel consent letter upon being provided with a copy of the itinerary, including dates and mode of travel, and contact information at the destination. The non-travelling party shall not unreasonably deny such a request.

[199] The parties shall arrange the appropriate medical travel insurance and provide proof to the other parent prior to travelling.

[200] Ms. Catherwood will re-apply for Canadian passports for the children. Mr. Docherty will sign the passport applications. Ms. Catherwood will keep the passports and give them to Mr. Docherty when he needs it for travel. Mr. Docherty will return the passports promptly with the return of the children.

OTHER PARENTING TERMS

[201] In the event of illness, Ms. Catherwood and Mr. Docherty shall take the children to their regular physician, if an appointment is available. If no appointment is available, Ms. Catherwood and Mr. Docherty shall use the services of a medical centre known to the children and both parents if in Milton.

[202] E.P.D. and G.G.D.'s names will not be changed without the prior written consent of the other parent.

[203] Ms. Catherwood and Mr. Docherty will not harass or speak ill of each other in the presence of the children.

MOBILITY

[204] The children's primary residence shall not be more than 30 kilometres from Milton.

CHILD SUPPORT

[205] Mr. Docherty shall pay to Ms. Catherwood the table amount of child support under the Child Support Guidelines for E.P.D., born September 2, 2006, and G.G.D., born February 12, 2008, the monthly sum of \$2,658 based upon an

estimated annual income of \$206,700 commencing January 1, 2013, and on the first of every month thereafter.

SECTION 7 EXPENSES

[206] Mr. Docherty and Ms. Catherwood shall share the costs of the children's special and extraordinary expenses as set out in s. 7 of the *Child Support Guidelines*, on a basis proportionate to their incomes. Mr. Docherty's proportionate share shall be 69.2 per cent and Ms. Catherwood's share shall be 30.8 per cent, based on Mr. Docherty's imputed income of \$206,700 and Ms. Catherwood's imputed income of \$27,000.

[207] Mr. Docherty and Ms. Catherwood shall each pay everyday expenses for the children when in his or her care.

[208] Mr. Docherty shall maintain any medical and dental benefits for the children for as long as they are available to him. Ms. Catherwood shall maintain the children on any medical and dental benefits from any employment obtained by her. Mr. Docherty shall maintain Ms. Catherwood on his medical/dental benefits for as long as the policy permits. Mr. Docherty shall provide Ms. Catherwood with medical/dental benefit cards forthwith. In the event that no

medical/dental benefits are available to either party, such expenses incurred with respect to the children shall be paid proportionate to the parties' incomes.

DISCLOSURE

[209] Both parties will provide the following information to the other within 30 days of the request:

- (a) The documents required in s. 21(1) of the *Child Support Guidelines* that have not previously been provided, which includes:
 - i. a copy of every personal income tax return filed by the party for each of the three most recent taxation years;
 - ii. a copy of every notice of assessment and reassessment issued to the party for each of the three most recent taxation years;
 - iii. where the party is an employee, the most recent statement of earnings indicating the total earnings paid in the year to date, including overtime or, where such a statement is not provided by the employer, a letter from the party's employer setting out that information including the party's rate of annual salary or remuneration; and,

iv. where the party is self-employed, for the three most recent taxation years:

1. the financial statements of the party's business or professional practice, other than a partnership; and,
2. a statement showing a breakdown of all salaries, wages management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the party does not deal at arm's length.

v. where the party controls a corporation, for its three most recent taxation years:

1. the financial statements of the corporation and its subsidiaries; and,
2. a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the corporation, and every related corporation, does not deal at arm's length.

- vi. where the party is a beneficiary under a trust, a copy of the trust settlement agreement and copies of the trust's three most recent financial statements; and,
- vii. in addition to any income information that must be included above, where the party receives income from employment insurance, social assistance, a pension, workers compensation, disability payments or any other source, the most recent statement of income indicating the total amount from the applicable source during the current year, or if such a statement is not provided a letter from the appropriate authority stating the required information.

- (b) current information about the children's special or extraordinary expenses;
- (c) details of Canada Child Tax Benefit or other child benefits received in the previous year and anticipated in the coming year; and,
- (d) any other information needed to review the child support.

[210] The parties will adjust the table amount of child support paid each calendar year based on the parties' incomes for that calendar year in accordance with the *Child Support Guidelines* as of June 1.

SPOUSAL SUPPORT

[211] I order Mr. Docherty to pay Ms. Catherwood mid-range spousal support the fixed and non-variable amount of \$3,686 per month commencing January 1, 2013, and up to and including January 1, 2016, based on income of \$206,700 for Mr. Docherty and \$27,000 for Ms. Catherwood.

EQUALIZATION

[212] Ms. Catherwood is to pay an equalization payment to Mr. Docherty of \$91,056.10.

RETURN OF PERSONAL BELONGINGS

[213] Ms. Catherwood is to serve and file brief submissions on this issue within 14 days of this judgment.

DIVORCE

[214] Divorce order to issue upon proof of a clearance certificate and marriage certificate.

COSTS

[215] Mr. Docherty is to serve his submissions on costs to Ms. Catherwood within 30 days of this judgment. Ms. Catherwood is to serve her submissions on costs to Mr. Docherty within 21 days thereafter. Mr. Docherty may serve reply submissions within seven days thereafter.

M. J. Donohue J.

Released: August 15, 2013

CITATION: Docherty v. Catherwood, 2013 ONSC 5220
COURT FILE NO.: 33889/11
DATE: 2013-08-15

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

Paul Martin Docherty

Applicant

- and -

Debra Michelle Catherwood

Respondent

REASONS FOR JUDGMENT

M. J. Donohue J.

Released: August 15, 2013