CITATION: Choquette v. Choquette, 2018 ONSC 1435
COURT FILE NO.: FS-96-226578-001
DATE: 20180301

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
KEVIN RONALD CHOQUETTE	)	*Harold Niman & Meysa Maleki*, for the Applicant
Applicant	)	
– and –	)	
YVONNE ELIZABETH CHOQUETTE	)	*Ken H. Nathens*, for the Respondent
Respondent	)	
	)	**HEARD:** September 12, 13, 14, 18 & 26, 2017

HOOD, J.

REASONS FOR DECISION

Overview

[1] On October 8, 1996, following an eight day trial, Justice Jennings ordered Mr. Choquette to pay Mrs. Choquette spousal support in the amount of $4,750 per month, retroactive to May 6, 1996.

[2] Mr. Choquette has now brought a motion to change this order. He asks that spousal support be terminated effective January 1, 2016. In response, Mrs. Choquette asks that this motion to change be dismissed and that he instead pay increased support in the amount of $15,000 per month, effective January 1, 2013.

[3] For the following reasons, spousal support is terminated effective October 5, 2016.

Background

[4] The necessary background facts to understand this motion are set out in the judgment of Justice Jennings dated October 8, 1996. His judgment was Exhibit 6 at trial before me.

[5] In his reasons for judgment Justice Jennings stated as follows:

Background

The parties were married to each other on September the 2nd, 1979, at Saskatoon. They were recent graduates from the University of Saskatchewan, each earning the degree of Bachelor of Commerce.

They both worked in jobs appropriate to their education. The wife left employment with the City of Edmonton in 1983 when, on January 17th of that year, the first child of their marriage, Graham, was born. The wife returned to work briefly in 1987, as a project accountant with B.C.E. Development Corporation. She then stopped working. By this time the couple was living in Toronto and the husband had entered the securities business. He was doing well, and the reason the wife stopped working was as she said in her evidence "because we had a good income and I did not desire or choose to return to work."

She wanted another child, and after considerable difficulty with conception, a second son, Elliott, was born on November 1st, 1990. Not long after Elliott's birth, the marriage began to encounter difficulties. There were disagreements leading to arguments. Therapists were consulted. By the beginning of 1994 the marriage was virtually dead. In July 1994 the wife left the home, taking the two children with her. Solicitors were consulted, the first of the many orders was obtained, and because of it the wife returned to the home where the family continued to live together throughout the fall. On December 19, 1994 the wife obtained an order, the effect of which was to give her interim interim exclusive possession of the matrimonial home as of January 9th, 1995, and declaring that the children's primary residence would be with her.

The parties have lived separately since that time. They are now each forty-one years old.

Their children are thirteen and six.

The eldest child, Graham, has lived since March 1995 with his father. His relationship with his mother is strained and he sees her infrequently.

Elliott lives principally with his mother. His father has been, with some difficulty, enjoying the very wide access granted by various orders of this court.

The father is now a bank analyst with a stock brokerage firm. He is good at his job and well thought of by his colleagues. He earned about $390,000.00 last year, and his average income for the past few years has been about $200,000.00. Through his counsel, he has taken the position that his ability to pay reasonable support is not in issue.

The wife has not returned to work, but she intends to do so. She has now obtained a C.M.A., an accounting designation similar, I believe, to what used to be called an R.I.A. She is a member of her professional body.

She has also obtained a real estate agent's licence. She would like to take a four-year course to become a licenced chiropractor, but her initial application to the chiropractic college has been rejected.

Spousal Support

Mrs. Choquette is by my observation an articulate, intelligent and extremely strong-willed woman. She is well-educated. She has proven marketable skills at the management level. She told me that she does not intend to sit about doing nothing, and I accept her statement. I do not think her proposal to study to become a chiropractor is well-thought-out, but I have no doubt that she can and will return to the workplace and move relatively quickly towards self-sufficiency.

As well-educated and motivated and capable as she may be, Mrs. Choquette has not yet even entered the work place. Arguably, she has not until now been able to do so, as Elliott, who has been residing principally with her, has just begun attending school on a full-time basis. In any event, she is not nearly as far along the road to self-sufficiency as was Mrs. Frolick, for whom a time-limited award was held to be inappropriate.

Having regard to the objectives set out in Section 15(7) (a) through (d) of the Divorce Act, I believe a support order should be made. I anticipate the change in circumstances occasioned by Mrs. Choquette obtaining that level of full-time employment of which she is clearly capable, will result in a variation application in the near future if the parties cannot themselves settle that issue.

The wife will receive as a result of this judgment her share of the house sale proceeds, being approximately $100,000.00, and an equalization payment of something over $60,000.00. She has other investments and securities of about $60,000.00 after deducting her current debts. Her plans are to invest her capital. I think an appropriate support award under the circumstances would be $4,750.00 per month, a figure I have arrived at after having considered the obligations to be created by this judgment for the support of the children, and the need of both parties to obtain suitable accommodation for themselves and their children.

I also think it appropriate that the husband provide for the wife any tuition fees she may incur for a skills-refreshing or upgrading course reasonably required to enable her to re-enter the work force in a position compatible with her education and past employment history. I would anticipate that any such course would last no more than twelve months. Accordingly, I order the husband to reimburse the wife for the tuition fees and book expenses incurred by her for any course undertaken by her within the next six months, to a maximum of $5,000.00, upon presentation to him of

> an appropriate invoice and some evidence that the wife is enrolled and attending as required.
>
> Child Support
>
> If he were to receive custody, Mr. Choquette did not seek an order in his favour. I am aware that Mrs. Choquette will have child care expenses when exercising access, and I reiterate that I took the effect of my judgment for custody into account when determining spousal support.
>
> Accordingly, I make no order for child support.

[6] Mrs. Choquette appealed the custody order made by Justice Jennings to the Court of Appeal. She subsequently abandoned her appeal. Mr. Choquette cross-appealed the spousal support award. As stated by the Court in paras. 2-5 of its endorsement of July 28, 1998, marked as Exhibit 7:

> The husband cross-appeals from the spousal support award on the ground that the trial judge erred in not making a time-limited order, a "review order" or "drop down order" in order to promote the self-sufficiency of the wife. At the hearing, the husband abandoned his request for a time-limited order and asked that the judgment be varied so as to provide for a reduction from $4,750.00 to $2,350.00 a month on January 1, 1999 and then a further reduction to $1.00 a month on January 1, 2001, or in the alternative, an order that spousal support award be subject to an automatic review no later than January 1, 1999.
>
> In our view, this is not an appropriate case to consider the propriety of making a review order as part of a final judgment. It is clear from the trial judge's reasons that he fully considered the objectives set out in s. 15(7)(a) through (d) of the *Divorce Act* as they applied to the facts of this case. In particular, he specifically addressed the issue of self-sufficiency and was satisfied on the evidence that the wife would "return to the workplace and move relatively quickly towards self-sufficiency". It is not our role to decide the issue afresh. In the absence of a material error, this court should not intervene.
>
> In our view, the husband's concerns that the wife may not become self-sufficient as quickly as anticipated by the trial judge are better dealt with on a variation application brought in that eventuality. The non-happening of an anticipated event can constitute a material change in circumstances within the meaning of the *Divorce Act*: *Trewin v. Jones* (1997), 26 R.F.L. (4th) 418 (Ont. C.A.). Counsel for the wife conceded that proof of malingering by the wife could be the basis for a variation application.

[7] Mr. Choquette paid the ordered monthly amount of spousal support of $4,750 retroactive to May 6, 1996 as ordered by Justice Jennings until the payment of spousal support was stayed

by Justice Corbett on October 5, 2016, pending the trial determination of his motion to change. Mr. Choquette paid the ordered spousal support for over 20 years. Taking into account the support paid subsequent to separation and prior to the decision of Justice Jennings, Mr. Choquette has paid support for approximately 22 years.

[8] When the parties separated in 1994 they were each 39 years of age. At the time of the first trial they were both 41. Today they are both 62. Graham, their eldest son, is now 35. Elliott, their youngest son, is now 27.

[9] Much of the trial before me was spent going over the events leading up to the trial before Justice Jennings and what was said and done at the first trial itself. To me these matters are irrelevant. All of this was dealt with in the earlier trial. I cannot and should not re-examine what has already been decided. What I am to do is consider what has happened since the first decision and determine whether there has been a material change in circumstances justifying a variation.

[10] Much of Mrs. Choquette's examination of Mr. Choquette involved going over their marriage and the various jobs taken by Mr. Choquette in a variety of cities, presumably in support of a claim to compensatory spousal support, because she sacrificed her career for the sake of Mr. Choquette's numerous career moves. The difficulty with this approach is that all of this was or should have been before Justice Jennings. In addition, Justice Jennings found as a fact that Mrs. Choquette stopped working because she wanted to. As she put it, and as quoted by Justice Jennings in his reasons, "we had a good income and I did not desire or choose to return to work." Justice Jennings made a finding that she was not entitled to compensatory support for the loss of an economic opportunity.

[11] Following the decision of Justice Jennings and the abandonment of her appeal of his custody order, Mrs. Choquette brought a motion for sole custody of Elliott, alleging child abuse by Mr. Choquette. Mr. Choquette in response sought sole custody of the boys and to either suspend her access to Elliott or for her to have supervised access with Elliott. On June 13, 2000, Justice Wilson ordered supervised access by Mrs. Choquette with Elliott, if requested by her, at a supervised access centre in Toronto for a maximum of two hours every second week. Mrs. Choquette appealed this order. The Court of Appeal dismissed her appeal on December 12, 2001.

[12] That was the last of the parties' involvement with the court system until Mr. Choquette commenced this motion to change.

Analysis

[13] Mr. Choquette argued before me that Mrs. Choquette did everything to keep this change motion from reaching the point of hearing, as she had done with the original application. In his view, she did this in order to increase his legal bills. Again, I found this to be irrelevant to the

decision I had to make. While this could perhaps be relevant to the consideration of costs, I did not see it as being relevant to whether there had been a material change in circumstances justifying a variation.

[14] On October 5, 2016, Mrs. Choquette requested that a scheduled case conference not proceed. She stated that she required an adjournment in order to produce evidence of her disability, as proof of her alleged inability to work in support of her opposition to the change motion that was being sought and her cross-motion for additional support. The adjournment request was granted, but at a cost: Justice Corbett stayed Justice Jennings' support order pending the trial determination of the motion to change.

[15] As it turned out, Mrs. Choquette never did submit any evidence in support of her alleged disability.

[16] Once Justice Jennings rendered his decision, both parties had the same net worth and education. While he had a well-paying job in 1996, making approximately $400,000 per year versus the $57,000 that Mrs. Choquette was receiving in support, he had much higher expenses, and was raising their two sons without any assistance, financial or otherwise from her. His assets were highly leveraged. He had gone deeply into debt in order to buy a home close to the boys' school. He had cash flow problems. While she had been out of the workforce for some time, the decision by Justice Jennings was designed to get her back to work and become self-sufficient.

[17] At the time of the first trial, Mr. Choquette was a bank analyst with Levesque Beaubien. He had become a bank analyst approximately ten years earlier while working at another financial institution.

[18] After separation, he moved to Scotia Capital then Scotia Global Markets, again as a bank analyst. He did extremely well financially, both from his employment and his investments. His line 150 income was $1,356,153 in 2011, $998,250 in 2012 and $2,314,097 in 2013. In 2014, he was let go without cause and was given a severance package. In 2014, his line 150 income was $1,493,672. That sum was comprised of both income and his severance pay. In June 2014, he joined Credit Suisse as a bank analyst and managing director. His line 150 income in 2015 was $1,717,154. On November 10, 2016, he was again terminated without cause as part of a corporate restructuring. His 2016 line 150 income was $1,521,928.

[19] At the age of 61 he decided, having just been let go for the second time in 3 years, to retire. He did not want to look for new employment. He was honest in saying that he had been lucky, in addition to working hard, and he was now in a position such that he did not have to work. I accept his evidence that his decision not to work was not a tactical decision designed to support his motion to change. He admitted to being somewhat selfish in his decision. As he put it, he now needed "Kevin time".

[20] I found Mr. Choquette to be credible. His answers to questions both in chief and in cross-examination were thoughtful and measured. He did not exaggerate. His evidence was consistent with the documentary evidence. When asked something, either in chief or in cross-examination and he could not remember, he said so.

[21] Mr. Choquette has a substantial net worth. He is in a position to retire. As disclosed on his most recent financial statement of August 30, 2017, he has assets of $14,068.640 with minimal debt, comprising of credit card debt of about $38,000 and CRA debt for tax installments of about $27,000, for a net worth of approximately $14,003,000. His net worth fluctuates based upon the ups and downs in the stock market, as his investments are 100% in stocks, primarily in bank stocks. For example, his September 16, 2016 financial statement had assets of about $700,000 more because of the market. He recognized that at his age a more reasonable portfolio would include about 40% bonds, rather than 100% equities.

[22] His expenses currently amount to approximately $296,000 per year. His income, from his most current financial statement (comprising of dividends from his investments) is $240,000. This leaves a net loss of $56,000 per year, meaning that he will have to start utilizing his capital or decrease his expenses.

[23] The current situation of Mrs. Choquette is much different.

[24] She lives in Cudworth, Saskatchewan, which is north east of Saskatoon, in a property she owns. She used money from her divorce to buy a number of homes in Saskatchewan. She lives in one and rents the others. She also currently works as an organic farmer. Despite living in Saskatchewan, she maintains a rental property in Toronto at a cost of $1,301 per month. She has done so for years. She says she has the apartment so that she has a Toronto address in case she applies for a job in Toronto.

[25] From the order of Justice Jennings, until the order of Justice Corbett on October 5, 2016, the annual spousal support of $57,000 made up the majority of Mrs. Choquette's income.

[26] In 2006, her line 150 income was $57,674, which included a small amount from Statistics Canada earned by working part-time on the census and $2,299 for working part-time for a company called Drake International, doing educational assessments.

[27] In 2007, her line 150 income was $63,333. She had employment income from working for Drake International again on a part-time basis, plus income from Elections Ontario for one month of work prior to an election. Together this totaled $9,753. This amount was offset by a loss from her rental properties of $6,570.

[28] In 2008, her line 150 income was $48,536. She had very minimal employment income from Elections Canada, had rental losses of $5,336, and farming losses of $4,496. She had also purchased some farm land in Saskatchewan that year.

[29] In 2009, her line 150 income was $54,845. This year there was no employment income. A small amount for rental income was offset by a larger farming loss.

[30] Her incomes from 2010 to 2016 were similar in nature. She received her support of $57,000. She would make a small rental income or would incur a larger loss. Her farming income was typically a loss, although in 2010 she had a net income of $37 from farming. She occasionally collapsed some of her RRSP. In 2015, she collapsed a very large amount of her RRSP thinking that she would use the money to buy some farmland from her father's estate. That did not happen. In 2010, her line 150 income was $67,311. In 2011, it was $64,374. In 2014, it was $55,371. In 2013, it was $58,241. In 2014, it was $63,922. In 2015, it was $242,477, because she took $190,200 out of her RRSP. This led to a very large tax payment. Instead of her typical tax payment of approximately $10,000 to $14,000, her 2015 tax payable was $65,528. In 2016, her line 150 income was $54,443.

[31] At the time of trial, Mrs. Choquette had assets of $1,219,561 and debts of $438,499 for a net worth of $781,112, based upon her financial statement dated August 29, 2017 and marked as Exhibit 74. Her net worth was substantially lower than that of Mr. Choquette.

[32] Her current expenses as set out in the same financial statement amount to $41,628 per year. Her proposed expenses as set out in this financial statement of August 29, 2017, amount to $197,844 per year. In Exhibit 77, being another financial statement of August 29, 2017, her assets, debts and current expenses are the same. However, she has not included any budget of expenses in that financial statement as she has indicated that much depends upon her level of spousal support. She is seeking $15,000 per month in support. Of this, she testified $5,000 would be for taxes, $5,000 would be to pay down her debt and $5,000 would go towards what it "takes to live". In Exhibit 74, she has shown these expenses for taxes and debt payment. She has also shown $2,000 as savings for retirement. Her other budgeted monthly expenses amount to approximately $4,500, up from her current monthly expenses of approximately $3,500.

[33] In his reasons, Justice Jennings found that Mrs. Choquette intended to return to work, that she had proven marketable skills at the management level and that she planned to invest her capital arising from the financial award made by him. He fully expected her to "re-enter the work force in a position compatible with her education and past employment history." The Court of Appeal in dismissing Mr. Choquette's cross-appeal did so relying upon, among other things, Justice Jennings' statement that he was satisfied on the evidence that Mrs. Choquette would "return to the workplace and move relatively quickly towards self-sufficiency."

[34] This never happened. Mrs. Choquette never returned to an accounting position or obtained employment at the management level or anything reasonably comparable. This was because she never made any attempt to do so. She argued that, due to the marriage, she was out of the workforce for ten years at the point of separation and was never able to catch up. In my view, however, she made no effort to catch up. If she had made an effort to "re-enter the

workforce in a position compatible with her education and past employment history" and had failed, that might support her argument. However, after having made no effort to "return to the workplace and move..towards self-sufficiency", it is not tenable to argue that her inability to support herself is the result of her marriage or its breakdown, and that she still requires spousal support – in fact, that she requires it at a level more than three times what had been ordered 21 years previously.

[35] There was no evidence tendered by Mrs. Choquette of any job searches between October, 1996 and January, 1999. She did put in as evidence a summary of approximately 50 applications to mostly newspaper ads between January, 1999 and September, 2001. Her applications apparently consisted of her resume along with perfunctory supporting letters. She got no jobs to speak of, which is not surprising. There was no focused effort by her to gain meaningful employment or something that would eventually lead to self-sufficiency. As she put it, she was worn out with court and couldn't work. Instead, seeking to set aside what she saw as incorrect decisions became her work.

[36] She had had some success selling real estate while married. Her license expired because of non-activity in December, 1992. In or around September 2001, she looked into its re-instatement. She decided not to seek re-instatement because it cost money, she had no time to take any courses and it was, as she put it, a "hard industry". Justice Jennings had ordered Mr. Choquette to pay up to $5,000 for any upgrading education courses so the cost issue could have likely been overcome. While she perceived it as a hard industry, she had had some success at it and arguably her view could be the case for most jobs or careers, where one is starting out. To say she had no time to take courses was unsupported by the evidence. There was no evidence of the time required and there certainly wasn't any evidence that she was spending her time on anything else.

[37] There was no evidence of any job searches from 2001 to 2006. Mrs. Choquette said she was depressed. There was no evidence from her in support of this, or evidence that her alleged depression was such she was incapable of working or looking for work.

[38] She did take a variety of computer courses in 2001 to 2015 but she took these more for personal reasons, rather than to find a job. She never sought to do anything that would utilize her CMA designation.

[39] She put into evidence a letter she had written in support of a job application in 2015 (The letter was filed as Exhibit 72). She could not recall what the job was for. The letter is so poorly written with so many grammatical errors that it could perhaps be seen as a deliberate effort not to obtain the job for which it was submitted. While she recalls getting an interview, she did not receive a job offer.

[40] She has chosen to buy and rent residential properties in rural Saskatchewan and to become an organic farmer, also in Saskatchewan. While she purchased a commercial property in or around 2009, it was not and remains in poor conditions such that it cannot be rented out. She is involved in another litigation, this time with her family over her father's estate in Saskatchewan.

[41] Being a small landlord and a farmer is work. It just is not lucrative for her. It is apparently not something that makes her self-sufficient. But that is and has been her choice. She did not do what she told Justice Jennings she was going to do, or follow his resulting admonishments.

[42] Her husband from approximately 22 years ago, despite his wealth and his arguable ability to pay support (certainly at the current level of $4,750 per month and maybe even at $15,000) should not have to fund her chosen lifestyle and provide spousal support when she has made no legitimate effort to become self-sufficient in all the years following separation.

[43] In cross-examination, she acknowledged that she told Justice Jennings that she was not a person to stand around and expect handouts. To me, that is what she is now asking this court to promote.

[44] Justice Jennings' order for spousal support did not call for annual adjustments based on income. This is because he was satisfied that Mrs. Choquette would move relatively quickly to achieve self-sufficiency.

[45] Mr. Choquette never sought child support or any contribution towards his s. 7 expenses for the boys. He did not bring any prior motion to change. He only did so after receiving a letter from counsel for Mrs. Choquette in November, 2015, stating that she wished to review the current spousal support arrangement and determine whether it was consistent with the SSAGs (which did not exist when Justice Jennings made his decision), and if the amount being paid was appropriate, considering their current incomes and financial prospects. Following receipt of this letter Mr. Choquette obtained legal advice. His motion to change was issued soon thereafter.

[46] Mr. Choquette argues that Mrs. Choquette's failure to become self-sufficient is a material change justifying a variation. He also argues that his decision to retire is a material change. I will not consider his retirement as I am satisfied that Mrs. Choquette's failure to become self-sufficient is a material change.

[47] The Court of Appeal, in its decision quoted above, stated that "The non-happening of an anticipated event can constitute a material change in circumstances." In argument before me, Mrs. Choquette acknowledges that her failure to become self-sufficient is a material change. I would have found this to be the case regardless. Where the parties differ is over how this

material change should affect spousal support and whether there is a continuous entitlement to spousal support.

[48] Having found there to be a material change, the issue then becomes whether there should be a variation in support as argued by Mrs. Choquette, or whether support should be terminated as argued by Mr. Choquette. In making this decision, I must consider the objectives for variation set out in s. 17(7) of the *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.). These objectives are the same objectives as found at s. 15.2(6) of the *Act* for spousal support, and as considered by Justice Jennings (then numbered as s. 15(7) of the *Act*).

[49] Mrs. Choquette argues that she remains entitled to support on a compensatory basis and while perhaps she did not fulfill the expectations of Justice Jennings and the Court of Appeal in becoming self-sufficient relatively quickly, the remedy is a variation to some other amount after imputing an appropriate income to her, not a termination.

[50] As mentioned previously, she argued she was never able to attain self-sufficiency because she was out of the workforce for ten years. As I have already stated however, she made no effort to do so. Mr. Choquette should not have to continue to pay support at his previous level and certainly not at the level now being requested.

[51] Mrs. Choquette relies upon *Wegler v. Wegler*, 2012 ONSC 5982, [2012] O.J. No. 5129, for the proposition that the fairest way to deal with her failure to achieve or to even attempt to achieve self-sufficiency is to impute an income to her for the purposes of the SSAGs. *Wegler,* however, is distinguishable because in that case the mother still had child care responsibilities and would likely be in her late 50s when her child care responsibilities would end. Here, Mrs. Choquette was 39 at the time of separation in 1994 and had no child care responsibilities after 1996. After 1996, she was not prevented from immediately and fully re-entering the work place and trying to catch up. She chose to place her energy and time elsewhere. Nor did she have to contribute anything for child support or s. 7 expenses.

[52] Mrs. Choquette argues that the SSAGs are a useful tool, although the court in *Fisher v. Fisher,* 2008 ONCA 11, 88 O.R. (3d) 341, at para. 96, stated that they do not apply to variation orders. When Justice Jennings made his decision there were no SSAGs.

[53] Based on the SSAGs provided, spousal support at the time of initial separation in 1994 would have ranged from 7.5 to 15 years based upon the duration of the marriage. Mr. Choquette has paid over 22 years of support. While I am not relying upon the SSAG calculations, they are supportive of the view that in certain circumstances, support is not expected to go on forever.

[54] I have considered the objectives listed in s. 17(7) of the *Act*.

[55] With respect to (a), recognition of economic advantage or disadvantage arising out of the marriage, any disadvantage to Mrs. Choquette arising from the marriage has been compensated for by the length of support. Any disadvantage that she may now be in is a result not of the marriage or its breakdown, but by her choices made since separation.

[56] With respect to (b), apportioning financial consequences for childcare other than child support obligations, Mr. Choquette had all of the child care responsibilities following Justice Jennings' decision. Justice Jennings stated that he took his custody order into account and Mrs. Choquette's child care expenses when exercising access into account when considering spousal support. There are no child care expenses now that come into play.

[57] While Mrs. Choquette did not make submissions on (c), economic hardship arising from breakdown of the marriage, any economic hardship arising from the breakdown of the marriage has long been dealt with. The breakdown took place in 1994. Support was paid for 22 years and Mrs. Choquette, with her degree and qualifications at the age of 39, had every opportunity to overcome any economic hardship there might have been at the time.

[58] With respect to (d), promotion of self-sufficiency of each spouse within a reasonable period of time, the order made in 1996 was designed to promote Mrs. Choquette's economic self-sufficiency. She chose a different path. The only order that can be made to promote her self-sufficiency would be a termination of support.

[59] Support was stayed on October 5, 2016 by Justice Corbett. In Mr. Choquette's proposed order, provided at the commencement of trial, he asked for repayment of the support paid from January 1, 2016, when his application was issued, to October 5, 2016 when the support was stayed. This would be a repayment of ten months or $47,500. However, during closing argument no submissions were made by Mr. Choquette in support of this argument or suggesting that he was seeking this repayment. Accordingly, no submissions were made by Mrs. Choquette on this issue.

[60] If it had been argued, I would have been hard pressed, taking into account the different economic circumstances of the parties, to make such an order. Such an order, if sought, would, in my view, have created an undue hardship for Mrs. Choquette and would have been inappropriate.

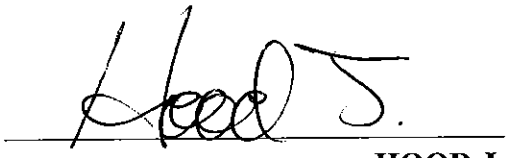
[61] I am mindful that this order may create economic hardship for Mrs. Choquette, because she does not appear to be self-sufficient at present. However, the question I must address in this case is whether she remains entitled to spousal support from her former spouse. In my view, having regard to the provisions of the *Divorce Act*, it is clear that she is not.

Conclusion

[62] Based upon the foregoing reasons, I order the spousal payments ordered to be paid by Justice Jennings in accordance with paragraph 4 of his order of October 8, 1996 to be terminated effective October 5, 2016.

[63] The respondent's claim for spousal support to be changed to $15,000 per month, effective January 1, 2013, is dismissed.

[64] Being successful, arguably the applicant is entitled to costs. If the applicant is seriously seeking costs, then he may file brief written submissions, not to exceed three typed, double spaced pages, together with a Bill of Costs and necessary documents such as dockets and offers to settle on or before March 23, 2018. Any responding submissions subject to the same directions are to be filed within three weeks of his submissions. There are to be no reply submissions. In addition to filing their submissions as part of the continuing record the parties are also directed to provide a hard copy directly to Judges' Administration, Room 170, at 361 University Avenue, to my attention.



HOOD J.

Released: March 1, 2018

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Applicant

– and –

YVONNE ELIZABETH CHOQUETTE

Respondent

REASONS FOR DECISION

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