

CASE NO.

Cite as: Benvie v. Mills, 1997 NSCA 193

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RALPH DOUGLAS BENVIE

- and -

KATHERINE MARY MILLS

Appellant

Respondent

C.A. No. 140928

Halifax

CHIPMAN, J.A.

APPEAL HEARD:

December 4, 1997

JUDGMENT DELIVERED:

December 9, 1997

SUBJECT:**DIVORCE - Family Law - Maintenance - Application for variation of terms of a support order pursuant to s. 17 of the Divorce Act, S.C. 1986****Federal child support guidelines made under s. 26.1 of the act.****SUMMARY:**

The former wife applied to a judge of the Supreme Court for a variation order respecting the terms of support payable by the former husband. The Federal Child Support Guidelines were relied on as a basis for making a variation. The Chambers judge made a variation in the support for two children in accordance with the appropriate table in the Guidelines. He imputed to the appellant an income greater than the amount disclosed in the appellant's income tax return. He entertained an argument on the appellant's behalf that the application of the Guidelines would produce undue hardship, and he made an award of an amount pursuant to s. 7 of the Guidelines (add-ons).

ISSUE:

Whether the trial judge made any error and, in particular, whether he failed to properly consider the appellant's argument of undue hardship.

RESULT:

The Court of Appeal, in a brief decision without setting out the facts, stated that it had come to a conclusion on a review of the evidence and argument that no error was made by the Chambers judge in arriving at the appellant's income or in the application of the Guidelines, including the issue of undue hardship. The appeal was dismissed with costs to be dealt with after further representation by the parties respecting an offer said to have been made before the hearing of the appeal.

THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION. QUOTES MUST BE FROM THE DECISION, NOT FROM THIS COVER SHEET. THE FULL COURT DECISION CONSISTS OF 3 PAGES.

