

CASE NO.

VOLUME

PAGE

Cite as: Hughes v. Hughes, 1997 NSCA 185

HOWARD BRYN HUGHES

MARY ELIZABETH HUGHES

- and -

(Appellant)

(Respondent)

C.A. No. 138256

Halifax, N.S.

Clarke, C.J.N.S.

APPEAL HEARD:

October 15, 1997

JUDGMENT DELIVERED:

November 12, 1997

SUBJECT: **FAMILY LAW - Child Support**

SUMMARY:

In the settlement agreement made upon separation and before divorce, the parties agreed the father would pay \$850.00 per month for the support of the child of the marriage. It was also agreed that if the father retired from the Armed Forces within three years, such would be considered a change of circumstance permitting him to make an application to vary. He did and he applied. His annual income fell from \$45,000.00 to \$25,971.00 (\$2,164.25 per month). The trial judge ordered the father to continue to pay \$850.00 per month on the assumption that the child, then 19 years old, would be continuing her post secondary education for four years, being two years at the Nova Scotia Community College and two years at Mount Saint Vincent University. The decision was rendered on April 22, 1997, seven days before the effective date of the Federal Child Support Guidelines. The father appealed.

ISSUE:

The father argued, among others, that the trial judge erred by failing, (a) to apply the Guidelines; (b) to require withdrawals from an education fund established by the mother and father for the child; (c) to require the child to apply for a student loan, and (d) to order the child should be required to contribute her earnings from summer employment against her costs of education.

RESULT: While recognizing the accepted principles of the standard of review, the court allowed the appeal. It concluded the trial judge misapprehended the evidence by accepting as a fact that the child would be pursuing four years post secondary education when the evidence, at best, only supported two years at Community College. In addition the calculations of the child's budget, upon which the award of \$850.00 was made, included the items for which the trial judge said the education fund should be dedicated.

The Court set aside the award and varied it downward to an order of

\$600.00 per month to be paid by the father on the same basis as the trial judge ordered; namely, a tax deduction to the father and income inclusion to the mother. The decision of the trial judge was rendered seven days before the effective date of the guidelines. The Court concluded the trial judge had appropriately considered the impact of the Guidelines in these circumstances.

An application by the father to introduce fresh evidence was dismissed.

The Court considered **Briand v. Briand** (1996), 153 N.S.R. (2d) 157 at 160; **Maclsaac v. Maclsaac** (1996), 150 N.S.R. (2d) 321; **Edwards v. Edwards** (1995), 133 N.S.R. (2d) 8; 380 A.P.R. 8 (C.A.), at p. 20.

This information sheet does not form part of the Court's decision. Quotes must be from the decision, not this cover sheet. The full court decision consists of 17 pages.