

CASE NO.**VOL. NO.****PAGE**

ELIZABETH FLORENCE SMITH - and - DOUGLAS EDWARD SMITH

(Appellant)

(Respondent)

CA 172939

Halifax, N.S.

Flinn, J.A.

[Cite as: *Smith v. Smith*, 2002 NSCA 78]

APPEAL HEARD:

May 14, 2002

JUDGMENT DELIVERED:

June 20, 2002

SUBJECT:**Family Law — Arrears of Spousal and Child Support
— Laches****SUMMARY:**

The appellant was divorced from the respondent 30 years ago. The respondent has never made any of the child and spousal support payments provided for in the decree nisi (\$60.00 per week). In 1976 the appellant obtained judgment against the respondent for arrears of payments to that date, but never executed on that judgment. The chambers judge dismissed her application for an order, *inter alia*, fixing the arrears from the date of the decree nisi to the date of her marriage to her second husband. The chambers judge dealt with the claim in two parts:

- 1) With respect to arrears of maintenance from the date of the decree nisi to the date of the judgment in 1976 the chambers judge said that he had no jurisdiction to revisit the fixing of arrears that were subject of the February 24, 1976 judgment. Those arrears had been determined by the Supreme Court in 1976. Any attempt to execute on that judgment would have to be the subject of another application.

- 2) With respect to the arrears of maintenance from the date of the judgment in 1976 to the appellant's second marriage in 1978, the chambers judge said that the appellant's delay in advancing this claim (22 - 24 years) is "extraordinary." In the course of his remarks the chambers judge noted that the court is being asked to fix arrears that no longer can be reasonably collected.

RESULT:

Appeal allowed in part.

- 1) The Court of Appeal was not persuaded that the chambers judge was wrong in concluding that he had no jurisdiction to revisit the fixing of arrears that were the subject of the February 24, 1976 judgment.
2. In the circumstances of this case the chambers judge erred in relying upon the fact that the arrears "no longer can be reasonably collected." The Court of Appeal decided that the respondent should be ordered to account for these arrears. The factors in this case which compelled that conclusion are:
 - (a) the stance which the respondent took at his divorce hearing that he would not pay maintenance;
 - (b) the threats which the respondent made to the appellant if she attempted to collect arrears from him;
 - (c) the evidence before the chambers judge that the respondent has the ability to pay something; and
 - (d) the fact that the respondent led no evidence that he relied to his detriment on the fact that

he would not be called upon to account for these arrears.

The Court of Appeal ordered the respondent to pay arrears of \$7,080.00 together with pre-judgment interest on \$7,080.00 at 2 1/2% from May 7, 1978 to date.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 6 pages.