

DOCKET: FKMCA-049035

IN THE FAMILY COURT FOR THE PROVINCE OF NOVA SCOTIA
[Cite as: L. F. v. P. M. 2007 NSFC 3]

BETWEEN:

L. F.
-APPLICANT

AND

P. M.
-RESPONDENT

BEFORE THE HONOURABLE JUDGE BOB LEVY

HEARD AT: KENTVILLE

DATE HEARD: JANUARY 15, 2007

DECISION DATE: JANUARY 16, 2007

APPEARANCES: THE PARTIES REPRESENTED THEMSELVES

DECISION

Child Support - undue hardship application denied

By the Court:

L. F., who has the care and custody of her 14 year old daughter seeks a variation in the support payable by the girl's father, P. M.. Child support currently stands at \$122 per month pursuant to a 2002 confirmation order by the Manitoba Court of Queen's Bench (Family Division). Both parties now reside in Nova Scotia.

Mr. M., and for that matter Ms. F. as well, cite "undue hardship". They have given me their figures and supporting documents in an informal setting, forgoing cross-examination by consent, and leaving the undue hardship calculations and the result, up to me. They take no issue with the information that the other has put before the court.

Mr. M. is employed in a retail grocery store earning, as extrapolated from his pay cheque for the pay period ending December 2, 2006, the sum of \$34, 354 per year, gross. He lives and has lived 'common law' for over five years now with his current partner, M. W.. They have no children residing with them. Ms. W. is on a long term disability pension of \$799.29 monthly, with taxes of \$38.35 deducted from that amount. Mr. M. has another child living in British Columbia for whom he pays monthly maintenance, pursuant to an order, in the amount of \$122, which triggers section 10 (2) (d) of the Guidelines. He indicates that he has or may soon have expenses associated with maintaining a computer and internet account to enable him to keep in contact with this child.

Mr. M.'s common law partner has considerable expenses resulting from her

disability. In short, she attends with a chiropractor three times weekly at a cost of \$35 per session at a yearly cost of \$4,960 as she is re-imbursed through insurance a maximum of \$500 per year, ($\$35 \times 52 = \$5,460 - \500). She also has cost for pharmaceuticals of \$150 per month, (\$1,800 per year). The total cost of these expenses is \$6,760 and are all the result of her disability and serious illness. I hold that given the length of the cohabitation that section 10 (2) (e) of the Child Maintenance Guidelines applies and these expenses are part of Mr. M.'s 'legal duty'.

Ms. F. resides with the her two children, the child who is the subject of this application, and another child, aged 11. She works part time at a bank with an annual income of \$14,050. She receives \$135 monthly maintenance for the other child, (\$1,620 per year), and the Child Tax Benefit of \$465.11 monthly, (\$5,581.32 per year).

As there are two factors covered by section 10 (2) of the Guidelines that apply to Mr. M. I am obliged to compare the standards of living of the two households and I will do so employing the calculations in Schedule II of the Guidelines. I begin by saying that neither household is well-off and it is evident that their relatively low incomes are a serious stressor in both households. No doubt both parties are finding it very hard indeed. Both parties have been obliged to resort to bankruptcy, with Mr. M. now being discharged and Ms. F. scheduled to be discharged this month.

Mr. M.'s household:

Mr. M.'s gross income	\$34,354.00
less tax (as deducted at source)	<u>-\$ 5,609.76</u>
	\$28,745.76
M. W.'s income	\$9,591.48 (\$799.29 x 12)
less tax	<u>-\$ 460.20</u> (\$38.35 x 12)
	\$9,139.28
Deductions from income	
Mr. M.'s support for the other child	\$1,464.00 (\$122 x 12)
Ms. W.'s medical expenses	\$6,760.00
Table amount of child support	<u>\$3,634.80</u> (\$302.90 x 12)
	\$11,858.80
Household Income Amount	
Mr. M.'s after tax income	\$34,354.00
Ms. W.'s after tax income	<u>\$ 9,139.28</u>
	\$37,885.04
Less deductions	<u>-\$11,858.80</u>
"Household Income Amount"	\$26,026.24
Low Income Measure (two adults)	\$14,535
Household Income Ratio	1.79 (\$26,026.24 ÷ \$14,535)
Ms. F.'s household:	
Ms. F.'s employment earnings	\$14,050.00
Less tax: note, she has personal and equivalent to married deduction	<u>- \$ 0.00</u>
	\$14,050.00
Plus:	
support for other child	\$1,620.00 (\$135 x 12)
child tax benefit	\$5,581.32 (\$465.11 x 12)
table amount of support from Mr. M.	\$3,634.80 (\$302.90 x 12)

“Household Income Amount”	\$24,886.12
Low Income Measure (adult and two children)	\$17,649.00
Household Income Ratio	1.41 (\$24,886.12 ÷ \$17,649.00)

Mr. M.’s household has the higher ratio and therefore is deemed to have the higher standard of living. Section 10 (3) of the Guidelines reads:

Standards of living must be considered

(3) Despite a determination of undue hardship under subsection (1), an application under that subsection must be denied by the court if it is of the opinion that the household of the parent who claims undue hardship would, after determining the amount of child maintenance under any of Sections 3 to 5, 8 or 9, have a higher standard of living than the household of the other parent.

(Emphasis added)

Accordingly, having canvassed the evidence extensively I am unable to grant the relief that Mr. M. seeks. I will therefore order that he shall pay child support to Ms. F. in the amount of \$302.90 per month commencing January 31, 2007 and on the last day of each month thereafter. Appreciating the limits on Mr. M.’s income I just can’t see how he could pay any back-dated award even though I recognize that Ms. F.’s circumstances are compelling as well.

Order accordingly.

Bob Levy, J.F.C.