

**IN THE FAMILY COURT OF NOVA SCOTIA**

**Citation:** S.S.A.T-W. v. C.H.W., 2010 NSFC 19

**Date:** 20100726

**Docket:** 10C066755

**Registry:** Yarmouth

**Between:**

S.S.A.T-W.

Applicant

v.

C.H.W.

Respondent

**Judge:**

The Honourable Chief Judge John D. Comeau

**Heard:**

June 10, 2010, Comeauville, Nova Scotia

**Counsel:**

S.S.A.T-W, Applicant not present nor represented by counsel.

C.H.W, Respondent, self-represented.

**The Application:**

[1] The Applicant resides in the Province of Ontario and she has applied under the **Interjurisdictional Support Orders Act** of Ontario.

[2] The support application, dated December 14, 2009, is for spousal support “as determined by the Court” starting August 2008.

[3] An Order of this Court, consented to by the parties, dated February 17, 2010, dealt with parenting (referred to as child care in the Order) and child support.

There was no provision for spousal support. Child support was a departure from the Child Support Guidelines amount, taking high access costs into consideration.

This was an agreement.

**Facts:**

[4] The Applicant is receiving Social Assistance in Ontario. The parties started living together in 1997 and were married in 2000. From the time they met until 2003 the Applicant worked seasonal full time. In 2004 she kept the same job but did not work as much and the parties decided the Applicant would stay home and

take care of their daughter. After her bankruptcy in 2005, they were able to live comfortably on the Respondent's salary. In 2005 she earned \$73.00. In 2006 her income was \$1178.00, 2007 - \$6445.00 and 2008 - \$7749.00. Most of the time, however, she was at home caring for their daughter as a full time homemaker.

[5] The parties separated in July 2008 because of domestic violence. A Recognizance respecting the Respondent has been supplied to the Court (it has not been signed) but indicates some very serious charges against the Respondent however there is no proof of what happened to them. The Applicant indicates it is because of the charges (death threats, assault, sexual assault) as to why she left and relocated to a women's shelter with only her and her daughter's clothes.

[6] The Applicant's annual income is \$7111.00 and her expenses are \$16,560.00 per year (\$1380.00 a month). She resides with a person to whom she pays rent which includes cable, heat, internet, water, power, condo fees and insurance. This is \$700.00 a month and the rest of her expenses total \$1380.00 a month.

[7] The Respondent is a truck driver whose income in 2007 was \$52,113.00, 2008 - \$76,150.00 and in 2009 - \$77,161.00. He has not provided the Court with his expenses, although requested.

**The Law:**

[8] The **Maintenance and Custody Act** provides for spousal support.

- 3 (1) The Court may, on application by either or both spouses or common law partners, make an Order requiring a spouse or common law partner to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the Court thinks reasonable for the maintenance of the other spouse or common law partner.
  
- 4 In determining whether to order a person to pay maintenance to that person's spouse or common law partner and the amount of any maintenance to be paid, the Court shall consider
  - (a) the division of function in their relationship
  
  - (b) the express or tacit agreement of the spouses or common law partners that one will maintain the other;
  
  - (c) the terms of a marriage contract or separation agreement between the spouses or common law partners;

- (d) custodial arrangements made with respect to the children of the relationship;
- (e) the obligations of each spouse or common law partner towards any children;
- (f) the physical or mental disability of either spouse or common law partner;
- (g) the inability of a spouse or common law partner to obtain gainful employment;
- (h) the contribution of a spouse or common law partner to obtain gainful employment;
- (i) the reasonable needs of the spouse or common law partner with a right to maintenance;
- (j) the reasonable needs of the spouse or common law partner obliged to pay maintenance;
- (k) the separate property of each spouse or common law partner;
- (l) the ability to pay of the spouse or common law partner who is obliged to pay maintenance having regard to that spouse's or common law partner's obligation to pay child maintenance in accordance with the Guidelines;
- (m) the ability of the spouse or common law partner with the right to maintenance to contribute to his own maintenance. **R.S., c. 160, s.4; 1997 (2<sup>nd</sup> Sess.), c.3, s.3; 2000, c. 29, ss. 5, 8.**

### **Obligation of maintained spouse or partner**

- 5** A maintained spouse or common law partner has an obligation to assume responsibility for his own maintenance unless, considering the ages of the spouses or common law partners, the duration of the relationship, the nature of the needs of the maintained spouse or common law partner and the origin of those needs, it would be unreasonable to require the maintained spouse or common law partner to assume responsibility for his maintenance, and it would be reasonable to require the other spouse or common law partner to continue to bear this responsibility. **R.S., c. 160, s. 5; 2000, c. 29, s. 8.**

### **Entitlement:**

[9] In *Bracklow v. Bracklow*, 44 R.F.L. (4<sup>th</sup>) 1, [1999] 1 S.C.R. 420 McLachlin, J. stated that based on statutory support objectives, there are three types of support: compensatory support, non-compensatory support and contractual support. A person may have to pay support on a needs and means basis, even if his spouse was not economically disadvantaged by the roles adopted in marriage. Where a pattern of economic dependence had developed between the spouses during cohabitation, spousal support could be ordered by agreement or implied agreement.

**Non-Entitlement:**

[10] Since *Bracklow* supra, entitlement to support is usually not an issue because proof is necessary that the spouse suffered no economic disadvantage from the marriage and no pattern of economic dependency developed during the parties' relationship.

**Priority**

- 3A**
- (1) Where the Court is considering an application for a child maintenance order and an application for a spousal or common law partner maintenance order, the Court shall give priority to child maintenance in determining the applications.
  
  - (2) Where the amount of a spousal or common law partner maintenance order is less than it otherwise would have been as a result of giving priority to child maintenance, any subsequent reduction or termination of that child maintenance constitutes a change of circumstances for the purposes of an application for a variation order in respect of the spousal or common law partner maintenance order. **1997 (2<sup>nd</sup> Sess.) C. 3, s. 2, 2000, c. 29, s. 4.**

**Factors considered**

- 4** In determining whether to order a person to pay maintenance to that person's spouse or common law partner and the amount of any maintenance to be paid, the court shall consider
- (a) the division of function in their relationship
  - (b) the express or tacit agreement of the spouses or common law partners that one will maintain the other;
  - (c) the terms of a marriage contract or separation agreement between the spouses or common law partners;
  - (d) custodial arrangements made with respect to the children of the relationship;
  - (e) the obligations of each spouse or common law partner towards any children;
  - (f) the physical or mental disability of either spouse or common law partner;
  - (g) the inability of a spouse or common law partner to obtain gainful employment;



**Conclusions/Decision:**

[11] The Applicant is entitled to spousal support. From the time the parties met (1997) until 2003, the Applicant worked seasonal full time. At this time the parties decided the Applicant would stay home and take care of their daughter. In subsequent years she earned some money but it was minimal.

[12] As a result of domestic violence, the Applicant was forced to move to a shelter. Her present income is from Social Assistance.

[13] This is a case where the Spousal Support Advisory Guidelines have generally been reviewed by the Court. Formulation has only been helpful as to the possible range of spousal support.

[14] The Applicant was forced by domestic violence to leave the home and marriage. This was a traditional marriage where the Applicant remained at home to take care of the child.

[15] There was developed a pattern of economic dependency. “There must be an equitable sharing of economic consequences of marriage and marriage breakdown.” See *Whitney v. McIntosh* (1996) 152 N.S.R. (2d) 175.

[16] The Respondent shall pay spousal support in the amount of \$1500.00 a month through the Director of Maintenance Enforcement starting March 1, 2010 (the month following the date the application was re-sworn). Payment of spousal support is indefinite subject to variation.

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John D. Comeau  
Chief Judge of the Family Court of Nova Scotia