

**FAMILY COURT OF NOVA SCOTIA**

**Citation:** Mills v. Mills, 2012 NSFC 5

**Date:** 2012 03 20

**Docket:** FLBMCA-074792

**Registry:** Bridgewater

**Between:**

Glenna Mills

Applicant

v.

Richard Mills

Respondent

**Revised decision:**

The text of the original decision has been corrected according to the erratum dated April 13, 2012. The text of the erratum is appended to this decision.

**Judge:**

The Honourable Judge William J. Dyer

**Heard:**

January 4, 2012, in Bridgewater, Nova Scotia

**Counsel:**

Nicholas LeBlanc, for the Applicant  
Ian MacKay, Q.C., for the Respondent

**By the Court:**

[1] This is a spousal support application under the **Maintenance and Custody Act (MCA)** by Glenna Mills (the wife) against Richard Mills (the husband).

[2] The case was started in late March 2011. There were delays in getting the case to the hearing stage, but are attributable to scheduling difficulties and not laxity or disinterest on the part of the spouses or their counsel.

**The Wife's Case**

[3] In an affidavit, the wife recounted that the parties started their relationship in early February, 1989 and started to cohabit in October, 1989 at Barrie, Ontario. They were both employed at the time – she as a transport company dispatcher; he as a truck driver.

[4] The husband and wife have one biological child, Amber, now twenty-one years old. The wife also has two daughters from a previous relationship, one in her late twenties and one in her mid-twenties. Both are living independently. She said the husband treated her daughters as if they were his own children; and they have always considered him to be their “father”.

[5] After Amber's birth, the wife stayed at home to take care of all three children. She also did most of the household chores, prepared the meals, etcetera. Typically, at the time, the husband worked Monday to Friday from about 8:00 a.m. until 5:00 p.m. The family moved from Ontario to Nova Scotia in 1991 so the husband could be nearer to his son by a previous relationship.

[6] The parties married in mid-July, 1993. In Nova Scotia, the husband continued to be the principal wage earner. The wife continued to stay at home to care for the children and continued to take care of most of the household tasks and responsibilities.

[7] In 2002, the wife wrote an entrance exam for a paramedic course. She was successful and on the brink of entering the program when the husband was told by employment insurance officials that they would pay for him to take a long haul trucking course. As both parents could not be away at the same time to further

their education, it was decided that the wife would stay at home with the children and that the husband would take his trucking course.

[8] The wife disclosed an employment history which included seasonal work at a tourist site to supplement the family income from 1993 to 2003. And, she worked seasonally at a local restaurant from 2003 until 2006. She stopped work outside the home sometime during 2006.

[9] The husband has worked full time with a transport company based in New Glasgow since 2002. His long haul work in recent years has required him to be away for several days at a time. Typically, he would be away from the home for about 10 days and then return for two or three days. During the times the husband was away, the wife was solely responsible for the children's care.

[10] The parties separated in mid-July, 2007. According to the wife, the husband did not pay any formal child or spousal support to her. However, she confirmed that he continued to make the mortgage payments on the family residence and also the car payments. (I will refer to these as the debt payments.

[11] The wife remained in the matrimonial residence with Amber until she completed high school in June, 2008. Amber began studies at a Halifax university in September, 2008. During this time frame, the wife did not work outside the home. She received social assistance benefits from June, 2008 until April, 2010.

[12] Amber completed her first year at university but due to a reported back injury, she left her university studies and, in November, 2009 she began a paralegal course at a small college. She graduated in April, 2011. During the summer months, Amber lived with her mother.

[13] After Amber finished high school, the husband started to pay support directly to her at the rate of \$534 monthly. The wife did not object to this. And, according to the wife, he continued to make the debt payments until February, 2010 when he abruptly stopped. He has paid no spousal support since then.

[14] The wife mistakenly asserted the bank repossessed the residence and the car in April, 2010. Regardless, she did move out of the former matrimonial residence when the husband made a voluntary assignment into personal bankruptcy.

[15] The wife did not make a similar assignment. Indeed, she claimed she had no knowledge or information regarding the husband's bankruptcy. She believes that she still has financial responsibility as a former joint owner for any amounts still owing to the mortgage company and to the finance company for the old automobile. She estimated the market value of the realty to be in the range of \$36,000. At the time of the husband's bankruptcy, she thought the mortgage company was owed something in the range of \$19,000. She agreed there may be a judgment registered against her by a dental professional for an unpaid account of about \$5,000.

[16] In early May, 2010 the wife relocated and started to live with her current "boyfriend", Victor Wareham. This is no secret. They hold themselves out to the community at large as living together. She is hopeful that her relationship with Mr. Wareham will be long term. The wife said the couple lives a modest lifestyle and that they do not have money for any extras. Mr. Wareham owns and operates a small construction company. His approximate gross monthly income is \$2,000.

[17] The wife has no significant debts at this time, except for the Judgment already mentioned and potential responsibility for the balance of the car and realty debts - if pursued by the creditors. That seems unlikely because the realty consists of a small rural lot with a mobile home of little value (according to the husband).

[18] The wife's partner has a personal credit card balance as well as a line of credit for business purposes. The wife is not responsible for either of these. The couple pool their incomes in order to meet their ordinary living expenses.

[19] The wife secured full time employment with a well-known local forestry company in May, 2011 where she is in charge of the stockroom and gets 40 hours each week at an hourly rate of \$13.50. But, this is not her preferred line of work. The company where she works employs between 65 and 70 people. She testified that the industry's future is uncertain and that she is looking for more long term career stability and a potentially better income. However, she acknowledged that her employer has a long history in the local area and that there is no immediate concern of losing her job.

[20] The wife's evidence was that she had always hoped and planned to go back to school, but has been unable to do so because of her limited financial resources. She would like to pursue a career as a health professional – specifically through a practical nursing program. As already noted, she had previously qualified to enter a paramedical program. The nursing program runs for two years. She would have to give up her job and income to pursue this career option.

[21] She and her partner live in a small community, about 25 minutes away by car from the community college she proposes to attend. The estimated cost of her program including tuition and books is about \$7,000 annually. She said she had applied for a bank loan to underwrite her costs of returning to schooling but was unable to get an approval. If she is able to complete her proposed education, she estimates that she could earn a salary in the \$35-45,000 range, based on her personal research.

[22] Absent from the wife's evidence were any specifics about whether she would qualify (for example) for employment insurance benefits or other income support while at school; the availability of student bursaries, grants, loans; the prospects for summer and/or part-time employment; the tax implications (if any) of tuition payments; etcetera. The paucity of evidence makes it difficult to estimate with any precision her income for the next two years or so (if she goes back to school) and introduces another element of "rough justice" to the case.

## **The Husband's Case**

### **Evidence of Janet Whittle**

[23] Janet Whittle is the common-law spouse of Richard Mills. She and he have lived together in rural Pictou County for several years. Whittle has an extensive employment history. She started work in April, 2006 in the administrative department of the transport company which the husband has been with since 1999.

[24] According to Whittle, in January, 2008 the husband asked her if she would take care of his finances. She agreed and they opened a joint bank account. One of the stated purposes was to give access to his money so that his bills, and those of his wife coming to him, would be paid on time.

[25] Whittle's evidence was to the effect that she started to get regular calls from creditors of Mr. and Mrs. Mills. According to her, it was discovered that a number of bills had been run up by the wife or had been left unpaid by her. She gave examples, including a power bill of over \$800 which was discovered after Mr. and Mrs. Mills separated.

[26] Whittle took on the responsibility of negotiating creditor settlements and arranging for payment. Between January, 2008 and January, 2010, Whittle said she monitored and paid, as need be, bills which included finance companies (family vehicle and house appliances), the mortgage, property taxes, and a credit card. She alleged that Mrs. Mills had repeatedly made purchases without Mr. Mills' consent which were charged up to his creditors.

[27] Whittle said that she and the husband went to a local lender to see if the matrimonial property could be refinanced in aid of a matrimonial settlement. That is when she said the truth was discovered about Mrs. Mills' financial circumstances, including one or more judgments against her personally which would or could affect refinancing and/or sale.

[28] Whittle confirmed Amber's departure for college and how she continued to pay bills on behalf of both Mr. and Mrs. Mills. She said it was thought the wife would become financially independent. She believes the wife was not making any serious efforts, however.

[29] Finally, after about two and a half years, Whittle said the husband instructed her to stop paying all of the matrimonial bills on behalf of himself and the wife. She did so around the end of January, 2010.

[30] Whittle corroborated that the husband started to send money to Amber directly in February, 2010. She said voluntary child support continued until April, 2011 at the rate of \$531 monthly. She also confirmed that Amber has since graduated, and is living and working independently.

[31] According to Whittle, there were various draft agreements and proposals which went forward to the wife in aid of settlement. It was only when those efforts proved unsuccessful, that Mr. Mills resorted to bankruptcy proceedings in

or about March, 2010. He received a summary discharge in early December, 2010.

[32] Whittle confirmed that to the best of her knowledge the husband's debts of \$39,000 were extinguished when he was discharged from the bankruptcy. Her belief is that the Trustee in Bankruptcy and the wife still hold legal title to the property in rural Guysborough County, subject to the balance of the unpaid mortgage.

[33] Neither Whittle nor the husband submitted copies of any of the bankruptcy documents. However, her understanding is that his debts included a jointly signed mortgage (\$19,000), an automobile loan (\$8,000), \$1,800 for a computer, a \$4,000 judgment for a deep freezer or other appliance, and over \$9,500 in consolidated credit card debts for household items, back taxes, etcetera.

[34] Whittle's current annual income is approximately \$25,000 (gross). Her evidence was that she and the husband share expenses.

### **Evidence of Richard Mills**

[35] In his affidavit, the husband said that the parties started cohabitation in November, 1989. He corrected some of the wife's evidence to indicate that they relocated to Nova Scotia in August, 1991, and that he had employment (other than in the trucking industry) in Guysborough County from 1993 to 1999 when he started with his present employer.

[36] The husband also expanded the wife's employment history (as recounted by her) to include work after 2006 and mentioned a café in Antigonish and a restaurant at Sherbrooke. He also said she worked for the Department of Natural Resources in 2008 and also had employment at a provincial park.

[37] The husband candidly stated the wife gave thought to and applied for a paramedic course in 1999 (3 years earlier than she stated). He also confirmed he started to work full time as a trucker based in New Glasgow in 1999.

[38] The husband's evidence was that when the parties separated they

maintained their joint family bank account into which all of his pay was deposited. He said the money was used to pay all of the couple's bills; and that money was also being used informally for child support and spousal support at the time.

[39] He said the arrangement continued without court order or written agreement until January, 2008 when he opened a new bank account, and cancelled or closed the old account. The reason he gave was that the wife continued to overspend and to put their former account into overdraft. The new account was intended to cover some routine bills, plus child support and spousal support. He said he also paid additional money to Amber when needed.

[40] The husband said the mortgage payments of combined principle, interest and taxes he made before the bankruptcy were about \$355 monthly and that the car payments were in the range of \$510 monthly. These figures were not disputed by the wife.

[41] After Amber completed high school, he said the parties made an agreement about the amounts each of them would pay towards their outstanding bills. He said it was agreed that he would pay more on the bills in return or in exchange for the wife also contributing to Amber's support.

[42] The husband claimed that the informal arrangements were adhered to until January, 2010. After that he went into bankruptcy, and he admittedly stopped all payments on their outstanding bills and accounts. However, he stressed he continued to pay child support of \$531 monthly for Amber.

[43] The husband's evidence was that the trailer/mobile home and land mortgage were not foreclosed. His understanding was that foreclosure action was not started because there was (and is) little value in the property. Moreover, he said that the finance company which had a lien on the car did not believe there was sufficient value in it to make pursuit of remedies worthwhile. At one stage his understanding was that the wife was going to take the car and continue the payments; but this did not occur. He claimed that the ownership and insurance were in her name. (She did not refute this.).

[44] To the husband's knowledge, he no longer has a legal interest in the realty. He believes the wife may still have some responsibility because she did not go into



bankruptcy. As far as he knows, the municipal taxes are still unpaid. He estimated that the property has a very modest value - perhaps somewhere between \$7,500 and \$10,000.

[45] When he made his assignment in bankruptcy, the husband said he gave the wife advance notice and told her that she was the one that had forced him into this position.

[46] The husband made serious allegations that the wife had been dishonest with him before the separation by incurring bills which he had not agreed to and which he had no knowledge of. As discussed elsewhere, these bills included a credit card which he alleged she obtained in 2005 in both of their names without his consent or knowledge. He alleged that she ran up in excess of \$3,400 in charges which he negotiated down to \$2,700 before the bankruptcy. He alleged that his wife forged his signature to documents which allowed her to purchase a computer in 2009 for \$1,800. He also alleged that the wife was supposed to be paying municipal taxes from the money in the bank account but later determined that she did not do so for approximately five years. He said that he ultimately paid approximately \$2,500 to get the taxes up to date. He did not give any reasons for not checking on the status of the taxes during the intervening years.

[47] The fraud and deceit allegations were not referred for investigation. Nor did the husband raise them during the bankruptcy proceedings.

[48] By a combination of paying family bills, informal child and spousal support, and other monies, the husband claims he paid to the wife in excess of \$30,000. He said this amount was paid and received up until the time she left the matrimonial residence, coincidental with his assignment.

[49] The husband did not submit a statement or reconciliation to support the last proposition but, to use his words: "Because of her deceit and her current situation I do not feel I should have to pay any more money for her specifically." He also wrote, "It is not my intention to make any payments that I consider to be unreasonable to the Applicant pursuant to the factors necessary to provide it, and the factors present, such as cohabiting with another person in a conjugal relationship which repudiates our marriage."

[50] The husband further submitted that from September, 2008 until January, 2010 the wife was living alone at home and therefore had ample opportunity to upgrade her education or skills and to put herself in a position to obtain better paid employment and to become self-sufficient financially. He alleged that she simply refused to do so. In his words: “She has done nothing for years”.

[51] As mentioned, in March, 2010 the husband filed for personal bankruptcy. Later that year, in mid-November, he accidentally broke a foot while at home. He opened up an employment insurance claim for 15 weeks. He continued to be unemployed and to receive sick benefits into early 2011. By March, 2011 the husband was still unemployed but he had started physiotherapy. By the end of March, 2011 the husband had exhausted his benefits claim and he returned to work as a long haul truck driver in late March, 2011.

[52] The husband is 48 years old; he has a grade 12 education. His work includes driving 18 and 22 wheel transport trucks. His work ethic is certainly not an issue. His total 2010 income (pre and post bankruptcy) was \$60,393, despite all his troubles that year. His current gross annual income is in the \$58,000 to \$60,000 range.

[53] Despite his good income, the husband said the bankruptcy has affected his present ability to borrow money. He said he has been trying to re-establish his credit rating. He expects it will take at least two years before he can see any positive results. (Nothing was submitted from any lending institutions to support these assertions.) He has no significant assets and no significant debts. He owns an older model vehicle which he inherited from his father.

[54] Asked about the wife’s role within the marriage before the separation, the husband did not dispute that she was the primary caregiver and candidly described her as “Mr. Mom”. Subject to his comments on the wife’s part-time work over the years, the husband also agreed that he was the primary wage earner for most of their relationship. He also agreed with her version of events touching on the subject of her abandoning a plan to pursue a paramedic course. Indeed, he described it as a joint decision.

[55] He confirmed that his income has increased significantly over the years from \$47,000 to something closer to \$60,000 annually. He also has a pension with

his current employer.

### **Discussion/Decision**

[56] The wife started proceedings against the husband in late March, 2011. As noted elsewhere, the parties had separated in mid July, 2007. The wife's delay of about three years, eight months was cited by the husband as a factor going to the wife's disentitlement. However, I find the wife's delay is explained in large measure by the husband's own evidence. Paraphrasing from the husband's affidavit, after the parties separated they maintained a "joint family bank account". All of the husband's pay went into that account. In the husband's words, "this money was used to pay all of the bills including child support and spousal support until such time as January, 2008 wherein the respondent opened a new account, cancelling the old account and began paying the applicant directly, bi-weekly, into her bank account".

[57] He wrote that he later made bi-weekly payments into the wife's bank account to pay child support, his share of the matrimonial bills, and extras for his daughter when needed. Those banking arrangements continued until the youngest daughter started university.

[58] The husband asserted that he and his spouse then made an agreement as to what amount each would pay on the outstanding bills and, according to him, it was agreed that the wife would "pay more on the bills (a portion of Glenna's responsibility) in return for Glenna forwarding child support to Amber". He did not say there was an agreement or understanding that she would use her best efforts to secure employment. In any event, his payments and the mode of banking continued until January, 2010 when he went into bankruptcy and stopped making all payments with regard to his, her or their outstanding bills. To his credit, he continued child support for his daughter.

[59] Given that the husband was making payments from which both his spouse and daughter received benefit, I find there was no need for the wife to commence legal action against him. The husband's discharge from bankruptcy did not occur until early December, 2010. That the wife did not in the intervening time meet up to his employment expectations for her may be a factor to consider, but it is hardly determinative. Moreover, there was evidence from the husband about ongoing,

albeit unfruitful, efforts at settlement spanning many months before the wife started proceedings.

[60] There is nothing to be gained by assigning blame for the failed negotiations. Both parties had recourse to the Family Court and to the Supreme Court to deal with property and support issues and, importantly for our purposes, the husband was certainly aware that the wife was seeking financial support at all material times.

[61] On the evidence, I find the wife's delay was not unreasonable.

[62] Neither spouse has started proceedings under the **Divorce Act** to end the marriage. And since the separation in mid-July, 2007, neither spouse has sought a formal accounting for, or a division of, their matrimonial assets and debts. There was no explanation for this inaction. The latter is not without significance because the husband's position is cloaked in broad assertions that the wife has already received more than she deserves because of the debts that she ran up in his name (without his knowledge or consent) and by virtue of his continuation of debt payments for the residence, for a vehicle, etcetera, for her benefit (and for their child's benefit) until he went into bankruptcy. Moreover, his voluntary payment of child support throughout the relevant time frame is apparently seen by him as relevant to the spousal support issue and potential outcome.

[63] When staking his defence in the ground of non-entitlement, counsel for the husband made no reference to the principled analysis suggested by the Supreme Court of Canada in **Bracklow v. Bracklow** [1999 1 SCR 420] which has been held to apply to cases decided under federal legislation (**The Divorce Act**) and those decided under provincial legislation (such as the **MCA**).

[64] The **MCA** does not make a definitive statement about the objectives of spousal support. However, section 4 does require that the court consider a wide range of factors when determining whether or not to order a person to pay maintenance (i.e. entitlement) and the amount of maintenance to be paid (i.e. quantum). Section 5 stipulates that a maintained spouse does have an obligation to assume responsibility for her/his own maintenance unless considering the ages of the spouses, the duration of the relationship, the needs of the maintained spouse and their origins, it would be unreasonable to require the maintained spouse to

assume responsibility for her/his own maintenance and, it would be reasonable to require the other spouse to continue to bear responsibility.

[65] **Bracklow v. Bracklow** identified three types of support. One is “contractual” support - by reference to any agreements between the spouses about their financial obligations to each other. In the present case, there was no evidence of any agreements about their respective obligations in the event of marriage breakdown.

[66] Another type of support is “non-compensatory dependency-based” which focuses on the disparity (if any) between the parties’ needs and financial means.

[67] Lastly, there is “compensatory support” to address any economic advantages and disadvantages to a spouse related to the marriage and the parties’ respective roles. This category may include specific and non-specific support elements.

[68] The evidence and submissions on behalf of the wife were largely devoted to the last category or type; and they were linked to several of the statutory considerations.

[69] The notion of compensatory spousal support is admittedly complex. A helpful summary of the types of compensatory support will be found in the *Annual Review of Family Law*, 2011, Carswell, pages 476 to 476. And, at page 477, the authors state the following: “A spouse who has suffered specific compensable economic loss from the marital relationship or conferred an identifiable economic advantage on his/her partner should be entitled to compensatory support to redress the specific loss incurred or benefit conferred even if he or she is self-sufficient, so long as the loss/benefit has not been fully compensated by the property division or other benefits received during the marriage”. In support of that proposition, **Dowding v. Dowding**, 2008 NSCA 27 is cited. Later, at page 478, the authors wrote as follows: “A spouse suffers economic disadvantage arising out of the roles adopted in a relationship if he or she withdraws from the work force for family reasons, delays entry into the work force for family reasons, or otherwise defers pursuing a career or economic independence for family reasons.” Among the cases cited for that proposition is **Rondeau v. Kirby**, 2003 NSSF 49, affirmed on appeal by 2004 NSCA 54.

[70] When the case started, the husband's defence included reference to the wife's forfeiture of support because of her admitted current cohabitation with another individual. That defence to the wife's entitlement claim was abandoned at the hearing. However, I am mindful that the wife's present circumstances are still relevant when assessing the quantum and duration of support, if there is an award.

[71] I have also directed myself that in Nova Scotia a spouse is not automatically disentitled to support because she or he obtains employment. (See **MacDonald v. MacDonald**, 2004 NSCA 153.)

[72] In the present case, it was submitted on behalf of the wife that she has established a strong case for spousal support over and beyond the benefits conferred between the date of separation and the commencement of legal proceedings. Indeed, it was submitted that a solid case for long term support has been established. I agree with those submissions.

[73] On the evidence, I find the marriage started out as a "traditional" one. The husband was the principle income-earner. He was away from the home much of the time. The wife remained at home where she cared for the children and took care of most of the household chores and other routine responsibilities. Later, the wife worked outside the home - but only part-time or seasonally. I find the wife's secondary income was directed to helping with the family's finances.

[74] Significantly, the evidence was that the wife abandoned pursuit of her education and training for a career as a paramedic at the husband's behest so that he could advance his training and his career as a long-haul trucker. By agreement, the wife set aside her plans and her aspirations, and she continued as a "stay at home" mother. Five years passed before the marriage broke down. The wife now seeks to pick up where she left off (career-wise) but can not afford to do so without some financial help from her spouse.

[75] Should the wife resume her education and training, her income will undoubtedly drop in the short term - even if she becomes entitled to some employment insurance or other benefits and assistance. If she is successful in her program, there is a good chance of improved job prospects, income, and security. Success may enhance her ability to contribute to her own support and thereby reduce, if not eliminate, financial need and dependency. It will take time for her to

regain the income lost while training, and for her to find work and to establish a reliable income stream after graduation. Leaving aside the issues of quantum and duration as contemplated by **Bracklow v. Bracklow**, I find the wife suffered economic disadvantage by foregoing an occupation or career path in favour of her husband's career, and that the husband has enjoyed considerable financial advantage as demonstrated by his upward income history in his chosen field of work.

[76] Also, enhancing the wife's entitlement under the **MCA** factors are the following considerations: the division of responsibilities within the marriage was by agreement; there was an understanding that as the principle wage earner [the husband] would be financially responsible for the wife and children while the family unit was intact; the wife primarily cared for the children during the marriage and this role continued until relatively recently when the youngest child achieved independence; the household benefited financially from the wife's role, in later years, as a secondary wage earner; the wife's recent employment history and living arrangements are relevant to her financial needs but do not address the opportunities and financial benefits she likely missed; the wife's occupation concessions helped the career potential of the husband; objectively, the wife's needs are not unreasonable in the circumstances; neither party has any significant assets or debts at this time; each party went on to other partners and common law relationships; neither party has child support obligations at this time; the husband's financial needs are unexceptional and he has financial ability to pay periodic support based on financial disclosure by him; the wife has ability to contribute to her own support as evidenced by her current employment, but she would sustain a significant income reduction to pursue further education or occupation training; the relationship extended over a period of approximately 18 years.

### **Spousal Support Advisory Guidelines**

[77] The submissions on behalf of the husband did not mention the **Spousal Support Advisory Guidelines (SSAG)**. However, counsel for the wife invoked the **SSAG** in his submissions.

[78] The **SSAG** were finalized in 2008 and were cited in submissions on behalf

of the wife as providing a helpful backdrop for consideration of quantum and duration of spousal support after a determination of entitlement.

[79] The **SSAG** “without child support” formula is said to offer “a useful tool for implementing both compensatory and non-compensatory support objectives in cases where there are no dependent children in a way that reflects general patterns in the current law”. [See **Spousal Support Advisory Guidelines**, July, 2008, Department of Justice, Canada, section 3.3.3]

[80] In Nova Scotia, the **SSAG** have received favourable mention by Supreme Court trial judges. (For example, **Skipton v. Skipton** 2005 NSSC 43.) Hundreds of other cases across the country have considered the **SSAG** by now. A regional case at the appellate level is **Smith v. Smith** 2011 NBCA 66 wherein it was decided that a trial judge’s failure to explain why the Guideline amounts were rejected (if that is done) is an error in law.

[81] Although not legally binding, conventional thinking remains that the **SSAG** may be used as “litmus test” to assess or evaluate the outcome in tandem with a traditional analysis and calculation based on the existing case law and the facts of the individual case.

[82] When referring to the **SSAG**, counsel for the wife provided a series of calculations generated by the ChildView software program using the so-called “without child support formula”. The court was reminded that because of the respective ages of the parties, the “Rule of 65” applies and that under the **SSAG** the suggested duration for spousal support is indefinite, subject to variation and/or review.

[83] As noted elsewhere, the husband’s gross annual income is in the \$58,000 to \$60,000 range, annually. The wife’s current income is in the \$30,000 range. One set of calculations used those approximate incomes. They generated a minimum support payment of about \$684 monthly and a maximum payment of exceeding \$900 monthly.

[84] The calculations were presented in a spreadsheet format and were especially helpful because they include the income tax consequences to the spouses. For example, the calculations suggested that the net monthly cost to the payor of a



\$684 payment is \$430 monthly. And, the net monthly benefit to the recipient is about \$437 monthly (\$5,244 annually).

[85] Counsel for the wife also presented calculations prefaced on the approximate incomes of the parties at separation. It will be recalled that the husband was employed and that the wife was in receipt of public assistance benefits. The **SSAG** calculations using the more divergent incomes generate an even higher support range, i.e. \$930 to \$1,200 monthly.

[86] A compelling argument was made that if, in the past, the husband was able to pay child support and debt payments (perhaps the equivalent of \$850 monthly) from a then lower income, with no income tax relief, that he can hardly argue he has no current ability to pay. After all, his present income is measurably higher; there is no child support; and all of the debts have been extinguished as a result of the bankruptcy. In short, it was submitted that any argument on behalf of the husband that he is unable to pay should not be sustained by the court.

[87] As mentioned elsewhere, there were no countervailing calculations submitted on behalf of the husband to assist in the deliberations. I conclude that those submitted on behalf of the wife are reliable, based on the evidence presented and my own analysis.

[88] Factors tending to push the quantum of the wife's claim up from the minimums include the strength of her underlying compensatory claim, her financial needs (particularly upon resumption of her education/training), and the husband's ability to respond to an award.

[89] The importance of putting forward up-to-date, reliable financial disclosure and calculations (including income tax implications) at hearings cannot be over-emphasized. The Income and Expense Statement introduced by the husband purported to show a monthly budget deficit of just under \$200. With respect, I find the Statement is misleading - if accepted at face value when assessing his ability to pay spousal support. For example, child support of \$531 monthly is no longer being paid. And, in claiming "food on the road - \$700 monthly", the husband glossed over the fact that he routinely claims his travel expenses (for meals and lodging) against income when filing his tax returns. In 2009, for example, he claimed over \$13,500 in such expenses - which may explain the "other allowable

expenses” of about \$9,500 on his Assessment that year and his tax refund of almost \$2,500. So, I find his budget does not accurately reflect his net (after tax) cost for meals while working. Moreover, the husband’s discretionary expenses (ie., gifts, holidays, alcohol, tobacco, etc.) exceed \$550 monthly.

[90] Against all of this background, at least for now, the wife does not demand an indefinite support order. Nor does she seek a high end award under the **SSAG** umbrella. She seeks a relatively short term order which will set the stage for her return to schooling and training, following which she would not oppose review by the court. Keeping in mind the outcomes suggested by the **SSAG**, and that the parties have yet to sort out the accounting for their assets and debts, I find the wife’s position to be fair and reasonable.

## **Result**

[91] While there is some (limited) evidence that the husband may have difficulty borrowing money from conventional lenders to meet a large lump sum award, there was no cogent evidence that he would be unable to meet a periodic award. Other than a broad assertion of inability to borrow money, the husband has offered no valid reason to deny the wife support retroactive to the date of her application.

[92] I order that the husband pay to the wife periodic spousal support of \$800 monthly, due and payable on the first day of each month, starting effective March 1, 2010. The payments shall continue until otherwise ordered by a court of competent jurisdiction, and shall be made through the Maintenance Enforcement Program. (Undoubtedly, given the tax implications, he will be able to arrange for adjustment of tax deducted at source by his employer.)

[93] Against the **SSAG** benchmark, the outcome is less than might have been awarded at separation when the income disparity was greater; and it is in the mid-range for current incomes. On the available evidence; it is difficult to say where the award will fall, if there is a Fall transition by the wife back to school.

[94] In making this award, I am mindful that the husband will have significant support arrears. However, he knew or ought to have known from the outset that an award might be imposed and he should have planned accordingly.

[95] This award should pave the way for the wife's immediate application for enrollment in her preferred program. I order that she shall use her best efforts to do so and that she shall provide the husband (through his legal counsel) proof of enrollment before the commencement of the September, 2012 academic year. Upon completion of the program, the wife shall provide the husband with confirmation of graduation and use her best efforts to find employment.

[96] Should the wife not be accepted for enrollment or, if enrolled, discontinue her education and training, she shall immediately advise the husband in writing.

[97] It should be obvious from the foregoing that I have relied heavily on the wife's assurances about her education and training and future employment. Accordingly, should the expected events not occur, and upon application, the quantum and duration of support shall be subject to review and further decision.

[98] Although the wife has been successful, court costs are not sought on her behalf and none are awarded.

[99] Mr. LeBlanc shall prepare and submit an appropriate order.

**Dyer, J.F.C.**

**FAMILY COURT OF NOVA SCOTIA**

**Citation:** Mills v. Mills, 2012 NSFC 5

**Date:** 2012 03 20

**Docket:** FLBMCA-074792

**Registry:** Bridgewater

**Between:**

Glenna Mills

Applicant

v.

Richard Mills

Respondent

**Judge:** The Honourable Judge William J. Dyer

**Revised Decision:** The text of the original decision has been corrected according to the appended erratum dated April 13, 2012

**Heard:** January 4, 2012, in Bridgewater, Nova Scotia

**Counsel:** Nicholas LeBlanc, for the Applicant  
Ian MacKay, Q.C., for the Respondent

**Erratum:**

Page 13 of the Decision , paragraph 69, the second line where it reads “ A helpful summary of the types of compensatory support will be found in the *Annual Review of Family Law*, 2011, Carswell, pages 455 to 456.”, should have read, “A helpful summary of the types of compensatory support will be found in the *Annual Review of Family Law*, 2011, Carswell, pages **475 to 476.**”