IN THE FAMILY COURT OF NOVA SCOTIA
Citation: M.F. v. M.W., 2011 NSFC 2

Date: 2011 01 31
Docket: FLBMCA-017862
Registry: Bridgewater

Between:

M. F.

Applicant

v.

M. W.

Respondent

Judge:	The Honourable Judge William J. Dyer
Heard:	October 6, 2010, at Bridgewater, Nova Scotia
Revised Decision:	The text of the decision has been revised to protect the identity of certain parties. This revised version is released on February 22, 2011.
Counsel:	Jodi Mailman, for the Applicant Nicholas LeBlanc, for the Respondent

By the Court:

[1] M. F. and M. W. are the unmarried parents of two sons, S.W. and D.W. For many years, by court order, M.W. was primarily responsible for the care and upbringing of both children. M.F. had been granted reasonable access, at reasonable times upon reasonable notice.

[2] In early May, 2009 the parties signed an agreement. Its stated purpose was to settle financial support for both sons, including post-secondary education expenses for D.W. M.F. had the benefit of independent legal advice before executing the agreement; M.W. waived her right to independent legal advice.

[3] M.F. was then employed locally for a Quebec based company ("the employer"). There was no hearing but in financial statements he filed with the court , M.F. represented that he had a monthly gross income of about $4,053, or about $48,600 annually. Basic support of $700 monthly was established for the benefit of S.W. and D.W., to start in mid-May. That is close to the Nova Scotia Table amount for basic support under the **Child Maintenance Guidelines** (**CMG**).

[4] As mentioned, M.F. was working. His 2008 total income had been about $70,450. This would normally attract basic support of about $988 monthly going into 2009. Nothing was said about the child support arrangements between 1998 and 2009. And, because neither party's evidence touched on the subject, I am unable to determine why income and support were set in May at the levels they were.

[5] In any event, the child support obligations were to continue until further written agreement between the parties or a court order, for so long as the children qualified as "dependent children" under the **Maintenance and Custody Act** (**MCA**).

[6] M.W.'s income was not mentioned in the agreement. With hindsight and disclosure, it is now known that her 2009 income was $30,186 and that it will be marginally higher at about $33,000 in 2010 and 2011.

[7] Despite the discrepancy in their incomes, the parents also agreed to "split equally" the costs of D.W.'s two-year community college carpentry course that started in September, 2009.

The Variation Application

[8] In early June, 2010 M.F. made an application for downward variation of his child support obligations, prospectively and retroactively, and linked it to his job loss in mid-July, 2009.

[9] When his job was terminated, M.F. unilaterally stopped paying support. This, in turn, prompted the Maintenance Enforcement Program (MEP) to garnishee his employment insurance (e.i) benefits once he qualified. Although the evidence on the topic was sketchy, e.i. benefits were over-paid at one stage and recovered by a separate garnishee.

[10] M.W. did not make a formal cross-application for upward support variation although M.F.'s Line 150 - 2009 income was much higher than usual ($122,721). As will appear, this is explained by a substantial severance package, most of which was paid in 2009 and the balance of which I find was paid by the end of March, 2010.

The Issues

[11] At the start of the present hearing, counsel for the parties announced an agreement that the eldest son, S.W., was no longer a dependent child, effective as of the end of June, 2010. Based on a stipulated annual income of approximately $23,200, it was said there was also agreement that basic support to be paid by M.F. for D.W.'s benefit would be $196 monthly, starting July 15, 2010.

[12] I took the announced agreement to be prospective. That is, there was agreement that M.F.'s "annual income" was about $23,200 - assuming his estimated e.i. benefits to be his only income source. The agreement was not presented as interim and/or without prejudice, pending my decision on the merits. But, upon considering counsels' written submissions and reviewing the evidence, I have concluded that M.F.'s e.i. benefits, plus balance of severance money [from January to March 2010] and other income easily exceed the $23,200 figure, even at first blush.

[13] M.F.'s likely 2010 income from all sources is an important factor in the overall outcome. That is because child support is usually based on the known or projected total income (Line 150) from all sources for the entire year.

[14] Adding to the dilemma, M.W.'s counsel invited the court to include M.F.'s severance money as "non-recurring" income for **CMG** purposes in both 2009 and 2010. Should that exercise produce total income and support figures greater than those already stipulated, there would be the possibility of an over-riding award beyond July, 2010. Indeed, there had been submissions to the effect that M.F. may be deliberately under-employed as at the hearing.

[15] Ultimately, M.W.'s counsel submitted that there should be no downward variation, that basic support should be affirmed as set out in the agreement, and that D.W.'s education expenses should continue to be equally shared. And, with that in mind, M.F.'s counsel submitted that what was left for decision were the issues of whether M.F.'s basic support obligation should be retroactively varied (to mid-July, 2009) and determination of each parent's contribution to D.W.'s post-secondary education expenses for the academic year 2010 - 2011.

[16] In the circumstances, assuming I have not misconstrued the agreement placed on the record regarding current support, I have decided it should be respected. It is not my intention to override it on my own motion. But it is something I have necessarily kept in mind when looking at the case as a whole.

[17] I took from counsels' submissions that there was no dispute that the circumstances of the children and M.F. had changed for the purposes of section 37 of the **MCA** and the parties' written agreement. Further, there was no threshold challenge to M.F.'s request for retroactive consideration of his circumstances and his applications, on the merits. Therefore, I see no need to re-canvass the principles I discussed in **M. (D.) v. A. (S.)**, 2008 Carswell NS 367.

M.F.'s Circumstances

Job Loss

[18] M.F. wrote that there was a fundamental change in his employment circumstances when his position with the employer was "terminated" in mid-July, 2009. He retained legal counsel and eventually accepted the terms of a severance

package from the employer. According to M.F., payments pursuant to the severance package stopped near the end of March, 2010. After that, M.F.'s main income source was employment insurance benefits.

[19] The entitlement to severance payments delayed M.F.'s qualification for e.i. benefits. As noted, an e.i. overpayment and recovery by the government added to M.F.'s plight.

[20] M.F. had asserted in April and May, 2009 that his income was just over $4,000 monthly. Going into the present hearing, he represented that his total monthly income had dropped to approximately $1,935 monthly.

Severance Package

[21] A smattering of e-mail communications from the former employer to M.F.'s lawyer confirm the severance package. I am confident in saying that not all of the communications were disclosed. (Indeed, the final settlement document is not in evidence.) However, a reasonable inference from an early October communique is that M.F. received the equivalent of 15 months salary, including commissions, of $87,110 (gross). In reaching that figure, the employer cited his average income over the years 2006, 2007, and 2008. The communications mention that M.F. had been with the company for at least 18 years and 10 months. Otherwise, there was no indication as to how the parties arrived at their settlement.

[22] M.F. and his lawyer had apparently inquired about the amounts which he might be able to roll into Registered Retirement Savings Plans. The employer provided some written advice in this regard, including possible deferral of up to $14,000 into the 2010 tax year. A letter from the employer dated in late March, 2010 confirms his last payment, net of source deductions, but the total disbursements for 2010 was unstated. (The $14,000 figure in settlement communications is close to what I have found to be his actual severance receipts in 2010.)

Health

[23] M.F. had written that he was waiting for surgery on his right elbow to correct nerve damage at that site. Following that procedure, he said that it was his understanding that there would be a six week recovery period.

[24] By the time of the hearing, the 53 year old M.F. was claiming complete inability to work. He elaborated by saying that he is also expecting to undergo surgery for a numb "pinky finger". Unspecified damage was said to have been affecting grasp and other motor control activities. As at the hearing, he was undergoing testing preparatory to this surgery.

[25] M.F. also wrote that he had sustained an injury to his right rotor cuff which could result in a need for even more surgery at a later date. At the hearing, he stated that he was still waiting for an MRI of one shoulder; and he claimed that his other shoulder could be now also be "in jeopardy". When questioned, M.F. said he could not even lift a ten pound bag of sugar without shoulder pain and that he could only perform limited household chores. By contrast, his former employment was described by him as being as physically demanding. He explained this in considerable detail. Pending the results of testing, he said his prospects for recovery were unclear, at best.

[26] M.F. then disclosed a Hepatitis C diagnosis. In testimony, he emphasized this aspect of his health and painted a very bleak picture which he reluctantly admitted was exacerbated by his consumption of alcohol. Coupled with his other physical problems, M.F. volunteered that he would likely not be able to work again.

[27] Compounding all of this was M.F.'s disclosure that he has Type 2 (adult onset) diabetes; and that he has suffered from manic/depression [or "bipolar disorder"] symptoms, throughout most of his life. Regarding the latter, he said it manifests itself in many ways, including sleep deprivation, spending sprees and other erratic behaviours. For example, he attributed one travel and spending spree to the trauma associated with the death of a former partner. (Other more recent trips and vacations were said to have occurred before his employment loss and/or paid for by his current spouse who he married in late August, 2009.) He insisted M.W. knew about his mental health condition and its hallmarks during their relationship.

[28] On the advice of a nurse practitioner and because of his deteriorating health, M.F. said he would apply for Canada Pension Plan disability benefits. There is no evidence about the prospects for success or the quantum of potential benefits.

[29] M.F. submitted no medical reports in support of his evidence about his mental or physical health.

M.F.'s Income

[30] M.F.'s 2009 personal income tax return was the focus of close questioning. His Line 150 income of approximately $122,721 included employment income of about $42,675, e.i. benefits of $5,364, rental income of about $1,402, and his severance package/income of $73,280. (The balance of his severance was paid in 2010.)

[31] In 2009, an amount equal to the severance receipts (i.e. $73,280) was contributed by M.F. to an RRSP and used to reduce the amount of income tax otherwise payable. Although no expert accounting evidence was called, according to M.F., if he had not made the RRSP deposit, his severance package would have been taxed away at a marginal rate of approximately 50 percent. He did not disclose the settlement to M.W. or consult her before deciding how he would manage the settlement proceeds.

[32] M.F.'s 2010 income will include e.i. benefits of $477 weekly (gross). He did not mention rental income from his realty; and did not say much about his settlement receipts from January through March or their disposition. He did say he expects his e.i. benefits will run out in February, 2011 and, unless his circumstances improve, he may thereafter draw down some of his RRSP savings to meet his ordinary living expenses.

[33] M.F.'s evidence was that he has applied for Canada Pension Plan disability benefits on the advice of a nurse practitioner whom he consulted incidental to his Hepatitis C condition. No additional information was available about the application or quantum of benefits should he qualify.

Other Circumstances

[34] M.F. owns a residence in a local village which (at the time of the hearing), was listed for sale at $299,000. His evidence was that he has been unsuccessful in selling the property and that he has had no offers to purchase. According to him, there are two mortgages or loans (he was not clear) outstanding against the property. In 2009, he rented out the property. As demonstrated on his personal income tax return, rental income was $6,000, against which he claimed deductions for such items as fire insurance, mortgage interest, municipal taxes, etcetera to achieve a net rental income of about $1,400. M.F.'s said he makes two mortgage payments of blended principal and interest totaling about $1,100 monthly. On top of that he continues to pay municipal taxes, fire insurance, etcetera. He said he owes about $86,000 on a home equity line of credit, but his evidence was vague and confusing on whether this is or is not related to one of the mortgages. In any case, he obtained the credit line before his job loss and is paying interest only (in testimony) pending a sale. It was unclear whether he is still receiving rent ($500 a month) from the realty but rental opportunities certainly appear to be there pending a sale.

[35] M.F.'s testimony included reference to a small tour boat business he said he tried to establish as soon after he lost his employment and before his health deteriorated. He said he disclosed his situation to employment insurance officials but, practically speaking, there was no impact on his entitlement because his expenses exceeded his income. He abandoned the venture.

[36] M.F. was in a common-law relationship with another individual who died in late 2008. M.F. received life insurance benefits as a named beneficiary. M.F.'s evidence was that these events predated the execution of the agreement between him and M.W.; and that her passing triggered a lengthy period of manic conduct. I accept his evidence in this regard.

[37] M.F.'s current spouse has been employed outside the home but, according to him, she is now experiencing her own unspecified health problems. M.F. said his spouse is receiving 66% of her usual $45,000 annual salary in the form of benefits from the employer. She has several children for whom she apparently is financially responsible. The couple occupy a residence registered in her name. They apparently have some form of a prenuptial or domestic contract governing their financial affairs, but the document was not entered in evidence. I find M.F. has no legal responsibility to help with the support of his spouse's children.

M.W.'s Circumstances

[38] M.W. confirmed D.W.'s enrollment and attendance at a local community college. According to her, the parents split D.W.'s education expenses for the first term of the 2009 - 2010 academic year; and she paid all of her son's expenses for the second term. She reported that M.F. balked at contributing to the second term costs and downplayed a suggestion that D.W. benefitted from receiving some tools from his father. Indeed, her evidence was that D.W. was upset and disappointed with his father's stance. M.W. shouldered all of her son's expenses for 2010 - 2011 and has borrowed money and paid interest on that money to cover the shortfall. She said she confronted M.F. with her financial plight, but it fell on deaf ears. She alleged he went as far as to say she would not see any of his severance settlement.

[39] M.W. mentioned that each of her sons had savings bonds which have already been redeemed and applied to their respective education costs. A Registered Education Savings Plan deposit of about $3,000 has also been exhausted to help with D.W.'s expenses. Twenty-one year old D.W. worked during the 2009 summer months and he had a work term during 2010. However, his income from these sources was described as minimal. Although no longer considered a dependant, S.W. still lives at M.W.'s residence. He contributes about $100 bi-weekly toward household expenses.

[40] M.W. presented her education expenses receipts and her calculations regarding M.F.'s obligations to MEP. MEP added the amounts to its Record of Payments. The Record recapitulates the amounts due under the written agreement and the amounts collected. Near the end of October, 2009 M.F.'s arrears were about $2,800.

Discussion/Decision

[41] Counsel for M.F. submitted that the severance funds are "akin to a damage award and should be classified as an asset of the Applicant rather than income for the purposes of calculating support ...". With respect, the submission is contrary to the **CMG** and the case law on the subject.

Sections 16 and 17 of the **CMG** state:

> 16 Subject to Sections 17 to 20, a parent's annual income is determined using the sources of income set out under the heading "(Total Income)" in the T1 General form issued by the Canada Revenue Agency and is adjusted in accordance with Schedule III.
>
> 17 (1) If the court is of the opinion that the determination of a parent's annual income under Section 16 would not be the fairest determination of that income, the court may have regard to the parent's income over the last 3 years and determine an amount that is fair and reasonable in light of any pattern of income, fluctuation in income or receipt of a non-recurring amount during those years.

[42] In my opinion, the inclusion of severance package income in a payor's income for child maintenance purposes is well-settled. (See, for example, **Vallis v. Vallis** [1998] N.S.J. No. 342, 170 N.S.R. (2nd) 116; **Mallet v. Mallet** [2001] N.B.J. No. 502; **Zhang v. Lin**, 2009 Carswell Ont 2394 (Div.Crt.))

[43] In most cases the issue is not whether the settlement is income, but when and how it will be recognized. Many have included a strong caution that the exercise of discretion under section 17 of the Guidelines is context or fact-specific, and that there is no requirement that extraordinary income be automatically averaged over several years rather than be recognized in the year of receipt. Should it be held on a particular set of facts that determination of income under section 16 is the fairest approach, there is no need to resort to section 17.

[44] The importance and implications of that statement are exemplified by the following cases. They involved individuals with very high incomes by comparison to the parents in the present case; but the issues are the same.

[45] In **Walsh v. Walsh**, [2008] O.J. No. 98, 2008 Carswell Ont 99 a 2005 child support order was varied upward (to $5,560 per month) based on a father's 2004 substantial income of $515,252. However, in 2006, his employment was terminated when his income climbed to about $1.2 million based on salary, commissions, severance payments and proceeds from stock options. In the result, the 2005 order was increased to about $14,195 monthly, based on Federal Child Support Guidelines. Justice Corbett easily found there had been changes in circumstances: Mr. Walsh's employment had been terminated so that his income

for 2006 and 2007 would be substantially higher than in past - as a result of the financial arrangements surrounding his termination; and thereafter that his income would likely decrease, - because it was unlikely he would obtain comparable re-employment, given his age and personal circumstances. Even if he did obtain employment comparable to his former position, the Justice found he would not enjoy the high earnings he received in 2006 and 2007 (which include substantial deferred compensation and a severance payment). Justice Corbett wrote:

> Typically, severance and other termination payments are intended to cushion a departing employee from the loss of employment income during the time it takes to find another job. These payments are a form of replacement income, in the same way that disability insurance payments are a form of replacement income. I do agree that "relocation costs" or employment counseling costs may well be payments that ought to be excluded from the calculation from income, since they are payments that reflect actual additional costs to the recipient. But that is not an accurate characterization of most severance payments. "Notice" payments are intended to compensate for loss of income during a period of unemployment. The consequences of termination are ameliorated by notice and severance payments. Generally, child support will be paid on income actually earned — reduced by loss of regular earnings, upon employment termination, but enhanced by severance and notice payments designed to ameliorate the interruption of earnings. When employment is lost, new employment may be secured on terms that result in a windfall. In other situations, there may be a gap in earnings between severance payments and new employment. However it works out, so long as there is no basis to impute income, support ought to be paid on the basis of actual income.
>
> The exercise of discretion under s.17 in respect to non-recurring income events is context specific. As is noted in many decisions from this court, where the court is seeking to predict future income from past experience, unique and non-recurring events may well be disregarded. Where the court is seeking to establish actual income for the purpose of calculating current obligations, the same logic does not apply. Since the decision of the Supreme Court of Canada in ***D.B.S.*** **[*S. (D.B.) v. G.*** *(S.R.),* 2006 SCC 37 (S.C.C.)] and its companion cases, courts have been less concerned with predicting future income, since adjustments are to be made to child support on the basis of actual income in any event. This point has full force in the circumstances of this case. These parties now have a settled routine for child support, which is consistent with the Guidelines, and requires payment of support annually on the basis of actual income received in the previous year. Thus, the court is not concerned with whether past income will be an accurate predictor of future income, since future support will be paid on actual future income, rather than a projection of that income made today.
>
> Other factors may also weigh in the exercise of discretion under s.17. For example, as indicated above, income may have increased to cover expenses

> consequent upon employment termination. Income may have increased upon the realization of assets, such as pensions, RRSP's, or stock options, that have already been equalized between the parties, and the court may be concerned about "double-dipping". None of these additional factors are present in the case at bar.
>
> As noted by Kiteley J. in ***Shaw v. Shaw***, [2002] O.J. No. 2782 (Ont. S.C.J.)., s.17 of the Guidelines "does not operate unless the court is satisfied that the determination of income under section 16 would not be the fairest determination of that income." I am satisfied that the calculation under s.16 is the fair way to determine income.

[46] In **B. (C.A.) v. S. (M.S.C.)**, 2006 Carswell BC 2339 (S.C.), affirmed 2007 Carswell BC 1144 (C.A.), the father had been paying support for two children at the rate of $7,000 monthly based on an annual income of $684,000. When his employment was terminated, he was given a large severance package which spiked his 2004 income to about $1.8 million. His 2005 annual income was $837,513; and by the trial, in August 2006, the father had earned less than $277,900. The father's averaged income for 2004, 2005, and 2006 was close to what he was earning before his dismissal. Justice Smith adopted a forward averaging approach based on s. 17(1) of Guidelines and, in effect, spread the father's severance income over subsequent years. The reasoning was that the father's severance pay was a non-recurring amount and that setting his income using the average from the three previous years would be fixing income based on a situation that no longer existed. After considering the submissions, Justice Smith ventured that "neither party's approach fairly represents reality" before writing:

> Rather than using an average based on the past, it would be more appropriate in this case to use "forward averaging" and spread the severance income over subsequent years. In my view, there is nothing in s. 17(1) of the *Guidelines* that would prevent such an approach. The section says the court "may have regard" to income over the last three years. It does not mandate any particular way to apply that information. The overriding concern is one of fairness. Even if I am wrong in my interpretation of s. 17, s. 19 allows the court to impute income as it considers appropriate. Although s. 19 lists a number of specific considerations, it is clear that is not intended to be an exhaustive list. In the circumstances of this case, it would be appropriate to use the severance package, or portions of it, to impute current and future income.

[47] **Rondeau v. Kirby**, 2003 Carswell NS 414, 49 R.F.L. (5th) 189 (S.C.) is a Nova Scotia case in which the father/husband had agreed during a divorce to pay

pre-Federal Child Support Guidelines blended support for his two sons and his wife. Several years later, he voluntarily left his job and accepted an early retirement buy-out and a pension settlement. He unilaterally decided to pay the Table amount for one son based on an income amount he assigned to himself under the Guidelines, and then sought retroactive and prospective downward variation of his child support, and to terminate spousal support. The mother resisted the applications, but did not file any formal cross-application.

[48] Mr. Rondeau's lump sum settlement was about $72,000; and his pension settlement was expected to generate over $21,000 annually, pending an expected, later division of pension benefits. He expressed an intention to start a business and thereby supplement his pension income, but his business income was not meeting expectations. The mother was not employed outside the home and had limited prospects.

[49] Justice Campbell characterized the lump sum as income replacement and postulated that such income cannot be ignored in assessing support obligations. Consistent with the case law previously mentioned, it was stated that ordinarily "total income" is defined by those items which make up Line 150 on the payor's (husband's) personal income tax return. Of the "unusual" $128,280 the father received in 2002, $72,389 was from the settlement. In looking at the overall situation, Justice Campbell stated that he could have measured 2002 child support against the $128,280 figure which would have produced a substantial (1 year) award, but he saw the need for a reality check:

> As I ask myself the question of how to account for the $72,000.00 income replacement in a way that would seem to me to be fair to both parties, I might have also taken account of the fact that it was apparently calculated as representing 18 months of pay. I might then have amortized that income over the 18 months following its receipt and calculated total income for that time frame in that fashion. It is possible, that despite the fact that the Husband placed most of that settlement money in an RRSP rolled over tax free, he may have to dip into it because his business has not done as well as he has expected in the beginning. If I were to treat that income either as entirely 2002 income or an 18 month allocation and if the Husband later spent some or all of that money by way of cashing the RRSP's I would, in my view, be creating a so-called "double dip". The RRSP once liquidated will be in his line 150 income in the year that he takes it out. If I were to follow either of those two actions then on the next variation a judge might feel compelled to treat the RRSP cashed as income because it is part of the line 150 and thereby creating a double counting of the same money. So I

have decided to take a different approach. Turning to the Child Support Guidelines, section 17 (c) allows the Court to deviate from the reference to line 150 in certain situations.

Section 17(1) says:

> Where the Court is of the opinion that the determination of a spouse's annual income from a source of income under Section 16 would not provide the fairest determination of the annual income from that source, the Court may determine the annual income from that source...
>
> (c)...where the spouse has received a non-recurring amount in any of the three most recent taxation years to be such portion of the amount as the Court considers appropriate if any.

The lump sum in the year 2002 was in fact an anomaly. It is a one time payment unlikely to be repeated and, depending upon the success of the Husband's business, money which may well come into income again necessarily. The $72,000.00 is income replacement and offsets the risk of income loss that the Husband took in accepting the package. It stands available to him to top up whatever shall be the shortfall between his combined self-employment, pension and investment income and his imputed income which I well set out below.

Section 17 of the Guideline also speaks of averaging three years when they are different. In this case I am going to average four years for one particular reason. The most recent year is not only anomalous by virtue of the lump sum but it also represents a part year of employment income and a partial year of attempting to start up a business which resulted in very little income. I went through the exercise of subtracting the lump sum from the 2002 income and then subtracting the dividend gross up (as I am required to do under Section 5 of Schedule III of the Child Support Guidelines) from all four years starting with 1999 to come to a figure.... The average income so calculated for the four years is $58,000.00. Whether that exercise could be characterized as a calculation of total income for guideline purposes or whether I could be said to be imputing income pursuant to section 19 of the Guideline is immaterial. In either event I will use $58,000.00 for purposes of total income both for child support table amount purposes and spousal support.

[50] Having settled the father's income at $58,000 for four years, the court proceeded to allocate child support based on (changing) dependency and to order ongoing spousal support. Justice Campbell's concern about double-dipping, and

the approach subsequent judges might take, was clearly linked to the likelihood of future spousal support variation - not child support - which he terminated. (Spousal support is not an issue in the present case.)

[51] By coincidence, M.W. (like Ms. Kirby) opposed downward variation but did not file a formal cross-application for increased support. Near the end of his decision, Justice Campbell again mentioned the absence of a cross-application but opined that he was not thereby constrained when striving to reach a fair and just result for the children and spouse. On appeal, his decision was affirmed. [See **Rondeau v. Kirby**, 2004 NFCA 54, 2004 Carswell NS 140 (N.S.C.A.)]

[52] I have already noted the [different] current wording in the **CMG**. And, at the outset, I stated it was not my intention to override agreements or second-guess tactical litigation choices on my own motion.

[53] In support of the outcome I am ordering, I find M.F.'s total severance package was $87,110. Relying on his 2009 tax return, I find he received $73,280 of his settlement that year; and that the $13,830 balance was paid and received in 2010.

[54] Assuming no adjustments to income for **CMG** purposes, M.F.'s income presents as follows:

	2009	**2010**
Employment	$42,675	------
e.i.(gross)	5,364	$21,456 *
rentals (net)	1,402	1,402 **
severance	73,280	13,830
	$122,721	$36,688

* E.i. benefits for 2010 were estimated at $477 weekly (gross) less an overpayment recovery of about $1,788.

** Assumes property rental income and expenses comparable to 2009

[55] Based on the foregoing, M.F.'s basic child support under the Nova Scotia Tables [for full years] would present as follows:

2009	**2010**
2 children: $1,608 monthly x 12 = $19,296	Jan.-June - 2 children: $536 monthly x6= $3,216

June-Dec. - 1 child: $320 monthly x 6= $1,920
$5,136

[56] In the "unadjusted" scenarios, M.F.'s total child support obligation for 2009 and 2010 is about $24,432.

[57] Although I have concluded there is no basis in the evidence or in law to exclude the severance package income from **CMG** income, arguably there may be some merit to spreading it out. Putting the best light on M.F.'s case, I would be prepared to resort to section 17 of the **CMG** to achieve a fair and reasonable result. As the settlement represented 15 months income replacement, spreading the non-recurring income over at least 15 months is appropriate. But, in my opinion, spreading it over more than two calendar (and tax) years would be inappropriate in the circumstances.

[58] The adjusted scenarios would present as follows:

	2009	**2010**
Employment	$42,675	-----
e.i. (gross)	5,364	21,456
rentals (net)	1,402	1,402
severance	43,555	43,555
	$92,996	$66,413

[59] Based on the foregoing, M.F.'s basic support presents as follows:

2009	**2010**
2 children: - $1,262 monthly x12 = $15,144	Jan.-June - 2 children - $935 monthly x6 = $5,610
	July-Dec. - 1 child - $577 monthly x6 = 3,462
	$9,042

[60] In the result, spreading out M.F.'s income does not affect his overall responsibilities.

[61] And, if the focus is narrowed to just the May, 2009 - June, 2010 time frame, when there were two dependent children, M.F.'s "agreed" obligation ($700

monthly) was about $9,800. This contrasts with a possible **CMG** duty to pay closer to the $16,000.

[62] If a principled approach to the **CMG** is taken, it is clear that child support has been underfunded throughout.

[63] The objectives of the **CMG** are to establish a fair standard of maintenance for children that ensures that they benefit from the financial means of both parents, to reduce conflict and tension between parents by making the calculation of child maintenance orders more objective, to improve the efficiency of the legal process by giving courts and parents guidance in setting the levels of child maintenance orders and encouraging settlement; and to ensure consistent treatment of parents and children who are in similar circumstances.

[64] In my opinion, to grant M.F. the retroactive relief he seeks with respect to basic support and for relief from his modest agreed contributions to education expenses to the end of the 2010 - 2011 academic year would offend the **CMG** objectives. His applications cannot be sustained on the evidence or in law. They are dismissed.

[65] M.W. does not seek court costs. None are awarded.

[66] Mr. LeBlanc shall submit an appropriate order.

Dyer, J.F.C.