

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** Butler v. Bowie, 2011 NSSC 7

**Date:** 20110111

**Docket:** SATD 023311

1210-000680

**Registry:** Pictou

**Between:**

Lionel Allan Francis Butler

Applicant

v.

Elaine Cecilia Bowie (Butler)

Respondent

**Judge:**

The Honourable Chief Justice Joseph P. Kennedy

**Heard:**

October 21, 2010, in Pictou, Nova Scotia

**Counsel:**

Lional Butler, Self Represented

Elaine Bowie (Butler), Self Represented

**By the Court:**

[1] This family Application came before me in Pictou.

[2] By Consent Order dated 23<sup>rd</sup> January, 2008, Justice Douglas MacLellan of this Court varied an Order of November the 16<sup>th</sup>, 2007 (which Order had varied the Corollary Relief Order of March 5<sup>th</sup>, 2003) to read in part as follows:

(b) The Applicant shall pay child maintenance to the Respondent according to the Federal Child Support Guidelines and in accordance with the Alberta Table in the amount of \$866.00 per month payable on the 1<sup>st</sup> day of each month commencing January 1<sup>st</sup>, 2008.

[3] The father has brought this Application to have his child maintenance obligations further adjusted to reflect what he says is his current employment situation.

[4] He acknowledges he is in arrears in the amount of \$9,354.00 and asked the Court to address that situation.

[5] The couple have three children. The oldest, Daniel, is an adult and has not been maintained since 2006. The youngest, Scott, is in his senior year of high school and expects to attend agricultural college upon graduation. The middle child, Melinda, is an undergraduate attending St. Francis Xavier University expecting to graduate with an Arts degree in May of 2011. She then intends to pursue a Bachelor of Education.

[6] By that Consent Order of 23<sup>rd</sup> of January 2008, Justice MacLellan said:

(c) The Applicant shall pay the Respondent a lump sum of \$1,000.00 by February 11<sup>th</sup>, 2008 in full satisfaction of the Applicant's obligation to contribute towards Melinda Butler's university expenses for 2007 - 2008 school year as per Section 7 of the Federal Child Support Guidelines.

(d) Upon payment of the aforementioned lump sum of \$1,000.00 child support arrears shall be set at zero.

[7] The father tells the Court (and the mother does not dispute) that in February of 2009 he was laid off from his job in Alberta and began receiving employment

insurance. He returned to reside in Nova Scotia in June of 2009. He continued on employment insurance until obtaining employment in June of 2010.

[8] He was unemployed for a total of fifteen months.

[9] The Applicant testifies that he informed Alberta Maintenance Enforcement of his circumstances but did not ask a court in either province to vary the Consent Order of January 2008.

[10] I find both parties to be reasonable people, the mother simply wants proper support for the children. The father impressed me as one who acknowledges his responsibility and wants to support on the basis of his current situation.

[11] Obviously the father should have made application to vary closer to the time when his circumstances changed but this is not a perfect world.

[12] The father submits that based on his current income in Nova Scotia he should properly be paying child maintenance of \$619.00 per month in support of the two children who remain "children of the marriage". That amount reflects a present income of \$45,200.00 which I find to be reasonably correct.

[13] I determine that the Applicant will pay child support as of January 1<sup>st</sup>, 2011 in the amount of \$619.00 per month payable on the first day of every month.

[14] As to the arrears of \$9,300.00 I will adjust to roughly address the father's circumstances in 2009 - 2010. Based upon his income for 2009 of \$42,164.00, he would have been responsible for \$6,960.00 in maintenance according to the Nova Scotia Table. This is \$3,432.00 less than he was required to pay under the January 2008 Order.

[15] The same calculation would apply to the year 2010. I will reduce the arrears payable to the amount of \$3,300.00 as of January 1<sup>st</sup>, 2011, payable within two months of the date of this decision.

[16] There will be no costs awarded on this Application.

Joseph P. Kennedy  
Chief Justice