IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: Coadic v. Coadic, 2005 NSSC 291

Date: 2005/10/27
Docket: 1206-04551
Registry: Sydney

Between:

Sonya Coadic

[Petitioner]

v.

Steven Coadic

[Respondent]

Judge:	The Honourable Justice Theresa Forgeron
Heard:	August 30, 2005 at Sydney, Nova Scotia
Written Decision:	October 27, 2005
Counsel:	Gus Postlewaite, Counsel for Sonya Coadic Steven Coadic, Self-represented
Note:	**This decision is to be reproduced in its entirety. Editing of names is not appropriate.**

By the Court:

[1] The matter before the court concerns a proceeding for divorce and corollary relief. The issues, other than child support, have been resolved to the satisfaction of the parties. The terms of their agreement will be incorporated into the provisions of the corollary relief judgement which will provide as follows and based upon the settlement:

> (a) Sonya Coadic and Steven Coadic shall have joint custody of the children of the marriage.
>
> (b) The day-to-day care and control and the primary residence of the children shall be with Sonya Coadic.
>
> (c) Steven Coadic shall have reasonable access to the children at reasonable times and upon giving twenty-four hours notice.
>
> (d) Sonya Coadic shall keep Steven Coadic aware of any medical, social, educational and economic needs of the children. Sonya Coadic shall keep Steven Coadic up-to-date with respect to the children's well being and health.
>
> (e) Each party shall retain sole ownership of the property held in his/her name and each party shall be solely responsible for the payment of the debt held in his/her name. Neither party shall make an equalization payment to the other.

Divorce and Name Change

[2] I find that there is no possibility of reconciliation between the parties and that all jurisdictional and procedural requirements have been met. As such, I

hereby grant the divorce based on a permanent breakdown of the marriage as evidenced by the fact that the parties have been separated for a period in excess of one year immediately preceding the determination of the divorce pursuant to s. 8 of the *Divorce Act R.S.C. 1985, c. (2nd Supp.)* Further, the name change application by Ms. Coadic is granted such that her surname shall revert to her maiden name of Aucoin.

Background

[3] The parties were married on August 11, 1984 in Sydney, Nova Scotia. They have two children, namely, Raymond Donald Coadic born September 18, 1985 and Stephanie Sonya Coadic born August 29, 1991. Separation occurred in April 1997.

[4] Following the separation, Ms. Coadic commenced proceedings pursuant to the then *Family Maintenance Act.* A consent order issued on January 8, 1998 which provided for the parenting arrangement outlined above and the payment of child support at a rate of $123.00 per month commencing November 20, 1997. A variation order issued on October 14, 1999 which changed the child support payment to $214.00 per month based upon Mr.

Coadic having an income of $13,640.00 per annum from workers compensation benefits. This last order was in effect at the time of the divorce hearing.

[5] At the time of trial, Ms. Coadic was 41 years of age and unemployed. Ms. Coadic was in receipt of a small, monthly disability insurance payment due to injuries which she had incurred in a motor vehicle accident in 2002. Prior to the motor vehicle accident, Ms. Coadic was employed as a cleaner.

[6] At the time of the divorce hearing, Mr. Coadic was 44 years of age. Mr. Coadic's financial situation had improved substantially from that which existed in 1999 as he was now employable and had been in the work force for a number of years. The failure of Mr. Coadic to disclose his financial circumstances had been a chronic problem which resulted in a disclosure order issuing on September 15, 2004. Despite this order, Mr. Coadic did not produce the financial material until the court adjourned the trial so that Mr. Coadic could attend at the local office of Canada Customs and Revenue Agency to obtain the outstanding income tax information. Following the adjournment, the information was produced for the court and Ms. Coadic.

[7] By the time of trial, the child Raymond was no longer in school, nor was he attending a post secondary educational institution. He had attained the age of 19 years in September 2004. Raymond still lived with his mother. There was some suggestion that Raymond might further his education in the future.

Outstanding Issues

[8] As indicated previously, the outstanding issues to be determined concern child maintenance. Ms. Coadic seeks to have income imputed to Mr. Coadic for the purpose of determining the table amount of support. In addition, she seeks a retroactive child support award and a prorata contribution from Mr. Coadic for medical expenses in respect of their child Stephanie. Mr. Coadic contests the imputation claim and the claim for a retroactive award. Mr. Coadic is in agreement to pay child support prospectively and based upon the income which Mr. Coadic indicates that he earns. Further he agrees to contribute to Stephanie's medical costs.

Imputation of Income

[9] The jurisdiction of the court to impute income is found in s. 19 of the *Federal Child Support Guidelines* SOR/97-175, as am. Ms. Coadic originally relied upon s. 19(1)(f) of the *Guidelines* given the non-disclosure. However, as Mr. Coadic belatedly disclosed his income during the trial, Ms. Coadic withdrew the imputation argument on that ground. Ms. Coadic now relies upon s. 19(1)(a) of the *Guidelines* which states:

> **19.** (1) The court may impute such amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include the following:
>
> > (a) the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse;

[10] The imputation of income pursuant to s. 19 of the *Guidelines* requires the exercise of judicial discretion. In **MacIsaac v. MacIsaac,** 1996 CarswellNS 177 (C.A.), Bateman J.A. reviewed the meaning of judicial discretion at paras 19 and 20:

> 19 In making a finding under *s. 13* a judge is called upon to exercise a measure of discretion. That discretion is not unfettered. It must be exercised judicially. Provided the discretion is exercised within acceptable limits, and not arbitrarily, this court will not interfere.
>
> 20 In R. v. Casey (1987), 80 N.S.R. (2d) 247 (C.A.), at p. 248, Macdonald J.A. referred to a statement of Lord Halsbury to explain

what is meant by the judicial exercise of a discretionary power:

> In **Sharp v. Wakefield et al**., [1891] A.C. 173, Lord Halsbury expressed what is meant by the judicial exercise of discretionary power in the following terms (p. 191):
>
> > An extensive power is confided to the justices in their capacity as justices to be exercised judicially; and 'discretion' means when it is said that something is to be done within the discretion of the authorities that something is to be done according to the rules of reason and justice, not according to private opinion: Rooke's Case; according to law, and not humour. It is to be, not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself.

[11] The court cannot impute income on an arbitrary basis, rather there must be a rational and a solid evidentiary foundation in order to do so. Imputation of income must be governed by principles of reasonableness and fairness in keeping with the case law which has developed.

[12] The burden of proof lies with Ms. Coadic as she is the party who is seeking to have income imputed. The standard is proof on a balance of probabilities.

[13] In **Montgomery** v. **Montgomery,** 2000CarswellNS 1 (C.A.), the Nova Scotia Court of Appeal confirmed that imputation pursuant to s. 19(1)(a) of

the *Guidelines* as it related to the reasonable educational needs of a spouse was not confined to circumstances where a parent deliberately sought to evade a child support obligation or recklessly disregarded the financial needs of the children while pursuing his/her personal choices of employment or lifestyle. Pugsley, J.A. stated at paras 35 to 37 as follows:

> 35 Section 19 does not establish any restriction on the court to imputing income only in those situations where the applicant has intended to evade child support obligations, or alternatively, recklessly disregarded the needs of his children in furtherance of his own career aspirations.
>
> 36 The critical word, in my view, is the word "reasonable". It is only the "reasonable" educational ... needs of the spouse" which should be taken into account.
>
> 37 The issue of reasonableness, in my opinion, should not be confined to an examination of the circumstances surrounding the applicant alone, but of all the circumstances, including the financial circumstances of the children, in order to ensure that they receive a fair standard of support as set out in the objectives to the Guidelines.

[14] In making my determination as to the amount of income to be attributed to Mr. Coadic, I am not restricted to the actual income which he earned or earns, rather I am permitted to review Mr. Coadic’s income earning capacity having regard to his age, health, education, skills and employment history.

[15] In **Saunders-Roberts** v. **Roberts,** 2002 Carswell NWT 10 (S.C.) Richard J. stated at para 25:

> 25 When imputing income, it is an individual's earning capacity which must be considered, taking into account the individual's age, state of health, education, skills and employment history. In the circumstances of the respondent, in my view it would not be unreasonable to impute, at a minimum, one-half of the income that the respondent earned in 1995 and 1996, say $50,000. I note that the respondent's present income, according to his own evidence, is approximately $42,500.00.

[16] In **C.(R.) v. I.(A.), 2001 CarswellOnt 1143 (S.C.J.)** Blishen J. reviewed the principle that income is based upon the amount of income which a parent could earn if working to his/her capacity and further adopted the factors to be applied when imputing income as proposed by Martinson J. in **Hanson** v. **Hanson**, [1999] B.C.J. No. 2532 (S.C.). Blishen J. stated at paras 79 to 80:

> 79 By imputing income, the court is able to give effect to the legal obligation on all parents to earn what they have the capacity to earn in order to meet their ongoing legal obligation to support their children. Therefore, it is important to consider not only the actual amount of income earned by a parent, but the amount of income they could earn if working to capacity **(Van Gool v. Van Gool (1998)**, **166 D.L.R. (4th) 528).**
>
> 80 In **Hanson v. Hanson, [1999] B.C.J. No. 2532** Madam Justice Martinson of the British Columbia Supreme Court, outlined the principles which should be considered when determining capacity to earn an income as follows:

> 1. There is a duty to seek employment in a case where a parent is healthy and there is no reason why the parent cannot work. It is "no answer for a person liable to support a child to say he is unemployed and does not intend to seek work or that his potential to earn income is an irrelevant factor." (Van Gool at para 30).
>
> 2. When imputing income on the basis of intentional under-employment, a court must consider what is reasonable under the circumstances. The age, education, experience, skills and health of the parent are factors to be considered in addition to such matters as availability to work, freedom to relocate and other obligations.
>
> 3. A parent's limited work experience and job skills do not justify a failure to pursue employment that does not require significant skills, or employment in which the necessary skills can be learned on the job. While this may mean that job availability will be at a lower end of the wage scale, courts have never sanctioned the refusal of a parent to take reasonable steps to support his or her children simply because the parent cannot obtain interesting or highly paid employment.
>
> 4. Persistence in unremunerative employment may entitle the court to impute income.
>
> 5. A parent cannot be excused from his or her child support obligations in furtherance of unrealistic or unproductive career aspirations.
>
> 6. As a general rule, a parent cannot avoid child support obligations by a self-induced reduction of income.

[17] No evidence was presented which would suggest that Mr. Coadic is under-employed or unemployed for reasons relating to his health or relating to any

educational pursuits. As such I find that there are no health or educational limitations which interfere with Mr. Coadic's ability to work.

[18] I therefore must look to other factors in the determination of whether income should be imputed to Mr. Coadic inclusive of his age, education, experience, skills, work availability, freedom to relocate and any obligations for which Mr. Coadic is responsible which impact on his ability to be employed.

[19] Mr. Coadic has many work years left as he is only 44 years old. I find that age cannot be used as a reason to justify unemployment or under-employment.

[20] Mr. Coadic has significant employment skills and experience in training and grooming horses, in the construction industry, and operating heavy equipment. Mr. Coadic's educational level was only discussed during submissions and thus cannot be considered. In any event, Mr. Coadic's employability is not connected to any significant degree to his scholastic abilities. I find that Mr. Coadic has the work skills and experience to be employed.

[21] Mr. Coadic has not restricted himself to the Cape Breton area to find work. He has taken jobs in Ontario and is intending to seek work in Alberta. I find that there are jobs available for Mr. Coadic.

[22] No evidence was presented which suggested that there were any obligations for which Mr. Coadic was or is responsible which impact on his ability to be employed. I find that this is not a factor which needs to be considered.

[23] I must now examine the work history of Mr. Coadic to determine if income should be imputed to him in light of my findings.

[24] Mr. Coadic remained in receipt of worker compensation benefits following the issuance of the last order in 1999 until 2002 when he agreed to accept a buy-out of his entitlement based upon a lump sum payment of $43,595.00. Mr. Coadic then earned income of $13,153.00 and received employment insurance benefits of $4,726.00 for a total income of $61,474.00. In 2002, Mr. Coadic was employed in the horse industry in Ontario and then returned to Cape Breton where he collected employment insurance benefits.

[25] In 2003 Mr. Coadic earned $20,052.00 while employed in Ontario in the horse industry. He collected employment insurance benefits of $7,162.00 while in Cape Breton and received workers compensation benefits of $183.00. Mr. Coadic also withdrew RRSPs of $4,000.00 which he had saved in 2002. Total income, excluding the RRSPs, was $27,397.00.

[26] Mr. Coadic was served with the divorce documentation on December 30, 2003. Mr. Coadic did not work in Ontario in 2004. Instead, he collected employment insurance benefits from the two claims which were opened at the time. His total income in 2004 is derived from employment insurance benefits in the amount of $17,058.00 and a further $4, 000.00 from collapsed RRSPs.

[27] In 2005, after his employment insurance claims ran out, Mr. Coadic travelled to Ontario to work once again in the horse industry from January 3rd until April 16th. His ROE shows a lay off due to a shortage of work. Total earnings for this period were $4,048.46. Mr. Coadic then opened a claim for

employment insurance benefits. Mr. Coadic states that he will soon start to look for work in the construction industry in Alberta.

[28] In reviewing the evidence I note that Mr. Coadic was vague when discussing job search efforts and his evidence lacked details in many respects. I find that Mr. Coadic has not made diligent efforts to find employment, but rather was content to work for a sufficient number of weeks and then collect employment insurance benefits for the balance of the time. Mr. Coadic's search for employment was not diligent, consistent, nor conducted in good faith.

[29] Ms. Coadic asks that I impute income to Mr. Coadic in the amount of $44,616.00 which represents the annual income of a male worker in Ontario pursuant to the Statistics Canada printout for July 2004 to July 2005.

[30] I have reviewed the *Guidelines* and the case law. I have assessed the evidence and the burden of proof. I have considered the appropriate factors in the exercise of the discretion conferred upon me. In the circumstances I find that income ought to be imputed to Mr. Coadic for the years 2003, 2004

and 2005. I will not impute income to Mr. Coadic in the amount sought by Ms. Coadic as Mr. Coadic does not reside permanently in Ontario. I therefore impute income to Mr. Coadic in the amount of $30,000.00 for the years 2003, 2004 and 2005. It is not necessary to impute income for the year 2002 as the income which was earned by Mr. Coadic in 2002 exceeds the imputed amount.

Retroactive Request

[31] Ms. Coadic seeks a retroactive maintenance award which is contested by Mr. Coadic.

[32] The jurisdiction of the court to award child support is found in s. 15.1 of the *Divorce Act*, *supra*, the relevant subsections of which state as follows:

> **15.1** (1)**Child support order** - A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to pay for the support of any or all children of the marriage
>
> ...
>
> (3) **Guidelines apply** - A court making an order under subsection (1) or an interim order under subsection (2) shall do so in accordance with the applicable guidelines.
>
> (4) **Terms and conditions** - The court may make an order under subsection (1) or an interim order under subsection (2) for a definite

> or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order or interim order as it thinks fit and just.

[33] The court his jurisdiction to award a retroactive payment for maintenance prior to the filing of an application for maintenance: **Donald** v. **Donald**, [1991], 103 N.S.R. (2d) 322 (C.A.) and **Lidstone** v. **Lidstone,** (1993) 121 N.S.R. (2d) 213 (C.A.).

[34] The payment of a retroactive maintenance award is a discretionary remedy which must be based upon legal principles. In **Conrad** v. **Rafuse,** (2002), 205 N.S.R. (2d) 46 (C.A.) Roscoe JA approved the approach taken by the British Columbia Court of Appeal at paras 17 to 20:

> ¶ 17 A case often cited with approval as an authoritative overview of the principles relating to retroactive support orders is L.S. v. E.P. (1999), 50 R.F.L. (4th) 302 (B.C.C.A.) (leave to appeal to the Supreme Court of Canada dismissed [1999] S.C.C.A. No. 444). In that decision, Justice Rowles indicates at para 40 that there is jurisdiction to order a retroactive child support order under both the federal Divorce Act and various provincial family legislation for both a period of time pre-dating the judgment, and for a time preceding the commencement of the proceedings. In the latter category, which is applicable to this case, she cites: see Waterman v. Waterman (1995), 16 R.F.L. (4th) 10 (Nfld.C.A.); MacMinn v. MacMinn (1995), 17 R.F.L. (4th) 88 (Alta. C.A.); Chrintz v. Chrintz (1998), 41 R.F.L. (4th)

219 (Ont. Gen. Div.), [1998] O.J. No. 3289; and Celi v. Eagle, [1996] O.J. No. 4429 (Gen. Div.).

¶ 18 Based on the jurisprudence reviewed, Justice Rowles enumerates the policy concerns relating to the discretion to award retroactive maintenance, and includes a discussion of and authority for each of the following:

> (i) equal treatment under the Divorce Act and Family Relations Act;
>
> (ii) presumption that a previous court order is to be respected;
> (iii) presumption against retroactive effect;
>
> (iv) child maintenance is a right of the child, not of the parent;
> (v) parents are jointly responsible for child support; and
>
> (vi) encourage negotiated settlement.

¶19 Following discussion of the policy considerations, Justice Rowles examines the factors that govern the discretion to award retroactive maintenance, summarizing at para 66:

> 66 A review of the case law reveals that there are a number of factors which have been regarded as significant in determining whether to order or not to order retroactive child maintenance. Factors militating in favour of ordering retroactive maintenance include: (1) the need on the part of the child and a corresponding ability to pay on the part of the non-custodial parent; (2) some blameworthy conduct on the part of the non-custodial parent such as incomplete or misleading financial disclosure at the time of the original order; (3) necessity on the part of the custodial parent to encroach on his or her capital or incur debt to meet child rearing expenses; (4) an excuse for a delay in bringing the application where the delay is significant; and (5) notice to the non-custodial parent of an intention to pursue maintenance followed by negotiations to that end.

> 67 Factors which have militated against ordering retroactive maintenance include: (1) the order would cause an unreasonable or unfair burden to the non-custodial parent, especially to the extent that such a burden would interfere with ongoing support obligations; (2) the only purpose of the award would be to redistribute capital or award spousal support in the guise of child support; and (3) a significant, unexplained delay in bringing the application.
>
> ¶ 20 I agree with the analysis of Justice Rowles and would adopt the policy considerations and factors as listed in L.S. v. E.P. as relevant to the review of the exercise of discretion in this case. As noted in Hickey, supra, this court is not entitled to interfere with the order of the trial judge simply on the basis that we would be inclined to weigh the factors differently

[35] In **MacPhail** v. **MacPhail,** (2002) 210 N.S.R. (2d) 269 (C.A.) Cromwell, JA held that retroactive maintenance should only be awarded in exceptional circumstances at para 11:

> ¶ 11 The awarding of "retroactive" child support is a discretionary matter: see Reardon v. Smith, (1999), 180 N.S.R. (2d) 339; [1990] N.S.J. No. 403 (Quicklaw)(C.A.). A leading authority on the exercise of this discretion is found in the British Columbia Court of Appeal decision in S.(L.) v. P.(E.) (1999), 175 D.L.R. (4th) 423; [1999] B.C.J. No. 1451 (Quicklaw) (B.C.C.A.) which has been referred to with approval by the Alberta Court of Appeal in Ennis v. Ennis (2000), 5 R.F.L. (5th) 302; [2002] A.J. No. 75 (Quicklaw) at para. 28 and by this Court in Rafuse v . Conrad (2002), 205 N.S.R. (2d) 46; [2002] N.S.J. No. 208 (Quicklaw). It is

> exceptional to award support before the date of application for it. In exercising the discretion to do so, relevant considerations include, but are not limited to, need on the part of the children; whether the award will benefit the children; whether there has been blameworthy conduct on the part of the non-paying spouse such as, for example, failing to disclose income; whether there is a reasonable excuse for the delay in applying for support; and whether, although formal application has not been made, there has been notice that child support will be sought.

[36] In **MacLean** v. **Walsh**, (2003) 219 N.S.R. (2d) 108 (C.A.) Hamilton, J.A. confirmed the application of **Rafuse** v. **Conrad**, *supra* at para 8:

> ¶ 8 As indicated by this court's decision in MacPhail v. MacPhail (2002), 210 N.S.R. (2d) 269, Rafuse does not stand for the proposition that retroactive child support is always payable. The trial judge has to consider the factors governing retroactive child support and exercise his or her discretion.

[37] In the recent case of **Lu** v. **Sun**, 2005 Carswell NS 338 (C.A.), Hamilton JA. once again reviewed the status of the law in relation to retroactive maintenance in light of the Alberta trilogy, the position of the Ontario Court of Appeal, and pending the determination of the issue by the Supreme Court of Canada at paras 48 to 50:

> 48 This court in Rafuse v. Conrad,[2002] N.S.J. No. 208 at para. 20, adopted the policy considerations and factors listed by Rowles, J. in L.S. v. E.P. (1999), 50 R.F.L. (4th) 302 (B.C.C.A.) with respect to

> whether an award of child support should be ordered retroactively. These factors were mentioned in S.(D.B.) v. G.(S.R.) (2005), 7 R.F.L. (6th) 373 where the Alberta Court of Appeal set out factors it considered appropriate for the award of retroactive child support. S.(D.B.) v. G.(S.R.) in turn was recently considered in Park v. Thompson, [2005] O.J. No. 1695 (Ont. C.A.):
>
> > para. 16 In his submissions, Mr. Beamish on behalf of the mother asks this court to adopt a different approach in line with the so-called Alberta trilogy: S.(D.B.) v. G.(S.R.) (2005), 7 R.F.L. (6th) 373 (Alta. C.A.); L.J.W. v. T.A.R. (2005), 9 R.F.L. (6th) 232 (Alta. C.A.); and Henry v. Henry (2005), 7 R.F.L. (6th) 275 (Alta. C.A.). In the trilogy, the Alberta Court of Appeal has taken a very different approach to retroactive child support and, for example, has presumed need and an ability to pay on the part of the payor and has not required any demonstration of blameworthy conduct on the part of the payor or encroachment on capital by the custodial parent. Given the recent extended discussion of retroactive support in Walsh and Marinangeli, I have not been persuaded that this is an appropriate time to reconsider the issue, notwithstanding the thoughtful discussion in the Alberta trilogy.
>
> **[49]** Regardless which approach is taken on the facts of this appeal, payment of thirteen months retroactive child support is not an error considering: ....

[38] I have reviewed the legislation, law and evidence. I have applied the burden to Ms. Coadic based on a civil standard. I am awarding retroactive child support to January 1, 2002 given my findings as follows:

> (a) The children were in need of maintenance. They and Ms. Coadic did without on many occasions because there was insufficient income

to pay for their expenses, from time to time including not having sufficient money to buy groceries.

(b) Ms. Coadic borrowed from family and maximized all available credit in an attempt to meet the financial demands of the family given her meagre income of $121.85 per week from Royal Sun Alliance.

(c) Mr. Coadic paid little in child support - a mere $214.00 per month. Thus the substantial financial burden of supporting the children fell upon Ms. Coadic despite her inferior financial position.

(d) Mr. Coadic failed to notify Ms. Coadic when his income increased substantially as was required by the court order which issued on January 8, 1998, and which provisions were not varied in the subsequent court order. Further, Mr. Coadic did not disclose his income when required to do so as a result of the conciliation process, the Rules and the *Guidelines*. Mr. Coadic did not disclose his income pursuant to the disclosure order of September 2004. In fact, Mr. Coadic only disclosed his income when the trial was adjourned and Mr. Coadic was told that he had no other option. Mr. Coadic's behavior was most unsatisfactory and blameworthy. The failure to make a retroactive payment in such circumstances would be tantamount to a judicial sanction of defiance to court orders and the court process. Such a policy would bring the administration of justice into disrepute and punish the children and custodial spouse who are frequently powerless by virtue of economic and social factors. Court orders must be respected and consequence must flow if they are not.

(e) The retroactive award does not redistribute capital, nor award spousal support in the guise of child support. The award will provide Ms. Coadic with much needed child support.

(f) The retroactive award will not interfere with the ongoing support obligations of Mr. Coadic as the retroactive order will be paid by Mr. Coadic

providing an additional $250.00 per month in child support when employed and $150.00 per month when unemployed.

(g) Ms. Coadic's delay in making an application to increase child support is understandable and reasonable. I infer that she was unaware of the financial changes in circumstances of Mr. Coadic as he did not disclose such to her.

[39] In granting the retroactive order I have taken into consideration that the child Raymond ceased to be a child of the marriage in October 2004. Thus for 2002, 2003 and until October 1st, 2004 child support will be based upon the table amount for two children. From September 2004 child support will be based upon the table amount for one child.

[40] In granting the retroactive order I have also grossed up the workers compensation benefits received by Mr. Coadic in 2002 as such are nontaxable in the amount of $43,595.00 and in keeping with s.19(1)(b) of the *Guidelines* and **Diehl** v. **Diehl** [1998], A.J. No. 1303 (Q.B.), **Dahlgren** v. **Hodgson** [1998] A.J. No. 1501 (C.A.), **Callaghan** v. **Brett** [2000] N.J. No. 354 (S.C.) I have applied the 2002 federal and provincial tax rates when completing the gross up. In the year 2002, I find that the "grossed up" income of Mr. Coadic is approximately $80,000.00.

[41] Given these findings, the retroactive amount due is set at $15,046.00 based upon the following calculations:

(a) 2002: $80,000.00 & 2 children: $1,026.00 - $214.00 = $812.00 x 12months = $9,744.00.

(b) 2003 to September 2004: $30,000.00 & 2 children:$438.00 - $214.00= $224.00 x 21 months = $4,704.00

(c) October 2004 to October 2005: $30,000.00 & 1 child: $260.00 - $214.00 = $46.00 x 12 months = $598.00

Summary and Conclusion

[42] Mr. Coadic shall therefore pay child support based upon the Nova Scotia table for one child and based upon an imputed amount of income of $30,000.00 which equates to a monthly payment of $260.00 commencing November 1st, 2005 and continuing on the 1st day of every month thereafter until otherwise ordered by a court of competent jurisdiction. In addition, a retroactive award is likewise ordered to be paid in the amount of $15,046.00 which shall be paid at a rate of $250.00 per month when Mr. Coadic is employed and at a rate of $150.00 per month when Mr. Coadic is

unemployed, and such is payable on the 15th of each and every month commencing on November 15, 2005. In the event arrears are outstanding pursuant to the last court order, such shall be added to the retroactive payment stated and collected accordingly. Further, Mr. Coadic shall pay a proportionate share of all health related expenses of the child Stephanie pursuant to the provisions of s.7 of the *Guidelines* which proportionate share is set at 82 % based upon Mr. Coadic earning $30,000.00 per annum and Ms. Coadic earning $6,400.00 per annum. Such shall be payable within 30 days of having been presented with the invoice by Ms. Coadic. Finally, the usual income reporting provisions will be added to the order.

[43] Ms. Coadic has not sought interest nor costs and in the circumstances none will be ordered.

Forgeron, J.