

**IN THE SUPREME COURT OF NOVA SCOTIA**  
**Citation: Charbonneau v. Charbonneau, 2006 NSSC 188**

**Date:** 20051215

**Docket:** 1202-001175 (017470)

**Registry:** Amherst

**Between:**

Joseph Jean Claude Robert Charbonneau

Applicant

v.

Mary Frances Charbonneau

Respondent

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**DECISION**

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**Judge:** The Honourable Justice J.E. Scanlan

**Heard:** 15 December 2005, in Amherst, Nova Scotia

**Written Decision:** 16 June 2006

**Counsel:** Ms. Mary Ellen Nurse, for the applicant  
Mr. Robert M. Gregan, for the respondent

**By the Court:**

- [1] This is an application to vary wherein Mr. Charbonneau seeks to have a maintenance order, which required him to pay child maintenance in the amount of \$407 a month, plus spousal maintenance in the amount of \$600 per month, varied. The order was made in July 2002.
- [2] Mr. Charbonneau suggests that there has been a change of circumstances which would justify him having a reduction in maintenance payments. The change in circumstances is really on three fronts, as suggested by Mr. Charbonneau. One is that he has now lost his job at Sifto. He says it was lost as a result of the fact that he was suffering from a seasonal affective disorder. He was required to work night shifts, and it simply resulted in depression and an inability to continue with that job. The evidence as regards his seasonal affective disorder was not disputed in any way, shape or form. Mr. Charbonneau's evidence is that he negotiated a termination with Sifto, and as a result of that negotiated agreement with Sifto, he left his employment in August of 2005 and received a \$35,000 lump sum termination benefit. Mr. Charbonneau indicates that he had requested that his employer put that in the form of an RRSP, and that is where the money, or at least a part of the money, sits.
- [3] He also indicates that in addition, during that same period of time, his current common-law partner was disabled from work. He said she was not able to work for some period of time even prior to his leaving his employment. She got disability benefits; whether they were long or short, I'm not sure. She also got some EI sick benefits, and went for a period when she couldn't get any income in the form of disability benefits or employment insurance benefits. She is now back in a work hardening process and hopes, by December of this year, to get back to basically full time employment. I understand her to be saying she's going to go back four days a week as opposed to five days a week in the future. At five days a week she would have been earning just over \$35,000 a year. There seems to be some suggestion that there has been an increase in the remuneration for her and there is a coinciding reduction in the number of hours, so it's not clear exactly how much she'll make, but it will be in the \$30,000 range.

- [4] I just simply pointed out what Ms. Natalie Estabrooks' circumstances are. I want to make it clear that I am not requiring Natalie Estabrooks to pay child or spousal support on behalf of Mr. Charbonneau. I have to decide the case in relation to Mr. Charbonneau based on the merits of that case, and that case alone. The issue is, should Mr. Charbonneau continue to pay.
- [5] The second change in circumstance that he alleges is that he says Manon, a daughter and child of the marriage, is no longer a child of the marriage. There were two children of the marriage. He refers to the fact that during the university year she lives with her boyfriend in an apartment in Sackville, New Brunswick. He indicates as well that Manon had received a certificate from the community college. The suggestion by his counsel is that this somehow should be deemed to be the post secondary education to which a parent would normally be obliged to contribute, and that he should not be obliged to contribute anymore.
- [6] In October of 2005, Manon turned 23 years old. The evidence before the court would indicate that she was off to a little bit of a late start because in the midst of the parties separating, she ended up missing her first year of university at Saint Francis Xavier. She then ended up going for two years to the community college to get a certificate or diploma. I'm not sure what it was referred to or how it should be described, but in any event she went to community college and got a certificate of some sort. She is now able to get credit for some of the courses she took at the community college and she's in the third year of a four year degree program at Mount Allison. She really is not in much of a different situation than any other student who decides to go immediately from high school into a post secondary education. She has about 18 months left at university. If her father has the wherewithal to provide support to her, then in fact he is under a moral and legal responsibility to assist. The big "if" in this case is going to be can he afford it. That relates back to the first change of circumstances wherein he alleges that he can no longer work at Sifto and he's out of work. I will turn in a few minutes to what he should be doing in the future, or what this court might do in the future as regards his ability to pay. For now I'm talking about that as a change in circumstances.
- [7] There is a third change in circumstances that arises more from the evidence presented here in court than it did from the affidavit evidence. That is, Ms.

Charbonneau is now employed. She works as a caregiver for a 92 year old lady. I understand that she may well be able to get additional work to supplement her income, so as to give her a further income stream by which she can support herself. That is commendable. It's important, Ms. Charbonneau, that you understand that you have a primary obligation to support yourself, and contribute in any way that is reasonably possible. I find no fault in terms of the efforts that you have made to date. You were busy raising Manon, and you are still busy raising Manon. I find, for example, that Manon is still a child of the marriage in the sense that she is not able to withdraw from the charge of both parents. In addition I find that she does go home, and can reasonably expect to continue to go home during the summer months, Christmas vacations, some evenings, weekends. You have to have a place not only for yourself to live, but for Manon to live for the next little while.

- [8] It was not unreasonable that you decided not to go to the community college program that you had looked into. The reason was you couldn't reasonably care for Manon and attend in Annapolis Valley to get that certification. That was a reasonable decision, a reasonable choice. During that time you made relatively few dollars looking after your two nieces and helping with those family responsibilities. I'm not saying that things you do for the rest of your family are a reasonable excuse in terms of not supporting yourself. You have to support yourself first, and that's a primary obligation. It just happens to be that was the circumstance in which you found yourself, and at the end of the day it was not unreasonable. Looking forward I would hope, Ms. Charbonneau, that you take my words very seriously in terms of the fact that you do have an obligation to continue with your efforts to support yourself. If that means you're working 10 or 12 hours a week looking after one elderly person, maybe you can arrange in the next while to find more people that you can accommodate in terms of the time, energies, strengths and abilities that you have. Utilize your time and efforts to the full extent to support yourself. In saying that, the decision that I am about to render will give you some short term relief. Unless things change for Mr. Charbonneau, you're probably not going to be able to count on him for an awful lot longer. There comes a point when maintenance orders, whether they be for children or for spouses, are driven as much by the ability to pay as they are by need. In some situations, a divorced spouse simply cannot pay money because he or she does not have the means to pay it. That is in spite of the fact that

there is a need, there is an entitlement, and that you deserve it, based on the marriage, the circumstances of the marriage and the marriage breakdown.

- [9] There has been a change in circumstances. I refer to the *Divorce Act* and every consideration set out in *Moge v. Moge* and *Bracklow* and any number of the other cases. This was a 24 year traditional marriage wherein there was a substantial dependency by Ms. Charbonneau resulting from the role she that played in the marriage. She was a stay at home mom who had forsaken her career so that she could attend to the needs of the children of the marriage. Throughout that time Mr. Charbonneau was able to pursue his career. Ms. Charbonneau talked of having meals ready for him when he came home, no matter what his shifts were. She talked about the house cleaning. She talked about doing what she could to help him with his mental illness. She stopped work just a couple of years after the marriage. The parties now have to both share the consequences of that. She's not in the work force with some 24 years plus experience, security, seniority, pension and everything else under her belt. The parties basically have already felt the consequence of those decisions. For example Mr. Charbonneau, your pensions and profit sharing, all those things were divided based on the earnings during the marriage. In that sense you've already felt the consequence, in part, by dividing those assets. One of the other consequences is that Ms. Charbonneau, but for your support, would find herself completely impoverished. Can you simply walk away from this marriage at this point in time saying it's time she's on her own?
- [10] As I said already, Mr. Charbonneau, there may come a point in time when you don't have any money and you cannot be called upon to support Ms. Charbonneau. Alternatively the court may at some point be convinced that she has the ability to support herself and is refusing to. She's certainly not to that point yet. She's just getting back into the work force in terms of opening some doors for herself. The word is getting around Springhill that she's prepared to care for these elderly people. There's a need there. As I've said, I encourage her to utilize just about every means that she has possible to work to the full extent that she is physically and mentally able to do.
- [11] Having said that to her, I say the same to you, Mr. Charbonneau. You have to use every means at your disposal to meet your obligations, not just to

Manon, not just to your new partner, but to Ms. Charbonneau as well. I have no problem with the concept that in terms of finding I have jurisdiction in saying there has been a change in circumstances. There are several changes in circumstances that give me jurisdiction to review the matter. The question is; what should the maintenance now be? Mr. Charbonneau, as I have already noted, is not now employed with Sifto, but he did get the \$35,000 lump sum payment. One can only assume that it was intended to provide a bridge to him so that he could either find new work, or to help him deal with the situation he found himself in where he couldn't work with Sifto. Is he entitled to keep all that money to himself and say to the court, say to his daughter and Ms. Charbonneau, that's my money? I know a place where I want to put it, in terms of investing in a new business, and you can't have any of it. The short answer is no.

[12] Legally, the courts are entitled to, and obliged to look at your entire circumstances. The current reality is that you received the \$35,000. Much of it you still have. If you don't have it, you should have it, because one of the obligations that existed, and continues until I decided otherwise, is that you are obliged to pay this \$1007 per month in child and spousal support. You can't just make decisions which say that you're going to do something else with your money and they're not going to get it. The fact of the matter is, I take the \$35,000 into account. I am satisfied that it's a part of a severance package, or settlement, however you want to term it or describe it. I take it into account in terms of what your income is. I am satisfied that you should have been able to pay the \$1000 a month. The \$35,000 was to give you enough time to make reasonable job search for other jobs. For you to say that your choice is going to be to start up a business, doing something else with the money, that's not good enough. You're going to have to go out and continue making efforts to find a job that's going to give you a reasonable income. If you decide not to, then much of that will be your problem, and it's not going to be all Ms. Charbonneau's problem. It is not going to be all your daughter's problem.

[13] Where do we go? I've already indicated that Manon is a child of the marriage, and continues to be a child of the marriage. The amount of the maintenance was, in relation to Manon, \$407 per month, and I am satisfied that that \$407 per month should continue through to April of 2007. At that time it will terminate. That is regardless of whether or not you decide to go

on and get another degree, or whether you don't successfully complete your degree, Manon. That's the termination date. That gives you a reasonable amount of time to complete that degree. It is, however, conditional upon you continuing to be enrolled in a full time university education program. If you drop out between now and that date I've mentioned then you and your mother will not be entitled to receive the \$407 per month. I use the \$407 per month, by the way counsel, not because I am satisfied that Mr.

Charbonneau's income is going to be a set amount and I'm able to use the guidelines. Instead I look forward and I say look, take into account the \$35,000 lump sum payment and what he might reasonably be expected to make in the period of time that I have addressed. I am satisfied that he should make provision now out of the \$35,000 to deal with that maintenance issue. I point out as well, counsel, that is not tax deductible. So if he has to cash in RRSPs to do that, then there's going to be a tax consequence.

- [14] I move on to Ms. Charbonneau and the situation she finds herself in. She is in a vastly improved situation compared to what she was in at the time of the divorce. At that time she was totally dependent on Mr. Charbonneau for income, maintenance and support. I am satisfied that I have to take into account something of Mr. Charbonneau's position in terms of ability to pay. I'm not prepared to put a termination date on this, because I'm not all that comfortable with the fact that Ms. Charbonneau's going to continue with the work that she's doing, and to increase to become totally self sufficient. So I don't put a termination date on it. By the same token, I'm not going to say that she's entitled to 'X' number of dollars for the same amount of time that I've put out for Manon. I really would have to be convinced that once this \$35,000 runs out that Mr. Charbonneau is not making a reasonable effort to find alternative employment, before I would deem a specific income to him. It is a situation where I think Mr. Charbonneau should be making an effort to find employment and get other work so he can continue with his maintenance obligations. By the same token Ms. Charbonneau should be, as I said, continuing with her efforts to become self sufficient. I take into account her current situation where she's making about \$600 per month with her new opportunities. I'm satisfied that while her need by far would exceed the \$600 that she's earning, plus the \$407 that goes to Manon, there should be some recognition for the increase or improvement in her financial circumstances, and for the plight that Mr. Charbonneau might face down the road. Spousal maintenance should be in the amount of \$300 from this point

forward. It is reviewable...I don't want to have a Christmas review every year, counsel. Perhaps we could have it reviewable next September, so that we can again look and see what his job search efforts are, and see what her efforts are in terms of becoming self sufficient. He may get some relief earlier than what you suggested, Mr. Gregan, but he might not. A lot depends on what he's done and what she's done. So that portion is reviewable next September. So it's some relief to him, but it's not total relief, nor is there a termination date. No adjustment to the arrears, counsel.

- [15] Like I said, a reasonable portion of that \$35,000 should have been used. If he still doesn't have it, that's his fault. It can't be her problem, and her problem alone. Thank you.

**J.**