

**SUPREME COURT OF NOVA SCOTIA**  
**(FAMILY DIVISION)**

**Citation:** Hewens v. Guitard, 2011 NSSC 201

**Date:** 20110525

**Docket:** 1201-55652

**Registry:** Halifax

**Between:**

Cheryl Anne Hewens

Applicant

v.

Anthony Kent Guitard

Respondent

**Judge:**

The Honourable Justice Deborah Gass

**Heard:**

April 11, 2011, in Halifax, Nova Scotia

**Counsel:**

Joyce Ruck De Peza, for the applicant

**By the Court:**

[1] This is an application to vary a Corollary Relief Judgment dated April 4, 2003 as varied June 5, 2006. Specifically, the applicant seeks an increase in spousal support, which is currently \$400.00 per month as of July 1, 2006.

[2] In any variation application, the applicant must first establish a material change in circumstances since the last order, being a change in the conditions, means, needs, or circumstances of either spouse. Any variation should be relative to the change.

[3] The applicant is suffering from residual effects of an accident in 1978 which impairs her ability to be meaningfully employed, although she was able to work throughout most of a 20 year marriage. She has been receiving spousal support from the respondent for ten years. Her other sources of income are CPP Disability benefits and the GST tax credit for a monthly income of \$1247.00 (\$15,000/year). She relies on her son with whom she lives, to pay half the rent and other basic household expenses. Her expenses, particularly her housing costs, are increasing.

[4] At the time of the last order the respondent was in receipt of income of \$24,672.00. The respondent's current income according to his sworn financial statement is \$43,909.92. His 2010 income was \$46,288.49.

[5] The income he is receiving is supposed to decrease as the overtime hours he had been receiving are about to come to an end. He is supporting his spouse who has no income. The respondent was diagnosed with cancer in 2003 (well before the last order). While there is no sign of the cancer now after several years of radical treatment, the respondent carries the after effects of the treatments and a stem cell transplant. He now has a compromised immune system. He suffers from fatigue, "dry eye" syndrome, and dental problems.

[6] The parties have been separated about 11 years and while the length of the marriage and her needs would warrant a continuing obligation, the respondent is also entitled to move along with his life and establish a new relationship with new responsibilities.

[7] The Applicant has however established a need for an increase in spousal support, and her son is not obligated to contribute to her support. Her expenses are increasing, whether she remains where she is or not.

[8] The respondent is justified in his objection to supporting her smoking habit or keeping pets, a total cost of \$300.00 per month.

[9] In 2006 the respondent's disability income of \$24,000 was non taxable. His current income is taxed, thus his take home pay has in reality not increased significantly. With the loss of overtime his income will be lower.

[10] Thus, while on the face of it, it would appear that the respondent's income has significantly increased, in reality it has not, and any change in the order must be relative to the change in the circumstances.

[11] There is no question that an increased need has been established. Her expenses exceed her income by \$200.00 in her most recent statement of financial information sworn March 2, 2011. It is noted that her deficit in her November 2010 statement was \$409.00.

[12] I am not satisfied that a corresponding increase in ability to pay has been established. Although the Respondent's statement shows a surplus of \$789.00, that is before tax and the payment of spousal support. With spousal support his deficit is in the vicinity of \$200.00 per month and there is no ability to pay a higher amount.

[13] Under all these circumstances, and recognizing the difficult conditions for the applicant, I must dismiss her application for an increase in spousal support. The order will continue at \$400.00 per month.

Gass, J.