SUPREME COURT OF NOVA SCOTIA
Citation: Lamarche v. Lamarche, 2011 NSSC 72

Date: 20110223
Docket: SFHMCA-035030
Registry: Halifax

Between:

Shawn Lamarche

Applicant

v.

Kimberly Lamarche

Respondent

Judge:	The Honourable Justice Beryl MacDonald
Heard:	February 2, 2011, in Halifax, Nova Scotia
Counsel:	Sarah Harris, counsel for the Applicant Terrance Sheppard, counsel for the Respondent

By the Court:

[1] On February 15, 2010 Mr. Lamarche filed a Variation Application. He requested a change to the Order issued pursuant to the *Maintenance and Custody Act*, R.S.N.S. 1989, c. 160, dated August 30, 2006 as varied by Consent Order dated December 20, 2007. He asked that his son be in his primary care under a joint custodial arrangement. He asked that Ms. Lamarche pay child support as at January 1, 2010 for the table amount and for an unspecified amount for special expenses. The application was amended by document filed on October 12, 2010 removing the request for an amount for special expenses. This application was originally filed because the adolescent was then living with Mr. Lamarche. However, on or about July 6, 2010 the child returned to live with Ms. Lamarche. He continues to live with her. He is 14 years old.

[2] On January 7, 2011 both parties appeared before me with their counsel. I was informed the parties agreed their son should remain in Ms. Lamarche's primary care. The outstanding issues were Mr. Lamarche's request for a joint custodial arrangement, child support for the time when this adolescent had lived with Mr. Lamarche and ongoing child support including special expenses claimed

by Ms. Lamarche. These would be the subjects of a one day trial to be held on February 2, 2011.

[3] On January 19, 2011 Mr. Lamarche filed an affidavit in which he requested their son be returned to his primary care. As a result this again became an issue before me.

CUSTODIAL ARRANGEMENTS

[4] Section 37 (1) of the *Maintenance and Custody Act* directs that a court may make a variation to a previous order "where there has been a change in circumstances since the making of the order or the last variation order." This section has been interpreted to require the change to be a material change. The questions that must be answered to determine whether there has been a material change are similar to those asked when a variation is requested to a Corollary Relief Judgment under the Divorce Act. These were outlined in the Supreme Court of Canada case *Gordon v. Goertz*, 1996 CanLII 191 (S.C.C.). The questions are:

a. Has there been a change in the condition, means, needs or circumstances of the child or the ability of the parents to meet the needs of the child;

b. If so, does that change materially affect the child; and

c. Did the parties consider the possibility of that change at the time the order was granted or could they have reasonably contemplated the change would occur?

[5] If the court does decide that a material change has occurred it then must decide whether it is in the best interest of the child to vary the order as requested. It may be that the previous order is still in the child's best interest.

[6] The order establishing the parenting arrangement for this adolescent is dated August 30, 2006. At that time he was 10 years old. Ms. Lamarche was granted sole custody while Mr. Lamarche was to have their son in his care every second weekend and for a generous division of holiday time. Mr. Lamarche was to be informed about all matters affecting their son's health, education, religion, and

welfare. He did have the right to make independent inquiries of third party service providers and to request information from them. Because Ms. Lamarche had their son in her sole custodial care she was not required to make decisions jointly with Mr. Lamarche, a request he now seeks to have imposed upon her.

[7] Notwithstanding the fact that this adolescent lived with Mr. Lamarche from January until July 2010, by January 7, 2011 Mr. Lamarche decided their son should continue to live with Ms. Lamarche. As a result I am satisfied his initial application to have their son in his care was not based upon any allegation that Ms. Lamarche was not attending to their son's best interest when he was living with her but because their son had expressed a desire and willingness to live with his father and Ms. Lamarche agreed this should occur.

[8] The only material change Mr. Lamarche has put forward to now justify a variation of their son's custodial care is this adolescent's present propensity to travel with the "wrong crowd" at school, his experimentation with marijuana and alcohol, his failing grades at school and Ms. Lamarche's alleged inability to effectively help their son deal with these issues.

[9] Mr. Lamarche and Ms. Lamarche have different versions about how their son returned to his mother's care in late June early July 2010. Mr. Lamarche states in his affidavit sworn January 18, 2010 at paragraph seven:

> At the end of June 2010 after (the child) had finished school, he returned to Cole Harbor for a visit with his mother, Ms. Lamarche. (The child) did not ever return to my care. I have not been able to have a conversation directly with (the child) about why he left, and I have had to rely completely on communications with Ms. Lamarche and an e-mail exchange between (the child) and my fiancee as to why (the child) did not return.

[10] Ms Lamarche states in her affidavit sworn January 28, 2011 in paragraph 42:

> On June 23, 2010, (the child) had dental surgery and came back to my home afterwards. He went to the Applicant's home for about four days. Then he came back to stay with for what was supposed to be his two week visit. The Applicant and I started talking about what was best for (the child) and where it was best for him to live. Out of the blue, I received an e-mail from the Applicant, on or about July 15, 2010, stating that I had to come and pick up (the child's) belongings on Sunday between 3:00 and 5:00 otherwise they would be out on the curb to be picked up.

[11] In her testimony Ms. Lamarche stated the information she received from their son and Mr. Lamarche was that their son was not welcome to return to Mr. Lamarche's home. In his oral testimony Mr. Lamarche's response to this allegation was to deny it. He testified that when this adolescent returned to Ms. Lamarche's home he did so because he was missing his friends and Mr. Lamarche told him to

go and come back before school starts. Mr. Lamarche explained the e-mail was sent on July 15, 2010 because Ms. Lamarche would need their son's belongings for the summer and he and his partner were going out. Later when he and Ms. Lamarche began talking about where their son should live she told him she intended to enforce the terms of the original order and he told her they would have to deal with this in court.

[12] What actually happened that resulted in this adolescent continuing to live with his mother? I may never know the truth about what happened. All I can do is apply the legal principles developed by our courts to assess "credibility". The action imbedded in this word is a direction to sort out reliable from unreliable information. What information is most persuasive?

[13] In assessing credibility I adopt the outline set out in *Novak Estate, Re*, 2008 NSSC 283, at paragraphs 36 and 37:

> [36] There are many tools for assessing credibility:
>
> a) The ability to consider inconsistencies and weaknesses in the witness's evidence, which includes internal inconsistencies, prior inconsistent statements, inconsistencies between the witness' testimony and the testimony of other witnesses.

b) The ability to review independent evidence that confirms or contradicts the witness' testimony.

c) The ability to assess whether the witness' testimony is plausible or, as stated by the British Columbia Court of Appeal in ***Faryna v. Chorny***, 1951 CarswellBC 133, it is "in harmony with the preponderance of probabilities which a practical [and] informed person would readily recognize as reasonable in that place and in those conditions", but in doing so I am required not to rely on false or frail assumptions about human behavior.

d) It is possible to rely upon the demeanor of the witness, including their sincerity and use of language, but it should be done with caution ***R. v. Mah***, 2002 NSCA 99 at paragraphs 70-75).

e) Special consideration must be given to the testimony of witnesses who are parties to proceedings; it is important to consider the motive that witnesses may have to fabricate evidence. ***R. v. J.H.*** [2005] O.J. No.39 (OCA) at paragraphs 51-56).

[37] There is no principle of law that requires a trier of fact to believe or disbelieve a witness's testimony in its entirety. On the contrary, a trier may believe none, part or all of a witness's evidence, and may attach different weight to different parts of a witness's evidence. (See ***R. v. D.R.*** [1966] 2 S.C.R. 291 at paragraph 93 and ***R. v. J.H.*** *supra*).

[14] Mr. Lamarche's response to Ms. Lamarche's explanation about how their son came to live with her is similar to many responses he made during this proceeding. They were evasive. They were inconsistent. They blamed Ms. Lamarche for everything. He accepted no responsibility. For example, he did not deny sending the e-mail on July 15 to Ms. Lamarche requiring her to pick up their

son's belongings, nor did he deny the content of the e-mail. He sent it because he and his partner "had to go out". But if this was so why couldn't Ms. Lamarche go on another day to pick up her son's belongings? Why did she have to drive all the way to his home in that specific time frame? What was the emergency? Why would he leave his son's belongings on the curb?

[15] Even though he testified he informed Ms. Lamarche he would leave it to the court to decide where their son would live, he attended court on January 7, 2011, stating he was content to leave him in Ms. Lamarche's primary care.

[16] The conclusion I draw from Mr. Lamarche's e-mail correspondence and his oral testimony is that he knew his son wasn't returning to his home and he wanted all his son's possessions out of his home.

[17] Ms. Lamarche is a credible witness. When her information conflicts with or contradicts the information provided by Mr. Lamarche I accept her information as credible, not his. She has a conflictual relationship with Mr. Lamarche and she has often not been polite in her e-mail to him. However, she has tried to keep their son out of the conflict that has been ongoing between them since their separation. I

accept she did want father and son to have a positive relationship. This has been impossible because Mr. Lamarche blames her whenever his relationship with his son is not going well. She is the one who interferes says he. Yet he has sent his son insulting e-mails. He testified that perhaps he could have used different wording while in the same breath stating " he would have told his son the same thing if he was in his home". Mr. Lamarche wants to be a pal with his son and at the same time he demands obedience to his rules which may not always be communicated ahead of time.

[18] This adolescent has had a very disturbed relationship with his father. Although Mr. Lamarche had ample opportunity to have his son in his care he did not regularly exercise that opportunity. He blames Ms. Lamarche for this but I accept it was frequently convenient for him not to have the responsibility of caring for his son. His e-mails to his son show a complete lack of sensitivity. They were not age appropriate. They discussed adult issues that should have not been communicated to this adolescent. Mr. Lamarche may believe this type of communication is appropriate. It is not.

[19] I have no doubt this adolescent desperately wanted a relationship with his father and that whatever happened in his father's home has hurt him. Children who are hurt may act out and exhibit behavioral problems. This adolescent is now struggling to find his place in the world. He is susceptible to peer pressure. He has chosen friends who may be difficult to reject. His grades are failing. He is sad. He is experimenting with drugs, tobacco and alcohol. His mother is aware of his challenges. She has not ignored these issues as has been suggested by Mr. Lamarche. She may not have shared this information with Mr. Lamarche but given the current situation between them I can understand her hesitation in doing so. She does not consider him to be supportive in her parenting of their son and in fact he has not been a support to her. His continuous blame and criticism of her are not helpful and may be destructive, particularly when he shares his disrespect of her with his son as he has done in his e-mail.

[20] Ms. Lamarche has encouraged her son to speak with the principal of his school and with the guidance counsellor. She is prepared to employ an independent counsellor to assist him further but he has rejected this at present. He is attempting to improve his grades and she is supporting this effort. It will be up to Mr. Lamarche to heal the rift between he and his son but if he does not

recognize his responsibility for what has happened between them there may be little positive outcome for either.

[21] There is evidence before me to suggest this adolescent, while in Mr. Lamarche's care, exhibited some of the same concerning behaviors now complained about by Mr. Lamarche. For example, he was suspended from school while in Mr. Lamarche's care. I accept the evidence that he was fighting in the schoolyard. I do not accept the suspension was given to him for the reasons suggested by Mr. Lamarche. Those reasons are far too self aggrandizing to be believable.

[22] I am not satisfied there has been a material change in the circumstances of this adolescent or of his parents that would justify a change in the custodial or primary care arrangements. These parents did not have in the past, and do not now have, the ability to communicate and co-operate in the positive fashion required for a successful joint custodial arrangement. I am not convinced that a joint custodial order will cause a behavioral change in this dynamic.

[23] Ms. Lamarche is able to provide guidance to their son as he negotiates his passage through adolescence. There is nothing in the evidence to suggest that Mr. Lamarche will be able to guide him more effectively thus requiring a change to primary care.

CHILD SUPPORT

[24] The consent Variation Order dated December 20, 2007 set the annual income of Mr. Lamarche at $20,000. Upon this amount he was required to pay child maintenance of $161.00 per month. He was to provide Ms. Lamarche with a complete copy of his income tax return including all attachments and his notice of assessment every year on or before June 15th.

[25] Ms. Lamarche's annual income for the period when their son resided with Mr. Lamarche was $32,000.00. The provincial Child Maintenance Guidelines Table requires a payment of $284.00 per month at this level of income. Ms. Lamarche did not pay this amount to Mr. Lamarche for the six month period t their son resided with him. She has asked this court not to order her to pay this child maintenance for the following reasons:

a) The frequent failure of Mr. Lamarche to pay child support requiring a return to this court to properly calculate amounts owing.

b) The lack of contribution by Mr. Lamarche to special expenses including those for extracurricular activities, health insurance premiums and dental expenses.

c) The limited income received by Ms. Lamarche and the negative effect payments to Mr. Lamarche will have on her ability to financially support their son.

d) None of her fixed expenses were reduced while their son lived with Mr. Lamarche.

e) Their son was living with Mr. Lamarche as a trial arrangement not intended, at the time it was put into effect, to be permanent.

[26] A parent who has a child in his or her primary care is entitled to receive child support. The court has no discretion to refuse to award child-support pursuant to the table guideline amount to a parent who has a child in his or her primary care unless there is a proven hardship application. The legislation governing the guidelines provides no direction to the court about "trial custodial arrangements". Possibly changes in primary care amounting to a month or two may not be considered to be a material change (for the purpose of varying primary care and thus the recipient of child maintenance) if one looks at a 12 month period during which a child required parental care. However I cannot categorize a six-month change of residence as anything other than a material change of circumstances that would justify variation of the previous order in respect to the recipient of child maintenance. As a result Ms. Lamarche should have paid Mr. Lamarche child maintenance in the amount of $284.00 per month from January 1, 2010 until June 1, 2010, a total of $1,704.00. It is to be noted that Mr. Lamarche has not paid child maintenance since July 1, 2010. However, it appears he did pay support when his son was in his care. If I am incorrect I reserve jurisdiction to amend the mathematics reflected in this order to achieve the correct result.

[27] Once it is determined that a parent is entitled to receive table guideline child support and recognizing that the amount is not a discretionary award, factors such as Mr. Lamarche's previous failure to pay child maintenance as ordered, Ms. Lamarche's limited income, her necessity to pay special expenses without assistance from Mr. Lamarche and her continuing fixed expenses while their son lived with Mr. Lamarche are irrelevant.

[28] I cannot set off any amount she owes for child support against a retroactive claim for payment of special expenses by Mr. Lamarche because I do not have sufficient evidence to support that claim.

[29] Because child maintenance not been paid by Ms. Lamarche she is now in arrears. Does the court have any jurisdiction to forgive those arrears for any of the factors it could not take into consideration in the initial award for child support? It has not been uncommon for courts in Nova Scotia to forgive payment of arrears of child support. The authority to do so is unclear if it exists at all. The *Maintenance and Custody Act*, R.S.N.S. 1989, c. 160, s. 37(1) does state that the court may "make an order varying, rescinding or suspending, prospectively or retroactively, a maintenance order..." It does not address the issue of forgiveness. However, courts

in Nova Scotia have been known to forgive the payment of arrears taking into account factors such as the following:

a) whether the paying parent will ever be able to pay the account

b) whether the money will in fact be of any benefit to the child

c) how the impact of paying the arrears will affect the regular payment of child support

d) why a recipient parent may have delayed a request enforcing the payment of arrears.

[30] Of these factors the most significant is the problem of enforcing an order for collection of arrears for adult children who are no longer dependents. There may be no benefit to the child to enforce arrears under these circumstances. However, it may be considered appropriate to finally reimburse the parent who shouldered those expenses during the child's dependency.

[31] Arrears are to be distinguished from the requirement to grant a retroactive downward recalculation when there is a change of circumstances. Child maintenance is to be paid based upon annual income. Annual income can change. The guidelines provide that a change of income is a change of circumstances

requiring a recalculation. The extent of the requirement to recalculate and the factors to consider have been described by the Supreme Court in *S.(D.B.) v. G.(S.R.)* 2006 SCC 37. The Supreme Court did however state that its decision was not intended to apply to support arrears:

> 98 Before canvassing the myriad of factors that a court should consider before ordering a retroactive child support award, I also want to mention that these factors are not meant to apply to circumstances where arrears have accumulated. In such situations, the payor parent cannot argue that the amounts claimed disrupt his/her interest in certainty and predictability; to the contrary, in the case of arrears, certainty and predictability militate in the opposite direction. There is no analogy that can be made to the present cases [of retroactive increases in child support].

[32] In this case the court is dealing with a child maintenance award currently ordered but which, because of the circumstances, is essentially in arrears. In a recent New Brunswick case, *Brown v Brown* 2010 NBCA 5, the New Brunswick Court of Appeal decided there was no discretion to forgive arrears and that to do so required specific legislative direction:

> 45 In summary, there is no residual discretion to either reduce or cancel arrears based on the interlocking pleas of “inability to pay” and “hardship”. As a matter of interpretation, neither the provincial nor federal legislation expressly contemplates the exercise of such discretion, nor can it be inferred as being a necessary or practical incident of the power to issue retroactive orders. In any event, there can be no hardship if there is a true inability to pay: one cannot pay what one does not have, even if the demand were court ordered. This is why the payer’s inability to pay arrears is of relevance to the issue of enforcement but not

> to the forgiveness of arrears. As a matter of law, support recipients are entitled to cling to the hope, however faint, of the payer's future ability to pay.

[33] I am satisfied that there is no residual discretion pursuant to the *Maintenance and Custody Act* to reduce, cancel or "forgive" arrears. How the arrears owed by Ms. Lamarche are to be paid will be discussed later in this decision.

[34] Mr. Lamarche is seeking a variation in the amount of child maintenance to be paid by him to Ms. Lamarche. At the present time he alleges he has no income and this is a situation that has existed since July 2010 when the owner of the building in which he operated his business required him to relocate. At this time Mr. Lamarche decided to build a garage, adjacent to his own residential property, sufficient for the purposes of his work. He has devoted his time and effort to building that garage thus preventing him from earning income. He expects to be back in business by March 2011. Mr. Lamarche is self-employed in a business known as I. C. E. Coachworks. His fiancee looks after the business accounts and prepares the income tax returns. She is listed as a 50% owner in this partnership. This business has existed since approximately 2007.

[35] The order granted December 20, 2007 was based on an annual income of $20,000.00. In paragraph 18 of Mr. Lamarche's affidavit sworn January 18, 2011 he states:

> The consent order between that Ms. Lamarche and me dated December 20, 2007, took into consideration that I would be starting I. C. E. Coachworks. I estimated that at that time, I would likely be receiving an income of $20,000.00 per year. The child maintenance of $161.00 per month was agreed to between the parties based on the estimates of my income. Even though I did not make $20,000.00 in 2007, 2008 or 2009, I did not seek to change the amount of child support and I paid Ms. Lamarche. The only reason I was able to do this is because (he and his fiancee) work together and agreed that we would do what we could to provide the funds for (the child). In January of 2010, when Coltan was living with (my fiancee) and me I stop paying support and received no support from Ms. Lamarche. Since (the child) has returned to Ms. Lamarche's care my circumstances will not allow me to continue to make the payments. I do expect this is a temporary position for me to be in, but it is impossible to determine exactly how long it will last.

[36] But for paragraph 14 of the provincial Child Maintenance Guidelines, I would have decided there was no material change of circumstances to justify a change in the child maintenance award. I would have said so because since 2007 Mr. Lamarche's income tax returns and the reports of his business activities never have provided him with an income of $20,000.00 and in many years he reported substantial losses. He has had another setback for part of the years 2010/2011 which will mean for portion of the year he will have no income but this is not a new circumstance for him. If the legislation required a material change since the

date of the last order this would not be a material change in his circumstances. However, section 14 directs that any change resulting in a different table amount to be paid pursuant to the Guidelines is a change that must be taken into account.

[37] Notwithstanding Mr. Lamarche's apparent lack of income I have been asked by Ms. Lamarche to impute income to him. To do this effectively will first require an analysis of his total income since 2007 applying the factors outlined in section 16 of the Guidelines which recognize that line 150 on an income tax return may not be the appropriate total income amount for a self-employed person. This analysis is complicated by Mr. Lamarche's total lack of information about the financial situation of his business and the calculations that appear on his income tax returns. He informed the court everything concerning the financial information, reporting requirements and income tax preparation is the responsibility of his fiancee who was not called as a witness in this proceeding.

[38] Mr. Lamarche's income tax returns for the years 2007, 2008, and 2009 were provided with the attached statement of business activities. Also provided was an income statement for I. C. E. Coachworks from January 1, 2010 until December 31, 2010. In this statement all of the construction costs of the new garage are listed

as business expenses placing the business in a loss position for 2010 in the amount of $23,078.00. I have no evidence before me to show how these and previous year's losses have been or are being paid. Mr Lamarche's fiancee has independent employment from which she earns approximately $27,750.00 annually. Her 50% ownership in I.C.E. Coachworks provides her primarily with a business loss that reduces her income tax liability.

Mr. Lamarche's line 150 income was:

2007	$ 5,049.00
2008	$ 7,413.00
2009	($ 8,403.00)

[39] Mr. Lamarche has testified that his fiancee and her father have provided the money to build the garage. One would have expected something other than a showing of these expenses on the company's income statement if this is what has happened. No infusion of cash into the company is reflected in its statements. Based upon my previous finding about credibility I find these documents highly suspicious. In addition I question Mr. Lamarche's continuing in a business that provides him with so little income, even in recognition of the income splitting with

his fiancee. If his fiancee is paying for the business expenses how can this family meet their daily financial needs? There is no evidence to suggest they are unable to do so.

[40] I accept that the best evidence I have about Mr. Lamarche's annual income is the estimate he used in 2007 even though his business by that time may not have been operational. He continued to pay child support based upon this amount in 2008 and 2009 at a time when reliance upon the documents he used for income tax purposes would have suggested a complete inability to pay child support. I have decided he did so not because he and his fiancee were being generous, as he testified, but because he must be receiving more money from the operation of this business, or from some other source, than he has disclosed to this court.

[41] Section 19 of the provincial *Child Maintenance Guidelines* states:

> (1) The court may impute such amount of income to a parent as it considers appropriate in the circumstances, which circumstances include the following:

> (a) the parent is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of the child to whom the order relates or any child under the age of majority or by the reasonable educational or health needs of the parent;...

[42] Justice Warner in *Googoo v Googoo* 2010 NSSC 49, conducted an extensive review of the provisions of the Child Maintenance Guidelines relating to imputing income. He commented upon the leading case in Nova Scotia, *Montgomery v Montgomery*, 200 NSCA 2 and said:

> [47] At the other end of the spectrum, according to Rollie Thompson, is *Montgomery*. At paragraph 35, the court expressly rejected limiting section 19 to those situations where the payor intended to evade child-support obligations (the *Hunt* test) or acting in reckless disregard of the needs of his/her children. While the Court use the term "reasonable" as the foundation for its analysis, it appeared to have rejected as unjustified any reduction in a payor's income produced by voluntary conduct unless it could be shown that the reduced income (in that case resulting from the payor's upgrading of his professional qualification) was beneficial to the payor's dependents in the short term.

He comments further:

> [55] Section 19 (1) of the Guidelines is written in simple, straightforward language. It authorizes the court to impute such income to a spouse "as is considers appropriate in the circumstances, which circumstances include:[nine

> enumerated circumstances]". This opening statement to this section clearly shows that the list of circumstances is inclusive but not exhaustive. Other circumstances may exist that justify imputing income to make the purpose of the section and determining whether, from an objective point of view, the parent is contributing to the support of the child as he/she is reasonably capable of – from income or income producing assets.

[43] I accept the evidence of Ms. Lamarche that Mr. Lamarche, prior to becoming self-employed, was regularly employed with brief periods of unemployment. When employed the lowest paying job was one in which he received $12.00 per hour. In his highest paying job he received $25.00 per hour. Her evidence is supported by a review of a previous order involving child support. In that order, dated August 30, 2006, Mr. Lamarche's annual income was stated to be $37,440.00.

[44] I find that Mr. Lamarche is underemployed. His decision to become self-employed was voluntary and was not beneficial to his son in the short term. It certainly has not been beneficial in the long term because he is not providing adequate financial support for his son. Based upon his past ability to earn income, which often may have been in a greater amount than I will presently impute, I impute to him an annual income in the amount of $20,000.00 upon which he is to pay $161.00 per month.

[45] As a result of my decision Mr. Lamarche owes Ms. Lamarche, for the period July 1, 2010 until February 1, 2011, the total amount of $1,288.00. This is to be deducted from the amount she owes him, ($1,704.00 + $966.00, his overpayment for six months at161.00), leaving a balance of $1,382.00 owed to Mr. Lamarche. This balance will be paid over a period of 30 months, beginning March 1, 2011, in the amount of $46.00 per month but the last payment on the 30th month is to be $48.00. These amounts are to be deducted from the child maintenance to be paid by Mr. Lamarche. His table amount of child maintenance is to revert to $161.00 per month after Ms. Lamarche's arrears are paid as described.

[46] Ms. Lamarche has also requested contribution from Mr. Lamarche towards the cost of her medical plan for their son and for potential dental work in the future. Each of these parents have limited income. Mr. Lamarche does have another person in his household sharing his expenses; Ms. Lamarche does not. The special expenses are necessary and they shall be shared proportional to income which in this case is - Ms. Lamarche 61.5% and Mr. Lamarche 38.5%.

[47] Because the cost of Ms. Lamarche's medical plan for the child is known, (it is $95.48 per month), Mr. Lamarche shall pay to Ms. Lamarche the sum of $36.76 per month commencing March 1, 2011. When the dental expense, (less what may be covered on Ms. Lamarche's medical/dental plan) is known, she shall send a copy of this account to Mr. Lamarche and he shall pay directly to her (or as an included amount to the Maintenance Enforcement Program) his 38.5% of that remainder.

[48] Neither party has spoken to the issue of costs. If costs are requested Ms. Lamarche is to provide written submissions to this court, with a copy sent to Mr. Lamarche, within 10 days from the date of this decision. The Mr. Lamarche's submissions are to be filed with this court and copied to Ms. Lamarche within 7 days from his receipt of her submissions. If Mr. Lamarche has raised an issue in his submissions not considered in Ms. Lamarche's submissions she may file and copy to him a further submission addressing those issues within 4 days of receiving his submissions.

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Beryl MacDonald, J.S.C.