SUPREME COURT OF NOVA SCOTIA
Citation: T.L.L. v. R.W. L., 2011 NSSC 277

Date: 20110707
Docket: SKD 068500; 1204-005176
Registry: Kentville

Between:

T. L. L.

Petitioner

v.

R. W. L.

Respondent

Editorial Notice

Identifying information has been removed from this electronic version of the judgment.

Revised Decision:	The text of the original decision has been corrected according to the erratum dated August 23, 2011. The text of the erratum is appended to this decision
Judge:	The Honourable Justice Patrick J. Duncan.
Heard:	February 11, 2011, in Kentville, Nova Scotia
Final Written Submissions:	April 7, 2011
Counsel:	Harold S. Adams, Q.C., for the Petitioner R. W. L., Self-represented

By the Court:

Introduction

[1] R. L. and T. L. L. began to cohabit in 1992 and married on May 28, 1994. They have two children, O. M. L., born January *, 1995 and M. W. L., born July *, 1997. As a result of unhappy differences, the parties separated December 5, 2009.

[2] Mrs. L. petitioned for divorce in January 2010. There was an interim order of the court issued on February 23, 2010 addressing custody, access and child support. At that time, both children were in the petitioner's primary care.

[3] M. L. moved in with his father and came under his primary care in March, 2010.

[4] After consulting legal counsel the parties entered into Minutes of Settlement on or about May 18, 2010. Problems arose with respect to the petitioner's access with her son. The financial circumstances of the parties also changed. In the result, some aspects of the agreement became unacceptable to each of the parties.

[5] There was a further interim order of this court issued December 15, 2010 which adjusted for changes in the circumstances of the custody, access and support issues.

[6] The parties have achieved a satisfactory division of matrimonial property, but a hearing was necessary to resolve the following issues:

(a) Divorce

(b) Change of the petitioner's name

(c) Custody of the children of the marriage

(d) Primary Care of the children of the marriage

(e) Access to the children of the marriage

(f) Calculation of child support - prospective

(g) Calculation of child support - retroactive

(h) Calculation of arrears/ overpayment of child support

(i) Determination of the parties' obligations to pay special child care expenses

(j) Determination of the petitioner's application for spousal support

(k) Costs

Divorce

[7] In an unpublished decision previously released to the parties I concluded that the parties lived separate and apart for a period in excess of one year immediately preceding the determination of divorce and that there was no possibility of reconciliation. All statutory requirements having been fulfilled I granted the petition for divorce.

Change of Name

[8] In that same decision I concluded that the petitioner's name is changed from T. L. L. to T. L. R., effective on the issuance of the Certificate of Divorce. The petitioner was born at Halifax, Nova Scotia on the * day of May, 1972. The petitioner's name prior to the marriage was T. L. R.. The petitioner's maiden name was T. L. R..

Custody

[9] By consent of the parties, they shall have joint custody of the children of the marriage.

Primary Care

[10] By consent of the parties, T. L. L. shall have primary care and control of the child of the marriage, O. M. L.. R. L. shall have primary care and control of the child of the marriage, M. W. L..

[11] The parties also agree, and I order, the following conditions for the administration of custody:

(a) The parties shall be entitled to contact and receive all necessary information with respect to the children from their school, dentists and doctors relating to the health, welfare and education of the children;

(b) Neither party is to make any major developmental decision regarding the children without the consent or acquiescence of

the other parent except on an emergency basis, such developmental decision to include but not be limited to issues of health, education, religion, residence, welfare and upbringing;

(c) The parties will cooperate with each other as much as is reasonably possible to ensure the most appropriate care, upbringing and education of the children of the marriage;

(d) Each party shall appoint the other as sole guardian of the children in his or her Last Will and Testament, and each party hereby acknowledges that the other is a fit and proper person to be the guardian of the children in the event of his or her death.

Access

[12] This court's December 2010 interim order set out an access schedule that reflected the changed circumstances of M.'s primary care. Some of the provisions of that order are:

(a) The petitioner shall have access to M. W. L. on a rotating four week schedule every first and third weekend from Thursday evening after school until Monday morning at 8 a.m.;

(b) The respondent shall have access to O. M. L. on a rotating four week schedule every second and fourth weekend from Thursday evening after school until Monday morning at 8 a.m.;

(c) Where the weekend of access includes a Statutory Holiday, the weekend access shall be extended by 24 hours to include the holiday;

(d) During those weekends where the Petitioner or the Respondent do not have access for the forthcoming weekend, each parent shall have access to their son or daughter, as the case may be, one night during the week, at a time to be arranged between the parties;

(e) In the event that scheduled access on the weekends cannot be exercised by either of the petitioner or the respondent as a result of children's events, this access shall be made up by access during the week, at a time to be arranged between the parties;

(f) [provision for Christmas access beginning in 2010];

(g) In the event that circumstances arise under which the respondent is unable to be at home due to work commitments or

for any other reason, then M. W. L. shall stay with the petitioner for that night, unless the parties agree to alternate arrangements.

[13] The petitioner seeks that the access provisions set out in the interim order form part of the order of this court, but with the following changes and additions from those contained in the interim order:

(i) Weekend access as set out in (a) and (b) changed so that weekend visits are from Friday after school until Sunday evening at 6 pm.

(ii) The respondent is to refrain from text messaging or otherwise attempting to contact M. during his visits with his mother;

(iii) That Mr. L. “insist” to M. that he visit his mother on the access schedule ordered;

(iv) That the parties alternate pick up and drop off of the children for the access visits so that they equally share the responsibility.

[14] Mr. L. submits that the children are at an age where they should be permitted to make their own decisions as to if, and when, they see a parent.

[15] There is a problem with certain aspects of the existing access provisions. M. is 13 years old and has demonstrated a persistent disrespect for his mother, which has been accompanied by an unwillingness to visit with her. This has resulted in there being only four visits in the year prior to the hearing.

[16] Mrs. L. complains that Mr. L. does not exert any, or at least enough, direction to M. to encourage him to participate in access visits. She says that M. takes direction well and if told to participate he would do so. Her opinion has some factual basis as Mr L. candidly acknowledges that he has not been prepared to do anything that would be perceived by M. as “forcing” him to go with his mother. The one instance where he did so was at Christmas time and the visit apparently went well.

[17] Mrs. L. alleges that Mr. L. has interfered with M.’s access visits with her by text messaging with him during the visit. She feels this caused disruption and an impetus for M. to seek a return to his father.

[18] Mr. L. agrees that it is important that mother and son have a “healthy relationship” but points to certain incidents which occurred between mother and son which he says provides context for M.’s reluctance. He describes their relationship as “estranged” and says that to force M. to participate in access visits could put further “strain” on his relationship with his mother.

[19] Mr. L. notes that the petitioner made few attempts to contact M. and that she blames Mr. L. for the problems, without accepting responsibility for any part she may have in the breakdown of her relationship with her son. He cites “public arguments” that she had with her son on the social website “Facebook” and that she removed him as a “Friend”, which M. first found out about from his friends. He did not react well. Mrs. L. has testified to her reasons for doing this.

[20] M. is doing well in school and, but for his poor relationship with his mother, there is no suggestion that he is experiencing social or educational problems.

[21] It is sufficient for my purposes to observe that the mother and son relationship is seriously troubled and no doubt requires more to heal than access visits that are forced on M. by his father. I say this without casting any blame.

[22] It can be difficult for a court to assess what is the root cause of such parent - child relationship issues. It is equally difficult to determine what the appropriate remedy is in such circumstances. Obviously, it is important to do everything possible to foster a positive relationship between parents and their children.

[23] A "Custody and Access Assessment Report" was prepared by Dr. Doug Symons, Psychologist, and filed with the court on April 14, 2010. Both parties have referenced it in their evidence but Dr. Symons was not called as a witness. It was prepared based on information that was up to date at March 20, 2010. The parents had been separated less than four months at that point. M. had not yet taken up full time residence at his father's although he expressed his desire to do so. Unfortunately the specific recommendations for M. are irrelevant now as they do not relate to his current circumstances.

[24] The report confirmed O.'s desire for structured access as is contained in the Interim Order.

[25] The following observations of Dr. Symons remain relevant and important:

> The primary need of both M. and O. right now is to have a positive relationship with both of their parents...
>
> ...
>
> The children are somewhat old to be mandating access arrangements, particularly in O.'s case...
>
> ...
>
> In sum, M. and O. are very likeable children coping well to a series of changes and challenges in their lives. These parents both care deeply for them, and need to work together on their own co-parenting relationship as they move through stages of separation and divorce.

Access with O.

[26] While Mr. L. feels that O. is old enough to set her own schedule, she has indicated a preference for defined access times. This is resolvable.

[27] Mr. L. shall have reasonable access to O.. That means that she is not limited to visiting with her father only on a schedule. If father and daughter agree on a visit, they are at liberty to do so.

[28] There shall also be a minimum period of access that is set by a schedule. In doing this, it relieves O. of any actual or perceived pressure she might otherwise experience in trying to meet the access expectations of her parents.

[29] I accept Mrs. L.'s position that defined access should reflect the school week and so access will be varied to a Friday to Sunday period.

[30] Therefore, I order that:

(a) the respondent shall have reasonable access to O. at reasonable times and on reasonable notice;

(b) the respondent will also have the following specific access to O. M. L. under the following conditions:

(i) a rotating four week schedule every second and fourth weekend from Friday evening after school until Sunday night at 7 p.m.;

(ii) where the weekend of access includes a Statutory Holiday, the weekend access shall be extended by 24 hours to include the holiday;

(iii) during those weeks where the respondent does not have access for the forthcoming weekend, he shall have access to his daughter, one night during the week, at a time to be arranged between the parties;

(iv) in the event that scheduled access on the weekends cannot be exercised by the respondent as a result of children's events, this access shall be made up by access during the week, at a time to be arranged between the parties;

(v) commencing with Christmas 2011, the Respondent shall have access to O. M. L. from Christmas Eve at 6 p.m. until Christmas Day at noon. The petitioner shall have access to O. from Christmas Day at 12 noon until Boxing Day at 6 p.m. The times of the parties' access to O. will be reversed in 2012, and continue to alternate in succeeding years. Any further access during the Christmas holiday period is to be governed by the principle that such access shall be shared equally between the parties, and on a schedule to be arranged between them.

(c) The parties shall alternate pick up and drop off of O. M. L. for the access visits so that they equally share the responsibility. If they cannot agree on the schedule then they can return the question to court for further direction.

Access with M. W. L.

[31] I do not agree that attempting to force M. to see his mother is in his best interests, nor is it likely that imposed access visits, by themselves, will be enough to repair the damaged relationship that he and his mother have.

[32] However, Mr. L. must actively promote contact between M. and his mother. If a visit does take place Mr. L. must refrain from unnecessary contact with M. so that he has uninterrupted time with his mother. M. is old enough that if he needs his father then he can initiate the contact. For his part, Mr. L. must limit this type of communication to only that which is absolutely necessary, and his son should be aware that will be the case.

[33] I believe that professional assistance will likely be necessary to assist this family to overcome the current problem between M. and his mother, but am

prepared to give the parties an opportunity to work this out without immediately involving a professional counselor.

[34] For these reasons I order the following:

(a) The petitioner shall have reasonable access, at reasonable times and on reasonable notice with M. W. L.;

(b) The petitioner will also enjoy the following specific access under the following conditions:

(i) The petitioner will have access to M. W. L. on a rotating four week schedule every first and third weekend from Friday evening after school until Sunday evening at 7 p.m.;

(ii) Where the weekend of access includes a Statutory Holiday, the weekend access shall be extended by 24 hours to include the holiday;

(iii) During those weekends where the petitioner does not have access for the forthcoming weekend, the petitioner shall have access to her son one night

during the week, at a time to be arranged between the parties;

(iv) In the event that scheduled access on the weekends cannot be exercised by the petitioner as a result of children's events, this access shall be made up by access during the week, at a time to be arranged between the parties;

(v) Commencing with Christmas 2011, the respondent shall have access to M. W. L. from Christmas Eve at 6 p.m. until Christmas Day at noon. The petitioner shall have access to M. W. L. from Christmas Day at 12 noon until Boxing Day at 6 p.m. The times of the parties' access to M. W. L. will be reversed in 2012, and continue to alternate in succeeding years. Any further access during the Christmas holiday period is to be governed by the principle that such access shall be shared equally between the parties, and on a schedule to be arranged between them.

(vi) In the event that circumstances arise under which the respondent is unable to be at home due to work commitments or for any other reason, then M. W.

L. shall stay with the petitioner for that night, unless the parties agree to alternate arrangements.

(c) The respondent is permitted to have one telephone conversation with M. in each 24 hour period that he is in his mother's care. The respondent will not otherwise initiate communication with M. during his access visits except to deal with urgent messages or circumstances;

(d) The parties shall alternate pick up and drop off of M. W. L. for access visits so that they equally share the responsibility. If they cannot agree on the schedule then they can return the question to court for further direction;

(e) The respondent is to actively and positively encourage M. to participate in access visits. If, and notwithstanding, the petitioner's efforts, M. continues to refuse then he will not be forced to participate;

(f) If M. refuses to attend three (3) consecutive specific access visits as set out in paragraph (b) above, then either party is at liberty to apply to the court for a review of parenting and access arrangements which review should include a determination as to if, and on what terms, an assessment and counseling may be directed by the court to assist M. and his mother develop a

> positive parent-child relationship. This is in addition to the statutory right of the parties to apply for variation of custody or access pursuant to section 17 of the ***Divorce Act***.

[35] M.'s best interests are enhanced by a positive relationship with both parents. Dr. Symons felt that this was possible. Along the way, this outcome has been de-railed for reasons that the evidence does not make entirely clear. The disposition seeks to restore the hoped for healing that Dr. Symons felt was possible.

Calculation of Prospective Child Support

[36] The parties agree that child support should be payable in accordance with the Nova Scotia tables issued pursuant to the ***Federal Child Support Guidelines*** SOR/ 97-175 **(FCSG)** , but disagree as to the method of calculating their respective incomes for that purpose.

[37] The petitioner has been employed on a full time basis as a legal assistant at a Windsor * from 2007 until 2011. Her income history in that period is:

2007 $12,187

2008	$17,750
2009	$18,000
2010	$18,820

[38] On February 23, 2011, Mrs. L. was hired to work at a Dartmouth * where she is earning an annual income of $29,000.

[39] The petitioner submits that her prospective contribution should be based on her 2010 income, since her new position is probationary. I have considered the provisions of sections 3, and 15 through 17 of the **FCSG** and conclude that there is no basis upon which to adopt such an approach. The sworn evidence is that this is and will be her income until at least August of 2011. At that time she may be retained at the same or a higher level of pay. Alternatively she may be released in which case her income would be terminated until she was able to find a new source of income. If her income remains unchanged then support calculated on $29,000 will continue to be correct. If her income either increases or decreases then that will generate, I expect, an application to vary the child support payments accordingly.

[40] For these reasons the petitioner's table amount will be calculated on an income of $18,820 for the period January 1, 2010 to February 23, 2011; and thereafter on the basis of her $29,000 income for 2011.

[41] The Respondent's Line 150 income history is:

2008	$48,308
2009	$52,231
2010	$44,000

[42] The Respondent's 2011 income is expected to be $43,000. It is slightly less than 2010 as that year included over two months of income from his previous and more highly paid employment. Having said that, his post trial submission offers child support calculated on the higher 2010 income.

[43] The petitioner submits that the respondent's child support should be based on an imputed income of $52,231 per year which he earned in 2009, not the $44,000 that he currently puts forward. She bases this argument on the provisions of section 19(1)(a) of the ***Federal Child Support Guidelines***:

> 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;

[44] The respondent argues against this result. He says that his previous employment required him to be away from home for long periods of time and negatively impacted on his ability to have contact with his children. The petitioner's evidence confirms this. In describing her own role as a mother and homemaker during the years of their marriage she unreservedly states that Mr. L. was rarely home to assist.

[45] Mr. L. submits that circumstances have changed markedly. His marriage is over and in the wake of that event M.'s relationship with his mother deteriorated; but the bond with his father improved to the point that he now lives with his father. The respondent's evidence, which I accept, is that the only way to earn a higher income is to return to * jobs that would undermine his responsibilities as the primary care giver to his son. His current position allows him to be home for evenings and weekends. It also permits him to be available to his daughter during her access times with him, something that would be jeopardized by returning to *.

[46] The authority of the court to set applicable child support amounts is found in section 15.1 of the ***Divorce Act*** R.S.C. 1985, c. 3:

> 15.1 (1) 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) A court making an order under subsection (1) or an interim order under subsection (2) shall do so in accordance with the applicable guidelines.

[47] Section 15 of the ***Federal Child Support Guidelines*** dictate that:

> Determination of annual income
>
> 15. (1) Subject to subsection (2), a spouse's annual income is determined by the court in accordance with sections 16 to 20.
>
> Calculation of annual income
>
> 16. Subject to sections 17 to 20, a spouse's annual income is determined using the sources of income set out under the heading "Total income" in the T1 General form issued by the Canada Revenue Agency and is adjusted in accordance with Schedule III.

[48] The starting point for calculation of the respondent's annual income is $44,000. The issue is whether a greater amount should be imputed on the facts of this case.

[49] It is true that the respondent has chosen to be "intentionally under-employed", and that has reduced his income. However, the evidence satisfies me that this is "...required by the needs of a child of the marriage or any child under the age of majority..." as that phrase is used in **Guideline section 19(1)(a)**. Mr. L. reflected in his evidence on whether his family life would have turned out differently if he had made this choice years ago, that is, to favor more time for family life at the expense of the increased income. He did not do that, but the new circumstances require that he does so.

[50] The separation has divided the children and M. needs his father to be there to provide primary care for him. O. potentially benefits by having her father more accessible to her than he was in his previous employment. It is in the best interests of the children that he be available to them; his current job allows this to occur.

[51] There is no evidence that there is other employment available to Mr. L. that will provide him a greater income than he is now earning, and which would allow him to meet his parental responsibilities.

[52] For these reasons I am not prepared to impute income to him as the petitioner seeks. For the purposes of the calculation of child support Mr. L.'s income for 2010 is calculated at $44,000 and for 2011 at $44,000.

[53] The **FCSG** provide that where, as here, there is a split custody arrangement child support payable is calculated in accordance with **Guidelines section 8**:

> 8. Where each spouse has custody of one or more children, the amount of a child support order is the difference between the amount that each spouse would otherwise pay if a child support order were sought against each of the spouses.

[54] I conclude that effective March 1, 2011 the petitioner, based on her 2011 income of $29,000 has a child support obligation to the respondent in the amount of $259 per month for the support of the child of the marriage, M. L.. I conclude that the respondent, based on his accepted 2011 income of $44,000 has a child support obligation to the petitioner in the amount of $383 per month for the support of the child of the marriage, O. L..

[55] The respondent shall pay to the petitioner the amount of $124 per month commencing March 1, 2011, being the difference between the amounts that each of the parties would otherwise pay.

Section 7 expenses

[56] The parties agree that there are certain expenses regularly incurred on behalf of the children that fall within the provisions of **FCSG** section 7 and that they will share. They disagree about the respective percentages they should be responsible for and also the costs associated with the children's extracurricular activities in horseback riding, an expensive activity.

[57] The **Guideline** reads, in part:

> Special or extraordinary expenses
>
> 7. (1) In a child support order the court may, on either spouse's request, provide for an amount to cover all or any portion of the following expenses, which expenses may be estimated, taking into account the necessity of the expense in relation to the child's best interests and the reasonableness of the expense in relation to the means of the spouses and those of the child and to the family's spending pattern prior to the separation:

...

(*a*) ...;

(*b*) that portion of the medical and dental insurance premiums attributable to the child;

(*c*) health-related expenses that exceed insurance reimbursement by at least $100 annually, including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy and prescription drugs, hearing aids, glasses and contact lenses;

(*d*) ...

(*e*) ...

(*f*) extraordinary expenses for extracurricular activities.

...

(1.1) For the purposes of paragraphs (1) (*d*) and (*f*), the term “extraordinary expenses” means

(*a*) expenses that exceed those that the spouse requesting an amount for the extraordinary expenses can reasonably cover, taking into account that spouse’s income and the amount that the spouse would receive under the applicable table or, where the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate; or

> (*b*) where paragraph (*a*) is not applicable, expenses that the court considers are extraordinary taking into account
>
> > (i) the amount of the expense in relation to the income of the spouse requesting the amount, including the amount that the spouse would receive under the applicable table or, where the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate,
> >
> > (ii) the nature and number of the educational programs and extracurricular activities,
> >
> > (iii) any special needs and talents of the child or children,
> >
> > (iv) the overall cost of the programs and activities, and
> >
> > (v) any other similar factor that the court considers relevant.
>
> Sharing of expense
>
> (2) The guiding principle in determining the amount of an expense referred to in subsection (1) is that the expense is shared by the spouses in proportion to their respective incomes after deducting from the expense, the contribution, if any, from the child.

[58] I will address the sharing formula first.

[59] Based on the parties 2011 incomes, the petitioner will be responsible to pay 39.7% and the respondent 60.3% of any amounts ordered as payable under section 7 of the **FCSG** and arising after March 1, 2011. In so deciding, I reject the petitioner's submissions that the share percentage should be calculated on her 2010 income of $18,820 and an imputed income of $52,231 for the respondent. The arguments advanced in support of the petitioner's position are the same as those offered for the calculation of child support. My reasons for rejecting this argument are the same.

[60] To the extent that there are any arrears of expenses owing from 2010 (omitting horse related costs from this calculation) the petitioner is responsible for 30% and the respondent 70%. This is based on 2010 incomes of $18,820 and $44,000 respectively.

[61] Costs incurred in 2009 will be attributed on the basis of the petitioner's income of $18,000 and the respondent's income of $52,231 or 25.6% for the petitioner and 74.4% for the respondent.

[62] ***Orthodontic Costs*****:** M.'s orthodontic work had not begun as at the hearing but will cost $5,800 over 24 months. It will be shared on the basis of the incomes

of the parties as it is incurred. Presently that will be 60.3% (respondent) and 39.7% (petitioner). It will vary as the parties' incomes vary in the future.

[63] ***Dental Costs*****:** There are two dental bills for the children, paid by Mr. L. in 2009, and which total $445.20 ($393.60 for M. and $51.60 for O..) Mrs. L. has agreed to pay to Mr. L. the amount of her share, which based on 2009 income figures is 25.6% or $113.97.

[64] **** Costs*****:** Mrs. L. seeks contribution to O.'s costs related to her * activities and that are not otherwise re-imbursed, There was some superficial disagreement between the parties about the expenses associated with this activity. O. enjoys * and is good at it. It has contributed to improved self esteem and confidence. It is competitive. In reviewing the budget provided by the petitioner in Exhibit 13, together with her testimony, it is apparent that most of the costs are covered by fund raising activities carried out by the * club, so there is little or no real cost to the parents.

[65] As trips to the United States are part of the available events, and a passport is necessary, I conclude that is a legitimate expense to be shared by the parties. The passport and necessary photo are estimated to cost $52.

[66] I direct the parties to share the future costs, otherwise unpaid, of *, including the passport cost, on the percentage basis I have set out. Receipts for reimbursement must be available and an accounting for any monies received to pay for * related activities must be provided before the parties are required to contribute to this expense.

[67] Some costs are incurred “up front” and then paid down by the fundraising. I have concluded that the best way to resolve this is to continue the current practice of Mrs. L. and O. tendering the up front payment and when all fundraising is complete the amount left to be shared, if any, can be demanded of Mr. L. who will be required to pay his share.

[68] ***Children’s Health Care Plan:*** Mr. L. maintains a health care plan through his employment that benefits his children. The evidence from his employer is that the portion of the Blue Cross Medical premium associated with the children is $131.09 (Family rate of $230.12 less single person rate of $99.03).

[69] I direct that the amount of the health care premium paid by Mr L. and attributable to the care of the children is an appropriate section 7 expense and

should be shared by the parties on the basis of the incomes as I have found them to be. Using the known 2011 incomes, that percentage will be 60.3% for the respondent and 39.7% for the petitioner. It may vary as the incomes of the parties vary. Mr. L. is required to provide an annual proof of insurance to Mrs. L. which specifies that amount attributable for the children.

[70] ***Driver Training:*** Mrs. L. claims contribution to the estimated $663 for O.'s driver education and a further amount payable for her licence. Mr. L., though questioning the cost and necessity of driver education, receives the benefit of reduced insurance premiums if O. operates his vehicle. M.'s opportunity to drive is only a few years away and the same opportunity should be offered to him.

[71] In the circumstances, I conclude that it is appropriate to direct that the parties share the costs of driver education and licencing, in accordance with the section 7 formula.

[72] ***Horse Riding related Costs:*** I will turn now to a contentious issue in the section 7 expenses claims: maintenance and training costs associated with horseback riding.

[73] O. and M. have been riding horses since they were very young. Both are members of the *. Each has a horse that is housed in a barn located on the land of the respondent's father. The costs for care and feeding of the horses in 2010 were estimated by Mr. L. at $272.29 per month for each horse, totaling $544.48 per month for the two horses. In addition, there is the cost of special clothing, helmets, insurance, memberships and entry fees to competitions. There is no capital cost for the barn or related expenses included.

[74] The Minutes of Settlement specified that Mrs. L. would not be required to contribute to this activity. In the February 2010 order, the court required Mrs. L. to contribute $100 per month for the children's extracurricular activities associated with the horses . That was not required in the December 2010 order.

[75] The petitioner objects to making any contribution to this extracurricular activity. Mr. L. argues that this is an important and appropriate activity to which Mrs. L. should contribute. It is, in his view, as important as *. He feels strongly enough about it that he asks for very little support: a sharing of entry fees. *see*, Exhibit 21 at para.4. He also says that he is prepared to do whatever it takes to provide this activity to his children at his own expense.

[76] **FCSG section 7(1)(f)** provides authority to order support for "extracurricular activities" such as this one. I am satisfied that this activity took place for many years during which the parties were married and living together.

[77] M. is still very active in the sport. While the petitioner says that O. is less interested in it and only participates when her * schedule permits it, Mrs. L. agreed in cross examination that O. has expressed a desire to become an Equine Massage Therapist. Mr. L. understandably says that maintaining the horses is part of promoting O.'s career interests. The evidence also indicates that O. has been involved in western style racing events and attends at the barn, so she has not abandoned the activity.

[78] M. and O. enjoy the activity and although O.'s interests may be diversifying, there is evidence that satisfies me that it continues to be in the best interests of the children to receive assistance to participate.

[79] However, there is a legitimate question to address as to the reasonableness of the costs associated with the activity, having regard to the financial circumstances of the parties. The true costs are significant. Some are set out above. Mr. L. maintains a truck that must, of necessity, be capable of hauling the horses. It is

more expensive to operate than most cars or, I suspect, lighter duty trucks. It is used to travel to and from the barns, and to haul the horses. It consumes a lot of gas that is becoming increasingly expensive; Mr. L. says $600 per month.

[80] I have concluded that Mr. L.'s request for a sharing of entry fees is reasonable and direct that future fees incurred to enter the children in horse related activities be shared in accordance with the cost sharing formula. A receipt or other proof of payment must be provided for reimbursement. Mrs. L. will not be required to contribute to the costs of care and maintenance of the horses, or equipment purchases.

[81] In making this determination I have considered the relative financial abilities of the parties, which I examine in more detail as part of the analysis of the spousal support claim.

[82] ***Tutoring for M.*:** Mr. L. provided receipts showing that he spent $200 for a tutor to assist M. during 2010. Mrs. L. indicated that she is willing to share in the cost. Although M. is doing well now, that was not the case around the time of the marital breakdown. Tutoring has been helpful to him. Based on the agreement of the parties, and the circumstances presented, I direct the parties to share the cost of

M.’s tutoring in accordance with the formula set out in section 7. In 2010 the petitioner’s share was 30% and so she will pay $60 to the respondent.

Retroactive Child Support Calculation and Arrears

[83] There are issues to be resolved in relation to retroactive calculation of support payable arising from M.’s change of primary care to his father.

[84] Mr. L. seeks that the petitioner pay him $1952 to adjust for what he says was an overpayment of child support in the period March 2010 to November 2010. Mrs. L. claims arrears of $558 for underpayment of child support in the months of November and December of 2010.

[85] The interim order of the court dated February 15, 2010 provided that Mr. L. pay to Mrs. L. the sum of $715 per month on the basis of his then $50,000 annual income, and for the support of two children in her primary care. This was reduced by $100 per month to reflect the petitioner’s contribution to the section 7 expense related to the care of the horses. Therefore the respondent was to pay $615 per month. The order also provided that if the respondent changed employment and

had a reduced income the support payable would reduce to that required by the tables, but not less than that payable on an income of $40,000.

[86] Mr. L. changed employment and his actual income for 2010 was $44,000. M. began to live in his primary care as of March 2010, but no adjustment was made to the child support ordered by the court. The correct amount of child support under the tables is the difference between the petitioner's obligation of $152 per month for one child and based on her income of $18,820; and the respondent's obligation of $383 per month for one child and based on his income of $44,000.

[87] The resulting amount payable by the respondent to the petitioner would be $231 per month for the months of March through November 2010 inclusive.

[88] Mr. L. assumes that this amount would be further reduced by the amount of $100 per month for the horse related costs. This is not necessarily a correct assumption as evidenced by the court's decision in December 2010. That order set the difference payable at $200 on the basis of an imputed income of $40,000 for Mr. L. and $18,820 for Mrs. L.. ($348 less $148; note that $148 would be the

correct amount for an income of $18,000; at $18,820 the correct amount would have been $152 per month)

[89] Existing orders of child support are presumptively valid, however, the two interim orders in this case were made without complete information upon which the court could make a complete assessment of the appropriate levels of child support payable. The evidence at this hearing provides that information.

[90] The next question is whether it is appropriate to retroactively set child support, and if so, then on what basis?

[91] In exercising the discretion to order retroactive support the court must balance the payor's interest in certainty with the need for fairness and flexibility. Four factors were identified by Justice Bastarache, in *S. (D.B.) v. G. (S.R.)* 2006 SCC 37, as relevant to achieving this objective. They are:

1. The reasonableness of the delay in seeking support;

2. The conduct of the payor;

3. The past and present circumstances of the child;

4. The potential for hardship

[92] In this case, the quantum of child support has always been a live issue, with ongoing monitoring of income levels but without all adjustments having been made concurrently with the events that affect the support payable. Neither party can be said to have delayed in seeking support.

[93] Both parties have acted appropriately and within the law to identify and pursue necessary support for the children. The petitioner has disagreed with Mr. L.'s decision to take a job with less pay and wanted his support paid on a imputed income. She has not wanted to recognize her $29,000 income in 2011 for calculation of child support. The petitioner has been unsuccessful in both of these arguments.

[94] Neither party, in taking legal positions contemplated by the law, can be said to have engaged in conduct that negatively impacts on their respective right to seek retroactive correction of the child support payable.

[95] The circumstances of the children have been taken into account by the parties, except to the extent that M.'s change of primary care was not recognized until several months after it occurred.

[96] I conclude that it is appropriate to make the following orders for retroactive child support for the period commencing April 1, 2010 to and including the 1st day of February 2011:

> The petitioner, based on her 2010 income of $18,820 has a child support obligation, for the period in question, to the respondent in the amount of $152 per month for the support of the child of the marriage, M. L..
>
> The respondent, based on his accepted 2010 income of $44,000 has a child support obligation, for the period in question, to the petitioner in the amount of $383 per month for the support of the child of the marriage, O. L..

[97] The difference in these amounts, being $231 per month, is the actual amount payable by the respondent to the petitioner during this period.

[98] I am not prepared to reduce that amount by a section 7 allowance for the children's costs associated with horse related activities, as the cost of those activities is not reasonable having regard to the financial circumstances of the parties during that time period. This is discussed in more detail in the discussion of section 7 expense claims of the parties.

Arrears/ Overpayment of Child Support

[99] Mr. L. paid $479 per month in child support to Mrs. L. during the period of April 2010 through October of 2010, and then paid $200 per month for the period November through February 2011. This totals $4,133. His actual obligation during this time period is set at a total of $2,541.

[100] In the result, the petitioner has received an overpayment of support in the amount of $1,592 which sum I direct to be reimbursed to Mr. L..

[101] Since March 1, 2011 the respondent was required to pay the sum of $124 per month to the petitioner for child support. The evidence is that the respondent was actually paying the sum of $200 per month. The parties are directed to calculate the actual amount of overpayment of child support made by Mr. L. to

Mrs. L. during the period since March 1, 2011 and include that amount in the order. E.g. if the overpayment is for six months at $76 per month then the overpayment will total $456.

Spousal Support

[102] The petitioner seeks an order requiring the respondent to pay her spousal support. The respondent is opposed.

[103] The Minutes of Settlement do not specifically address spousal support, although the agreement did provide for mutual releases of all claims against each other and was stated to be a "full and final settlement" and "satisfaction of all their respective rights and obligations... for relief under the ***Divorce Act*** **(1985)** of Canada, the ***Family Maintenance Act of Nova Scotia*** or any successor statute or similar legislation..."

[104] The petitioner testified that the agreement has not been honored, especially as it relates to her access to M. and so she is now pursuing this claim, where previously she had not intended to.

[105] An order for spousal support is authorized by section 15.2 of the ***Divorce Act:***

> 15.2 (1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse.
>
> ...
>
> (3) The court may make an order under subsection (1) ... for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order as it thinks fit and just.

[106] The **Act** sets out the factors and objectives to be accounted for in determining entitlement to, and quantum of, spousal support:

> 15.2 (4) In making an order under subsection (1) ... the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including
>
> (a) the length of time the spouses cohabited;
>
> (b) the functions performed by each spouse during cohabitation; and
>
> (c) any order, agreement or arrangement relating to support of either spouse.

...

(6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should

(a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;

(b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;

(c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and

(d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[107] The application of these provisions has been summarized by B. MacDonald J. in *S. (T.L.) v. M. (D.J.)*, 2009 NSSC 79, at paras. 59-72:

> [59] The Supreme Court of Canada in *Moge v. Moge* (1992), 43 R.F.L. 345 (S.C.C.) and in *Bracklow v. Bracklow* [1999] 1 SCR 420 confirmed that all four objectives set out in s.15.2 (6) are to be considered in every case. No one objective has paramountcy. If any one objective is relevant upon the facts, a spouse is entitled to receive support.
>
> [60] In *Bracklow v. Bracklow, supra*, the Supreme Court analysed the statutory objectives and held that they create three rationales for spousal support:

> 1. Compensatory support to address the economic advantages and disadvantages to the spouses flowing from the marriage or from the roles adopted in marriage.
>
> 2. Non-compensatory dependency based support, to address the disparity between the parties, needs and means upon marriage breakdown.
>
> 3. Contractual support, to reflect an express or implied agreement between the parties concerning the parties' financial obligations to each other.

[61] These rationales take into account both the factors set out in s. 15.2 (4) and the objectives set out in s. 15.2 (6).

[62] The Supreme Court did recognize that many claims have elements of two or more of the stated rationales. It confirmed that analysis of all of the objectives and factors is required. Pigeonholing was to be avoided.

[63]...

[64] McLachlan, J. in *Bracklow, supra*, indicated that the basis for a spouse's support entitlement also affects the form, duration, and amount of any support awarded.

[65] Examples of circumstances that may lead to a decision that a spouse is entitled to compensatory support are:

> a) a spouse's education, career development or earning potential has been impeded as a result of the marriage because, for example:

- a spouse has withdrawn from the workforce, delays entry into the workforce, or otherwise defers pursuing a career or economic independence to provide care for children and/or a spouse;

- a spouse's education or career development has been negatively affected by frequent moves to permit the other spouse to pursue these opportunities;

- a spouse has an actual loss of seniority, promotion, training, or pension benefits resulting from an absence from the workforce for family reasons;

b) a spouse has contributed financially either directly or indirectly to assist the other spouse in his or her education or career development.

[66] Non-compensatory support incorporates an analysis based upon need and ability to pay. If spouses have lived fully integrated lives, so that the marriage creates a pattern of dependence, the higher-income spouse is to be considered to have assumed financial responsibility for the lower-income spouse. In such cases a court may award support to reflect the pattern of dependence created by the marriage and to prevent hardship arising from marriage breakdown. L'Heureux-Dubé, J. wrote in *Moge v. Moge, supra,* at p. 390:

Although the doctrine of spousal support which focuses on equitable sharing does not guarantee to either party the standard of living enjoyed during the marriage, this standard is far from irrelevant to support entitlement (see *Mullin v. Mullin (1991), supra,* and *Linton v. Linton, supra*). Furthermore, great disparities in the standard of living that would be experienced by spouses in the absence of support are often a revealing indication of the economic disadvantages inherent in the role assumed by one party. *As marriage should be regarded as a joint endeavour, the longer the relationship endures, the closer the economic union, the greater will be the presumptive claim to equal standards of living upon its dissolution (see Rogerson,* "*Judicial Interpretation of the*

Spousal and Child Support Provisions of the Divorce Act, 1985 (Part I)", supra, at pp. 174-75). (emphasis added)

[67] It is not clear from Justice L'Heureux-Dubé's, decision whether entitlement arising from a "pattern of dependence" is compensatory or non-compensatory. A pattern of dependence may create a compensatory claim because it can justify an entitlement even though a spouse has sufficient income to cover reasonable expenses and might be considered to be self-supporting. This often is described as the "lifestyle argument" - that the spouse should have a lifestyle upon separation somewhat similar to that enjoyed during marriage. (*Linton v. Linton* 1990 CarswellOnt 316 (Ont. C.A.) A lengthy marriage generally leads to a pooling of resources and an interdependency even when both parties are working. Usually the recipient spouse will never be able to earn sufficient income to independently provide the previous lifestyle. This would form the basis of a compensatory claim but does not necessarily entitle a spouse to lifetime spousal support. The essence of a compensatory claim is that eventually it may be paid out. This leads to a discussion about the quantum and duration of the claim.

[68] Once it is decided that a spouse is entitled to spousal support, the quantum (amount and duration) is to be determined by considering the length of the relationship, the goal of the support (is it compensatory, non-compensatory or both), the goal of self-sufficiency, and the condition, means, needs and other circumstances of each spouse. In considering the condition, means, needs and other circumstances of each spouse one may examine the division of matrimonial property and consider the extent to which that division has adequately compensated for the economic dislocation caused to a spouse flowing from the marriage and its breakdown and any continuing need the spouse may have for support arising from other factors and other objectives set forth in s. 15(2). (*Tedham v. Tedham* 2005 CarswellBC 2346 (B.C.C.A.)

[69] There will be cases when the analysis may indicate that the only way to adequately address the compensatory or non-compensatory claim is to continue support for significant periods of time possibly during the entire life of the recipient or payor. (*Rondeau v. Kerby*, 2004 CarswellNS 140 (N.S.C.A.) This most often will occur in respect to lengthy marriages where there is significant income disparity.

[70] **Generally a non-compensatory claim in a short to mid-length marriage is satisfied when a spouse becomes self-supporting and, in such a case, neither the payor spouse's greater income nor the inability of a recipient**

spouse to replicate a previous lifestyle, is a factor entitling a spouse to continuing support. When spouses have not had a lengthy relationship and the only effect of the relationship, has been that a spouse has enjoyed a better lifestyle than he or she could afford alone, the duration of support will likely be for a period required to ease the recipient spouse's transition to economic independence. Self-sufficiency, however, is a relative concept. It constitutes something more than an ability to meet basic living expenses. It incorporates an ability to provide a reasonable standard of living from earned and other income exclusive of spousal support.

[71] **Every case involving a parent who has withdrawn from the workforce to raise a child will invoke a claim for compensatory support**. Many argue against this because conditions in families have changed since the analysis in *Moge* and *Bracklow*. It is now very common for both parents to work even though young children are present in the home. In fact, it often is essential that both parents work. Having children is often seen as a choice women have rather than a social norm to which they must subscribe. It is not an accepted norm today that children require a stay at home parent in order to thrive and prosper. If one parent wants the other to work, but the other believes the children require that he or she stay at home it can create tension. What is a parent in this situation to do? He or she cannot force the other to work. Unlike previous generations when each parent had a defined role in the marriage that was accepted this is not the case today. However today's parents must recognize that, irrespective of their personal preferences or the circumstances from which dependency evolved, if there are children and one parent has stayed at home the other parent will be required to assist by paying spousal support until the compensatory and non-compensatory claim of the stay at home parent has been satisfied or until some other factor intervenes justifying termination of spousal support.

[72] Critical to a proper analysis of spousal support is what each party will have in his or her pocket to pay reasonable living expenses after paying or receiving child support and spousal support. Even if the spousal support guidelines are used to suggest various possible amounts of spousal support, what a person might actually retain must be examined in respect to what is required for that individual to pay for housing, heat, food, etc.

(Emphasis added)

[108] See also, *L. (J.A.) v. L. (S.B.J.)*, 2009 NSSC 87, at paras. 5-18.

History of the marriage

[109] The parties cohabited for a period of 17 years 8 months of which they were married for approximately 15 years 7 months. During that time, Mr. L. was employed as a * and away from home for long periods of time. This permitted Mr. L. to earn a higher income to support his family. It left Mrs. L. with the responsibility for child care and maintaining the home on a day to day basis. The parties mutually agreed to these roles which continued from 1994 to 2001.

[110] The petitioner has a Grade 12 education. During the marriage, she completed a secretarial course at Nova Scotia Community College and in 2001 returned to the work force. For a number of years she has been employed as a secretary in a * . She has enjoyed steady increases in pay and in February of 2011, increased her income substantially from $18,820 to $29,000 per year.

[111] There was no change in the petitioner's responsibilities to look after the house and children after she undertook full time employment. She did however contribute her monies toward family and personal expenses. She describes the arrangement in her January 26 affidavit:

42. That during much of our marriage, the Respondent and I had separate bank accounts, ... and each of us had our own bills to pay.

Petitioner's Means and Needs

[112] The petitioner's Statement of Financial Information dated February 10 , 2011 was tendered as Exhibit 13. Effective February 23, 2011 her gross salary is $2,416.67 per month.

[113] In addition the petitioner showed child support payments, a Nova Scotia Affordable Living benefit, a GST credit and the Child Tax Benefit. After adjusting for the reduced child support that results from this decision, and discontinuance of the Affordable Living benefit, which she is no longer eligible to receive, the petitioner's gross income is $2872 per month.

[114] Her claimed expenses total $2552 before deduction of taxes and source deductions. After accounting for deductions and taxes the petitioner claimed a budget deficit of $519.68 per month. Unfortunately, the amount claimed for

source deductions and taxes was based on her 2010 income, and not on the $29,000 income I have accepted. To adjust for this I set out my tabulation:

Subtotal lines 1-35	$2272.30
Subtotal including debt payments	$2552.30
Subtotal including source deductions	$2700.30
Surplus/Deficit before tax deducted*	$ 171.70
Surplus/ Deficit after tax deducted*	($ 162.30)

* I have calculated monthly source deductions at $148 and monthly taxes at $334.

[115] Mrs. L.'s housing costs (lines 1-9) totaled $642. She testified that her rent will increase from $300 per month to $600 per month effective April 30, 2011, bringing her housing costs to $942 per month. This is comparable to the Respondent's costs for housing.

[116] The costs associated with her vehicle (line 14), which she needs for work and household total $677 per month. None of these costs are outside of reasonable ranges, although it has been suggested in post hearing submissions that Mrs. L.'s gas costs will increase by the travel to and from Dartmouth where she now works.

This, it is suggested, will take her gas bill from $300 to $600 per month. I do not question that there is a cost associated with this travel, but the evidence in the hearing did not address how the overall gas costs are incurred. For example, the evidence is that Mrs. L. is moving. I do not know how, if at all, that impacts on her budgeted car costs. I note as well that she has included a separate $20 per month cost of gas for child access the cost ofwhich is now to be shared equally with the respondent. I am prepared, however, to treat her overall transportation costs as approximately $1000, again similar to the respondent's claimed amount.

[117] The petitioner has credit card debts (lines 36-38) totaling $5,760 that require payments of $280 per month. There is no evidence to indicate what these debts were incurred for.

[118] Many of the remaining sundry expenses are reasonable, but there are some expenses which must be examined in light of this decision.

[119] There is a budget item of $230 per month for * and $52 per month for O.'s driver education program (line 16(f)).

[120] The evidence demonstrated that * expenses are largely covered by fund-raising, and to the extent that a balance is left outstanding Mr. L. is now responsible for approximately 60% of the shortfall.

[121] An amount of $52 per month is claimed for the driver training program, which Mr. L. will now be sharing. That will be paid off in 12 months. Mrs. L.'s share is approximately $20 per month.

[122] Mrs. L. claimed as an expense that she is paying $152 per month child support for M. (line 31). This is typically not included at this point of the calculation and it is not clear from the evidence as to how that amount was derived. It approximates the $148 representing her current share of section 7 expenses for M.'s orthodontics (to be paid off in 24 months); and the children's health care premiums paid through Mr. L.'s employer.

[123] In addition, Mrs. L. seeks support to assist her with paying the cost of asthma related medications in the amount of $29.41 monthly, which is not otherwise covered by health or pharmacare plans.

[124] Having regard to these findings, I have concluded that the petitioner's means barely meet her needs, but she is very close to self sufficiency. This includes her obligations to care for O. and recognizes the various elements of child support payments received and required to be made by her.

Respondent's Means and Needs

[125] The respondent's income as recorded in Exhibit 16 totals $3,792.95 per month which includes his employment income of $3684.31 plus the Child Tax Benefit of $108.64.

[126] Exhibit 14 set out Mr. L.'s expenses. The arithmetic in the statement was incorrect and so I will set out the results as I have tabulated them:

Subtotal lines 1-35	$4317.25
Subtotal including debt payments	$4583.25
Subtotal including source deductions	$4773.33
Surplus/Deficit before tax deducted	($ 980.38)
Surplus/ Deficit after tax deducted*	($1680.38)

> * No tax deduction calculation was included, but after reviewing pay stubs in evidence and considering Canadian tax rates I have assumed an amount of $700 per month, or 20%.

[127] The respondent's cost of housing (lines 1-9) including heat, electric, telephone, cable and internet is approximately $1000.

[128] Operating his motor vehicle (line 14) costs $1200 of which $600 is gas. He has debts (lines 36-38) that he pays $266 per month toward, but the total amount owing is not stated.

[129] Mr. L. estimates his section 7 expenses (line 16) at $580 per month. With the petitioner's contributions and having regard to the evidence, his actual costs should be closer to $220 per month.

[130] The respondent claims $500 per month for food (line 10) for he and M., as compared to the petitioner and O. who budget for $300 per month.

[131] In areas of largely discretionary spending (lines 11-13; 17- 35) Mr. L. consistently claims more than Mrs. L.. Some areas stand out in the difference. For

clothing, laundry and dry cleaning, school supplies, children's allowances and activities, gifts and event spending, and entertainment Mr. L. claims $500 per month; Mrs. L. claims $137 per month for the same items.

[132] As I reviewed these claims, it is apparent that Mr. L.'s claims are generally reasonable, but that Mrs. L., having less income to work with, has made choices to limit expenses in these categories - expenses that I am sure would be greater if the money was available to pay for them.

[133] Another major difference in the comparative expense claims of the parties is that Mr. L. also includes $544.58 per month for the care of the two horses for his children. I have previously acknowledged the hidden cost of increased transportation costs associated with the horses. There are also costs of equipment, registrations, insurance, among other things that impact on the respondent's expenses.

[134] In reality, while Mr. L. may be able to reduce the money that he spends in some areas of his budget, the bulk of any discretionary money that could be applied to spousal support would be at the expense of maintaining the horses and

providing the necessary training and equipment for the children to continue to participate in this activity.

Entitlement

[135] The petitioner submits that she is entitled both on compensatory and non compensatory grounds.

[136] I agree that Mrs. L. is entitled to support on a compensatory basis. The parties had a “traditional marriage” for a number of years. They were together over 17 years and the roles assumed in child care and home making permitted Mr. L. to pursue his career. Although they maintained separate bank accounts there was an interdependence that existed in the maintenance of the family.

[137] Mrs. L., with Mr. L.’s agreement, deferred the opportunity of working from 1994 to 2001. This undoubtedly created economic disadvantages to her by delaying her entry to the workforce, thus leaving her with less work experience, fewer earning years, and leaving her behind where she might otherwise have been in earnings and pension eligibility. Partially offsetting this is her youth, at age 39, and the potential for many years of employment.

[138] The argument for non compensatory support is less compelling. Mrs. L. was trained during the course of the marriage and has now been employed for 10 years, with increasing levels of pay and benefits. She has demonstrated an ability to be self sufficient or very close to it.

[139] Given her age, and an assumed pensionable age of 65, she has over 25 years of future employability. Her health problems have not and are not expected in the foreseeable future to negatively impact her ability to work, provided that she continues to consult her physician and to take her prescribed medications.

[140] Mr. L. has, because of the breakdown of the marriage given up approximately $8,000 per year income to be at home to provide primary care to M. at a time when Mrs L.'s income has increased by $11,000 per year. The differential in their incomes is narrowing quickly.

[141] Mr. L.'s monthly individual net disposable income is $2729 per month. (Gross income of $3793 less child support of $124, source deductions of $190, and taxes of $700). Mrs. L.'s individual net disposable income is $2390 (Gross income of $2872 less source deductions of $148 and taxes of $334).

[142] Therefore, Mr. L. enjoys approximately 54% of the total net disposable incomes of the parties. Mrs. L. receives 46%. These percentages demonstrate that there is not an substantial disparity between the parties.

[143] Even though there is an argument to set a nominal amount of spousal support, I have concluded that there should be a period of spousal support payable to the petitioner. This is intended to address the economic disadvantages of her deferred entry to the workplace. It is also to assist her by providing some additional income to ensure that she is able to meet the reasonable needs that she will experience over the next year as the parties deal with the financial consequences of the marital breakdown and the various financial obligations created in this decision.

[144] I therefore order that the respondent pay the petitioner the sum of $100 per month for a period of 12 months commencing August 1, 2011, after which time payments will end unless or until there is a further order of the court to vary the spousal support relief.

CONCLUSION

[145] ***Divorce:*** The divorce is granted.

[146] ***Change of the petitioner's name*****:** A change of the petitioner's name is granted.

[147] ***Custody of the children of the marriage*****:** The parties will have joint custody of the children of the marriage.

[148] ***Primary Care of the children of the marriage*****:** The petitioner will have primary care of O. L.; the respondent will have primary care of M. L.. Care of the children is subject to conditions for administration of custody that are set out in this decision.

[149] ***Access to the children of the marriage*****:** Each party will have reasonable access to the child in the primary care of the other parent. In addition, each party will have specific access as set out in this decision.

[150] ***Calculation of child support - prospective*****:** Effective March 1, 2011, the petitioner, based on her 2011 income of $29,000 has a child support obligation to the respondent in the amount of $259 per month for the support of the child of the marriage, M. L.. The respondent, based on his accepted 2011 income of $44,000

has a child support obligation to the petitioner in the amount of $383 per month for the support of the child of the marriage, O. L..

[151] The respondent will pay child support to the petitioner on the first day of each month commencing March 1, 2011, in the amount of $124 per month, being the difference between the amounts that each of the parties would otherwise pay.

[152] ***Calculation of child support - retroactive*:** For the period commencing April 1, 2010 to and including the 28th day of February 2011 the petitioner, based on her 2010 income of $18,820 has a child support obligation to the respondent in the amount of $152 per month for the support of the child of the marriage, M. L..

[153] The respondent, based on his 2010 income of $44,000 has a child support obligation to the petitioner in the amount of $383 per month for the support of the child of the marriage, O. L..

[154] The difference in these amounts, being $231 per month, is the actual amount payable by the respondent to the petitioner on the first of each month commencing April 1, 2010 through February 1, 2011.

[155] ***Calculation of arrears/ overpayment of child support*:** During the period April 1, 2010 through February 28, 2011, the petitioner received an overpayment of support in the amount of $1,592 which sum I direct to be reimbursed to Mr. L..

[156] Beginning on March 1, 2011, the respondent was required to pay the sum of $124 per month to the petitioner for child support. The evidence is that the respondent is paying the sum of $200 per month. The parties are directed to calculate the actual amount of overpayment of child support, if any, made by Mr. L. to Mrs. L. since March 1, 2011 and to include that amount in the order.

[157] ***Determination of the parties' obligations to pay special child care expenses*:** Certain expenses are to be shared by the parties in accordance with the provision of section 7 of the ***Federal Child Support Guidelines***, and on the basis of the facts and formulas set out herein.

[158] ***Determination of the petitioner's application for spousal support:*** The respondent shall pay the petitioner the sum of $100 per month for a period of 12 months commencing August 1, 2011, after which time payments will end unless or until there is a further order of the court to vary the spousal support relief.

COSTS

[159] Each party has incurred legal costs. Mr. L., though self represented at the hearing, was represented through much of 2010 and has legal bills outstanding. The parties both argue in support of costs being awarded to them to reflect this.

[160] The results have been mixed; neither party has enjoyed success in all issues. As a result I direct that each party shall bear their own costs.

Duncan, J.

SUPREME COURT OF NOVA SCOTIA

Citation: T.L.L. v. R.W.L., 2011 NSSC 277

Date: 20110823

Docket: SKD 068500; 1204-005176

Registry: Kentville

Between:

T. L. L.

Petitioner

v.

R. W. L.

Respondent

Editorial Notice

Identifying information has been removed from this electronic version of the erratum.

Judge: The Honourable Justice Patrick J. Duncan.

Heard: February 11, 2011, in Kentville, Nova Scotia

Final Written

Submissions: April 7, 2011

Counsel: Harold S. Adams, Q.C., for the Petitioner

R. W. L., Self-represented

E R R A T U M

1. Page 30 , paragraph [63] of the decision of July 7, 2011 reads:

"***Dental Costs*:** There are two dental bills for the children, paid by Mr. L. in 2009, and which total $445.20 ($393.60 for M. and $51.60 for O..) Mrs. L. has agreed to pay to Mr. L. the amount of her share, which based on 2009 income figures is 25.6% or $133.97."

It should read:

"***Dental Costs*:** There are two dental bills for the children, paid by Mr. L. in 2009, and which total $445.20 ($393.60 for M. and $51.60 for O..) Mrs. L. has agreed to pay to Mr. L. the amount of her share, which based on 2009 income figures is 25.6% or $113.97."

Duncan, J.