**SUPREME COURT OF NOVA SCOTIA**
**(FAMILY DIVISION)**
**Citation:** Gordinier-Regan v. Regan, 2011 NSSC 297

Date: 20110719
Docket: 1201-065135
Registry: Halifax

**Between:**

Amy Elizabeth Gordinier-Regan

**Petitioner**

v.

David Andrew Regan

**Respondent**

**Revised Decision:** The text of the original decision has been corrected according to the erratum dated September 23, 2011. The text of the erratum is appended to this decision.

**Judge:** The Honourable Justice Elizabeth Jollimore

**Date:** July 19, 2011

**Counsel:** Julia E. Cornish, Q.C. on behalf of Amy Gordinier-Regan
B. Lynn Reierson, Q.C. on behalf of David Regan

**By the Court:**

**Introduction**

[1] Ms. Gordinier-Regan and Mr. Regan are the parents of two school-aged children. They have been separated for more than one year and their lives are still in transition as they negotiate resolution of the legal issues that arise from their marriage and separation.

[2] This is a truncated application which comes before me in a highly defined legal context. The question of whether the children will be enrolled in a private school for the 2011 - 2012 school year is time-sensitive. If the children are to enroll, it must be done soon. To enable me to answer this question within existing time constraints, the parties have agreed that I may focus on the question of whether the expenses of attending private school are extraordinary expenses to which Mr. Regan should contribute, regardless of the nature of the children's parenting arrangement or any consideration of Mr. Regan's income beyond the remuneration he receives from his employment.

**Family history**

[3] The couple moved to Nova Scotia in late 2003, just before their older child was born early in 2004. Their younger child was born in mid-2005. Ms. Gordinier-Regan was primarily at home with the children during their early years, though she did work part-time, about three days each week, as a project consultant from June 2007 to April 2008.

[4] In September 2008, the couple's older child enrolled in junior kindergarten at Sacred Heart School and their son attended pre-school for half-days at Armbrae Academy. At the time, only Mr. Regan was employed and he was earning $185,000.00 per year. Additionally, in 2008 Mr. Regan received an employment bonus which I calculate to have been approximately $67,500.00, based on his tax return for that year. Ms. Gordinier-Regan had completed her part-time employment. Both spouses had dividend income.

[5] Their daughter continued at Sacred Heart School through the 2008 - 2009 and 2009 – 2010 school years. Their son began junior kindergarten in September 2009, moving from Armbrae Academy to Halifax Grammar School, where he remained through that school year.

[6] During the 2009 – 2010 school year, the family moved to a new home. Its

estimated value is approximately $740,000.00. According to Ms. Gordinier-Regan's Statement of Property, the home bears a mortgage of approximately $460,000.00. The parents don't agree on when they separated, but it's clear that Ms. Gordinier-Regan moved from that home in May 2010. She found employment, working Monday to Thursday, and moved to a rented house. During this year, Mr. Regan's base salary increased from $185,000.00 to $225,000.00. He received no bonus in 2009 or 2010.

[7] During the 2010- 2011 school year, the younger child continued at Halifax Grammar School and his sister transferred to join him there. So, their daughter has attended Halifax Grammar School for one year, while their son has been a student there for two years.

[8] Mr. Regan says the children's attendance at Halifax Grammar School for the 2010 – 2011 school year was the result of Ms. Gordinier-Regan's unilateral decision.

[9] Mr. Regan also says that earlier decisions that the children attend junior kindergarten at a private school considered the fact that the cost of their attending private school for junior kindergarten was very similar to the cost of their attending a daycare-based junior kindergarten. Between these options, the parents choose the private school-based junior kindergarten for both their children. Of course, in 2009 – 2010 when their daughter began grade primary, there was a "no cost" alternative available in the public school system. Still, the couple elected their daughter would remain at Sacred Heart School. Mr. Regan was still earning $185,000.00 and he received no employment bonus during this year. Ms. Gordinier-Regan wasn't employed. Mr. Regan says that because the couple hadn't separated, his income needed to support only one home.

[10] Following the couple's separation, Ms. Gordinier-Regan found employment, working four days each week. As the children began to attend the same school, Ms. Gordinier-Regan expanded her hours to five days each week. She says her employment requires extensive hours. She starts work early, works late and has lunch at her desk. She felt these hours were having a negative effect on the children and, as of late January 2011, she returned to her four day work week. This schedule still requires "longer hours than the average work week" she says.

[11] Since the separation, Ms. Gordinier-Regan has purchased a house costing $405,000.00. From her Statement of Property, it seems the house is mortgage-free. I understand it is being extensively renovated. I don't know the renovation cost.

[12] Mr. Regan will receive a bonus of $119,900.00 this month.

[13] Each week, the children are with their mother from Tuesday morning until Saturday at 6 p.m. and with their father from Saturday at 6 p.m. until Tuesday morning.

**Legal context**

[14] This is an application dealing with interim child support pursuant to section 15.1(2) of the *Divorce Act*, R.S.C. 1985 (2nd Supp.), c. 3. It relates to the provision of child support for a definite period: the period of the children's 2011 – 2012 school year. An order for a definite period is permissible under section 15.1(4) of the *Divorce Act*. The parents will continue their discussions about the family's new circumstances this fall and these discussions will consider the children's education beyond the coming year. As I've indicated, the parents have focused this application on the issue of whether Mr. Regan should be obliged to contribute to the children's private school tuition.

**Contribution to special or extraordinary expenses**

[15] According to section 7(1) of the *Federal Child Support Guidelines*, SOR/97-175, one spouse can ask that I order the other pay all or any portion of certain enumerated expenses. The amount of the expense claimed may be estimated. In making an order under section 7, I am to consider the necessity of the expense as it relates to the children's best interests and the reasonableness of the expense in relation to the spouses' and children's means and the family's pre-separation spending pattern.

[16] Of the six categories of expense enumerated in section 7, only two are categories of expenses which must be "extraordinary" in order to be the subject of an order for contribution. Expenses for primary school education fall into one such category and are listed in section 7(1)(d).

[17] In *L.K.S. v. D.M.C.T.*, 2008 NSCA 61 at paragraph 27, Justice Roscoe, with whom Justices Saunders and Oland concurred, said that it's "preferable to deal first with s. 7(1) to determine whether the expenses are necessary in relation to the child's best interests and reasonable in relation to the means of the parents before dealing with the definition of extraordinary expenses in s. 7(1A)." Her Ladyship's regulatory reference is to the *Nova Scotia Child Maintenance Guidelines*, N.S. Reg. 53/98. The case before the Court of Appeal was pursuant to the *Maintenance and Custody Act*, R.S.N.S. 1989, c. 160 and its regulations. I note that leave to appeal the Court of Appeal's decision to the Supreme Court of Canada was denied at *D.M.C.T. v. L.K.S.*, 2009 CanLII 1998 (SCC).

[18] I was specifically referred to Justice Campbell's decision in *Hatfield*, 2000 CanLII 14367 (NS SF) and Justice Kelly's consideration of that decision at paragraph 65 in

*Hendrickson*, 2004 NSSF 73, by Mr. Regan, suggesting that there may be other considerations, in addition to the expense's necessity and its reasonableness, that may be relevant to my decision. These decisions pre-date the Court of Appeal's decision in *L.K.S. v. D.M.C.T.*, 2008 NSCA 61 and, though the Court of Appeal would have had the opportunity to endorse this view of section 7(1) of the *Guidelines* in *L.K.S. v. D.M.C.T.*, 2008 NSCA 61, it did not.

[19] So, before I may order a contribution to children's private school costs, I must be satisfied the expense is necessary as it relates to the children's best interests. I must also be satisfied the expense is reasonable in relation to the means of the spouses and the children, and to the pattern of spending that existed for this family prior to the separation. Once I have completed that analysis, if I determine the expense is necessary and reasonable pursuant to section 7(1), I must then determine whether the expense is extraordinary pursuant to section 7(1.1). If it is, only then may I order a contribution to the extraordinary expense.

**The necessity of the expense in relation to the children's best interests**

[20] Whether the expense is necessary in relation to the children's best interests is the crux of the parents' disagreement. Ms. Gordinier-Regan believes that the continued expense of private school education is a necessity for both children, while Mr. Regan does not.

[21] Ms. Gordinier-Regan highlighted the various changes the children have experienced since December 2009: first, the family moved to a new home; then, Ms. Gordinier-Regan moved into rental accommodations; now Ms. Gordinier-Regan will move into her own home. This constitutes three re-locations for the children. Ms. Gordinier-Regan described difficulties the children had when she first moved in May 2010. As well, Ms. Gordinier-Regan has returned to employment. Her schedule has changed twice so far and her hours are long. She says the children's schooling arrangements have just stabilized. Many of these changes have been precipitated by the most significant change of all, the children's parents have separated.

[22] Ms. Gordinier-Regan says that in mid-April 2011, their daughter experienced breathing problems and the girl twice visited the hospital's emergency room. As a result of comments from hospital staff about panic attacks and counseling, Ms. Gordinier-Regan followed up with the children's pediatrician who referred both children to psychological services for anxiety and separation issues. Mr. Regan attributes the girl's breathing problems to an asthma attack and anxiety related to choking on her lunch earlier in the day. He does not explain why the girl didn't respond to her asthma

medication and, in fact, had a reaction to it.

[23] Since the end of 2009, there have been three changes of residence for both children, one change of school for one child, the parents have separated and there is no longer a parent at home every day. In the face of these changes, there are some sources of stability in the children's lives: both parents are involved in their upbringing, their father's home hasn't changed; and it appears that Ms. Gordinier-Regan plans to continue the involvement of the family's pre-separation nanny.

[24] Ms. Gordinier-Regan is clear that her employment is demanding. She works long hours. Mr. Regan is not equally explicit, but he does say that his work as a corporate development professional is one of only a very few similar positions in Halifax that offers him the level of compensation he receives. Implicitly, his is a demanding position. Before coming to Halifax to start their family, both spouses worked in New York and in London.

[25] Mr. Regan says that the children do well academically and socially and both are in excellent health. He says that their daughter exhibited some stressful reactions to separation, but that she transitioned easily and happily between schools last September. He admits that their son has historically been more difficult but says the boy has matured a great deal since he was four years old.

[26] Ms. Gordinier-Regan reports that she has been contacted by teachers about their son's difficulty accepting criticism. She says he "has been crying in class on a regular basis". Mr. Regan says these episodes have "greatly reduced through the course of the school year". He does not say that these episodes had stopped by the end of the school year. The boy is six.

[27] Mr. Regan argues that Nova Scotian courts are reluctant to order parents to pay a child's private school education expenses under section 7(1) of the *Guidelines* unless the parent claiming the expense can adduce clear and cogent evidence that the child has some need which the public school system cannot meet and which can only be met in the proposed private school setting. He refers me particularly to the decisions about private school education in Nova Scotia and urges me not to consider those from other jurisdictions, saying they are not of particular assistance. He says that I am to be persuaded "and/or" bound by decisions of courts in this jurisdiction.

[28] With regard to section 7(1)(d), the Nova Scotia cases Mr. Regan has referred me to are *Hendrickson*, 2004 NSSF 73, *Hendrickson*, 2005 NSSC 272, *Burton*, 1998 CanLII

1967 (NS SC), *Maginley v. MacKay*, 2003 NSSC 25, *Simmons v. Turner*, 2005 NSSC 315 and *L.K.S. v. D.M.C.T.*, 2008 NSCA 61.

[29] I am bound by decisions of the Court of Appeal and, while I may be persuaded by decisions of members of my own court, I do not believe I am bound by them. I will deal first with the decisions of my own court.

[30] Some of the decisions to which I have been referred provide scant guidance. In *Hendrickson*, 2004 NSSF 73, Justice Kelly addressed a claim for contribution to Halifax Grammar School tuition in the context of evidence, at paragraph 58, that "Chad is a normal child, balanced and intelligent" and "there is no evidence that he would not thrive in a public school environment." Justice Kelly's reasons suggest that one reason private school education could be a necessity is because the child would not thrive in a public school environment. Justice Kelly dismissed the claim with no further information that might assist me in understanding the basis for his decision. In a variation application involving the same family Justice Williams also dismissed a request for contribution to private school costs: in *Hendrickson*, 2004 NSSF 73 at paragraph 124. Justice Williams wrote, "I conclude *from the evidence before me* that Chad has no identified particular needs that are sought to be met by his attendance at the Halifax Grammar School. The expenses are not a necessity considering or having regard to Chad's best interests. [emphasis in the original]" His Lordship also concluded that the expense was not reasonable. While Justice Williams' conclusion is clear, I cannot determine what evidence was before him, so I can't take any guidance from his decision. Similarly, in *Simmons v. Turner*, 2005 NSSC 315 at paragraph 53 it was stated that "[t]he evidence presented to substantiate this claim [that private school is required because the child has learning disabilities] was inadequate" but the evidence was not detailed.

[31] Of greater assistance to me are Chief Justice Kennedy's decision in *Maginley v. MacKay*, 2003 NSSC 25 and Justice Hood's decision in *Burton*, 1998 CanLII 1967 (NS SC). In the former, Mr. MacKay sought a contribution to the costs of private school education for Suzanne, who was almost fifteen years old. The parents had been divorced for almost five years. It's not clear how long they had been separated prior to their divorce. The parents had discussed private schooling in the past and their discussions always included consideration of its affordability. Chief Justice Kennedy wrote, at paragraph 18, that Mr. MacKay adduced evidence that Suzanne was a "gifted student" and that Halifax Grammar School was "a good place for gifted students to be educated." Mr. MacKay also argued that attending a private school had assisted Suzanne in dealing with an eating disorder and self-harming behaviour. Chief Justice Kennedy found that the expense was not necessary in two regards: first, Suzanne had thrived in the public school system in the past and her health problems were not shown to be connected to her

public schooling; and, second, there was no evidence to suggest that a gifted student would be compromised by attending a public school.

[32] In *Burton*, 1998 CanLII 1967 (NS SC), Justice Hood addressed a claim for contribution to private education costs for each of three children, aged nine to fifteen. The Burtons had been separated for eight years. Ms. Burton had said the children flourished in the private school environment and they had had difficulties in the public school system. She said they were at the private school because they were unhappy in public schools, they wanted to be in a Christian school and, mainly, because of religious values and teachings that were important to both the children and Ms. Burton. At paragraph 15, Justice Hood determined that "a large part" of the reason the children attended the school was personal choice.

[33] Justice Hood noted that Jeffrey had reading and speech problems. He repeated a grade at the private school and was being promoted. Because of his academic difficulties, Justice Hood concluded it was in his best interest to attend the private school. No particular academic needs were identified for either daughter that might make attending the private school a necessity. However, one daughter was experiencing difficulties in public school, partly because she's very bright and Justice Hood concluded it was in this daughter's best interest to attend private school.

[34] These decisions tell me that it can be a necessity in a child's best interest to attend a private school if the child would not thrive in a public school environment. As well, academic or social needs might make it a necessity in the child's best interest to attend private school.

[35] In *L.K.S. v. D.M.C.T.*, 2008 NSCA 61, the Court of Appeal was not required to consider whether the requirements of section 7(1) of Nova Scotia's *Child Maintenance Guidelines* were met as they related to private school tuition: the parents were not contesting that determination and, it appears, they did not contest it at trial (*D.M.C.T. v L.K.S.*, 2007 NSFC 22 at paragraph 70: "The parents have agreed to their son attending Kings").

[36] The application before me is an interim one, designed to determine where the children will attend school this year. Neither child has ever attended public school. When choosing between pre-school options of similar expense, the parents chose private schools. They also chose a private school when they had to choose between a private school and a public school for their daughter.

[37] The children have experienced many changes since their parents separated and a

referral has been made for them for assistance in dealing with separation and anxiety issues. Both children have experienced some difficulty in coping with the changes that have accompanied their parents' separation and Ms. Gordinier-Regan and Mr. Regan are still resolving the legal issues arising from their separation. The children are noted to have experienced difficulty in adjusting to the transition that necessarily comes with parental separation. Transitions continue for these children: this summer they will move to their mother's new home; Ms. Gordinier-Regan may find she must return to full-time work; in the fall, their parents may decide that the children should attend public school next year.

[38] I find it is a necessity that the children attend private school during the 2011 - 2012 school year. The children have a need for stability and remaining at Halifax Grammar School provides that stability. Other options that might provide stability – having their primary residence in the former matrimonial home or Ms. Gordinier-Regan's resuming her status as a stay-at-home parent – are not suggested by either parent as a viable means for providing the children with stability during this time of change in their lives.

[39] In the context of interim parenting arrangements, it is accepted that maintaining the *status quo* is in children's best interests, since this is least disruptive, most supportive and most protective of the children: see *Webber* (1989), 90 N.S.R. (2d) 55 (F.C.). This test was accepted by the Supreme Court in *Stubson* (1991), 105 N.S.R. (2d) 155 and *Pye* (1992), 112 N.S.R. (2d) 109. The same can be said in the context of interim child support arrangements. The four "core principles" of child support identified in *Richardson*, 1987 CanLII 58 (S.C.C.) and *Willick*, 1994 CanLII 28 (S.C.C.) include the principle that "as much as possible, child support should provide the child with the same standard of living the child enjoyed when the parents were together".

[40] I find the necessity of the expense for private school education is in the children's best interests.

[41] While the necessity of the expense was the area of the parents' greatest disagreement, I cannot order a contribution to this expense unless I conclude it is warranted after considering all the required elements of the analysis.

**The reasonableness of the expense**

**The means of the spouses and the children**

[42] Mr. Regan's income this year, inclusive of his bonus, is $344,900.00 and Ms.

Gordinier-Regan earns $64,000.00.

[43] The parents' means are not confined to their income, but include other aspects of their financial circumstances. In this regard, I consider the Statement of Income which Ms. Gordinier-Regan has provided. As I've noted, Mr. Regan lives in a home worth approximately $740,000.00 which bears a $460,000.00 mortgage. Ms. Gordinier-Regan's new home appears to be mortgage-free. Both spouses have retirement savings from previous employment and there is an investment account which had a value in excess of one million dollars in April 2010. Ms. Gordinier-Regan identifies various securities and business interests, as well as a boat. Excluding her post-separation credit card debt, the total debt identified on Ms. Gordinier-Regan's Statement of Property is less than $463,000.00.

[44] I have no information of the children's means, if any.

**The family's pre-separation spending pattern**

[45] Prior to the separation, the family could depend on less income than it currently can depend upon. Only Mr. Regan was consistently working and his base salary was $40,000.00 less than it currently is. Ms. Gordinier-Regan worked part-time for less than one year. At this time when the parents' income was less than it is now, the parents' spending included providing both children with education at private schools.

[46] The Regan children have attended three separate private schools over the course of their educations. While their parents disagree about private school education, as far as the children are concerned, they attend private schools and have only attended private schools.

[47] Considering the means of the spouses' and the children and the family's pre-separation spending pattern, I conclude that the expense for private school education is reasonable.

[48] Again, my analysis cannot end with this conclusion. Before I can order a contribution to private school costs, I must determine whether they are extraordinary expenses.

**Is the expense extraordinary?**

[49] What constitutes an extraordinary expense may be determined either under section 7(1.1)(a) or section 7(1.1)(b) of the *Guidelines*. Pursuant to section 7(1.1)(a),

extraordinary expenses are those which are too great for Ms. Gordinier-Regan to reasonably cover, considering her income and the child support she receives. Where the expenses can reasonably be covered, I am to determine if the expenses are extraordinary by considering the five factors listed in section 7(1.1)(b). If the expenses cannot reasonably be covered, I need not conduct the analysis under section 7(1.1)(b).

**Section 7(1.1)(a) analysis**

[50] So, what is Ms. Gordinier-Regan's income and what child support does she receive?

[51] Ms. Gordinier-Regan's income is $64,000.00.

[52] Considering Mr. Regan's base income and his bonus, he pays Ms. Gordinier-Regan monthly child support of $4,096.00.

[53] It isn't possible to simply total Ms. Gordinier-Regan's earnings and Mr. Regan's child support to answer the question of whether this amount can reasonably cover the primary school expenses. Her earnings are subject to income tax, while the child support is not. Whether she can reasonably cover an expense depends on the expenses she has.

[54] Ms. Gordinier-Regan filed a Statement of Expenses. It dates from when she was renting a home. She will shortly move into her newly renovated home, if she has not done so already. This home is mortgage-free, according to her Statement of Property. She may be incurring some debt in its renovation, though no debt is shown for this on her Property Statement. Reviewing her Statement of Expenses, I consider all the expenses she has stated except those for rent, child-care, education and school supplies. Excluding these items, her expenses total $5,810.00. Additionally, she pays statutory contributions to the Canada Pension Plan and Employment Insurance, she pays into a registered pension plan, she pays health insurance premiums and income taxes. These expenses are budgeted at $1,769.00.

[55] I do not know how the cost of child-care is to be treated. Ms. Gordinier-Regan has a babysitter who watches the children after school when they are at her home. So the babysitter has enough hours to work, Ms. Gordinier-Regan also has the babysitter do some housekeeping. Mr. Regan proposes that the children would have an after-school nanny if they attended public school. He doesn't address their child care arrangements if they continue at Halifax Grammar School.

[56] Ms. Gordinier-Regan anticipates it will cost $873.26 each month for child care.

This amount is pre-tax. I have not been provided with calculations to determine the after-tax cost of child-care. At an approximate average marginal tax rate of thirty-seven percent, I estimate the after-tax cost would be $550.00 each month.

[57] This child-care expense is the sum of the cost of the babysitter (for the time spent with the children) and the cost of the children attending Halifax Grammar School's after school program one day each week. I assume the same level of expense exists during the summer months. I do not know how the parents intend to deal with this expense and I have not been asked to deal with it. In deciding whether Ms. Gordinier-Regan can reasonably cover the cost of Halifax Grammar School tuition, I assume that her best case scenario is one where the cost will be shared proportionately with Mr. Regan and her worst case scenario is one where she pays the cost entirely.

[58] Mr. Regan's child support provides Ms. Gordinier-Regan with all but $1,714.00 of the money she needs to meet the expenses of running her household. Her actual earnings are sufficient to pay the shortfall and to cover the various source deductions from her income and to leave her with $1,850.00 each month. With these funds she must make some contribution to the cost of child care, if not pay the entire cost.

[59] If Ms. Gordinier-Regan paid the entirety of the child-care expense, she would have approximately $1,300.00 each month to dedicate to the tuition expense. If she paid a proportionate share of the child-care expense, she would pay $88.00 and Mr. Regan would pay $462.00. On this basis, Ms. Gordinier-Regan would have approximately $1,762.00 to dedicate to the tuition expense.

[60] Tuition for the children's private school education costs $23,959.65 this year according to the Schedule of Tuition Payments sent by the school's headmaster to students' parents. This cost does not include uniforms, activities and outings for the children. Ms. Gordinier-Regan has made a claim for the children's tuition, so these additional costs are ones which I understand she will bear herself. On a monthly basis, the tuition cost is $1,996.63. Whether Mr. Regan contributes to the cost of the children's child-care or not, Ms. Gordinier-Regan cannot afford private school tuition from her income and the child support she receives.

[61] I was referred to the Court of Appeal's decision in *L.K.S. v. D.M.C.T.*, 2008 NSCA 61 for its discussion of section 7(1A) of the *Nova Scotia Child Maintenance Regulations* which parallels section 7(1.1)(a) of the *Federal Child Support Guidelines*. In *L.K.S. v. D.M.C.T.*, 2008 NSCA 61, the Court of Appeal concluded certain expenses did not exceed the amount that the mother could reasonably cover. The mother had income from all sources of $8,525.00. She hadn't filed a Statement of Expenses and her

testimony revealed she had monthly income of $6,700.00 with which to pay the $1,600.00 to which she sought a contribution. Surely, there were additional expenses that would also be funded from this $6,700.00, but that money was not needed to pay for housing, for food or for the child's clothing.

[62] I conclude that the tuition expense is one which Ms. Gordinier-Regan cannot reasonably afford. As a result of this conclusion, it isn't necessary for me to go further and analyse the application of s. 7(1.1)(b).

**What shall Mr. Regan contribute?**

[63] Mr. Regan's base salary is $225,000.00. This year he receives a bonus $119,900.00. His income from his employment is $344,900.00.

[64] Mr. Regan argues that his employment as a corporate development professional is not akin to being a lawyer or doctor: the "risk profile" of his earnings is high since he has one of only a very few similar positions in Halifax that can compensate him at this level. This application relates to the children's school attendance during the 2011 - 2012 school year. This is what makes the application time-sensitive. It is not contested that Mr. Regan has not indicated any uncertainties about his employment and that, if the company which employs him is sold, Mr. Regan "would be entitled to an eighteen month "change of control" package" whether or not he is taken on by the new entity."

[65] Mr. Regan argues that since his bonus is not dependably received, I should not consider it. He did not receive a bonus in either 2009 or 2010. Child support is based on a parent's current income. I have noted that core principles relating to child support emerge from *Richardson*, 1987 CanLII 58 (S.C.C.) and *Willick*, 1994 CanLII 28 (S.C.C.). These principles are:

1. child support is the right of the child;

2. the right to support survives the breakdown of the relationship between a child's parents;

3. as much as possible, child support should provide the child with the same standard of living the child enjoyed when the parents were together; and

4. the specific amount of child support owed will vary based upon the income of the payor parent.

[66] This final principle, that child support varies with the payor's income, is determinative in this instance. I have been asked to resolve the issue of the children's education during the 2011 – 2012 school year. During this period Mr. Regan's base salary is $225,000.00 and, in July 2011, he is receiving a bonus of $119,900.00. While Mr. Regan says his income in not secure because Halifax does not have a deep labour market for individuals at his earning level, I understand that if his employer was sold, he would be entitled to an eighteen month "change of control package" regardless of whether he continues employment by new owners. So, I consider Mr. Regan's income to be $344,900.00.

[67] Ms. Gordinier-Regan's income of $64,000.000 is approximately sixteen percent of the parents' combined income and Mr. Regan's comprises the remaining eighty-four percent.

[68] The monthly tuition expense is $1,996.63. The guiding principle in determining the amount of an expense is that the expense is shared by the spouses in proportion to their respective incomes after deducting any contribution to the expense from the children. This principle is stated in section 7(2) of the *Guidelines*.

[69] I see no reason to deviate from this principle and I order that Mr. Regan contribute $1,677.20 each month or a total of $20,126.40 to the children's Halifax Grammar School tuition. Again I note that tuition is not the only expense that exists for the children at Halifax Grammar School. All other ancillary expenses shall be paid by Ms. Gordinier-Regan.

**Conclusion**

[70] The expense for private school education during the 2011 – 2012 school year is a necessity in the children's best interests and reasonable in the context of the parents' and the children's means and the family's pre-separation spending patterns. I conclude that private school education is an extraordinary expense, pursuant to section 7(1.1)(a) of the *Guidelines* and order that Mr. Regan contribute $1,677.20 each month or a total of $20,126.40 to the children's Halifax Grammar School tuition.

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Elizabeth Jollimore, J.S.C. (F.D.)

Halifax, Nova Scotia

**SUPREME COURT OF NOVA SCOTIA**
**Citation: Citation:** Gordinier-Regan v. Regan, 2011 NSSC 297

**Date:** 20110719
**Docket:** 1201-065135
**Registry:** Halifax

**Between:**

Amy Elizabeth Gordinier-Regan

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v.

David Andrew Regan

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**ERRATUM**

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|---|---|
| **Revised decision:** | The text of the original decision has been corrected according to the attached erratum **September 23, 2011** |
| **Judge:** | The Honourable Justice Elizabeth Jollimore |
| **Heard:** | July 7, 2011 in Halifax, Nova Scotia |
| **Counsel:** | Julia E. Cornish, Q.C. on behalf of Amy Gordinier-Regan<br>B. Lynn Reierson, Q.C. on behalf of David Regan |

**Erratum**:

The final sentence in paragraph 17 is replaced by the following:

"I note that leave to appeal the Court of Appeal's decision to the Supreme Court of Canada was denied at *D.M.C.T. v. L.K.S.*, 2009 CanLII 1998 (SCC)."

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Elizabeth Jollimore, J.S.C.(F.D.)

Halifax, Nova Scotia