

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Klavano v. Howell, 2011 NSSC 435

Date: 20111122

Docket: 1201-59903

Registry: Halifax

Between:

Denice Klavano

Petitioner

v.

Paul Howell

Respondent

Judge:

The Honourable Justice Mona M. Lynch

Heard:

October 13, 2011, in Halifax, Nova Scotia

Counsel:

Peter Crowther, for the Petitioner
Damian Penny, for the Respondent

By the Court:

Background:

[1] The mother and father were married on July 31, 1982, separated in June of 2005 and were divorced on January 28, 2008. The mother lives in Nova Scotia and the father lives in Alberta.

[2] There are four male children born of the marriage. The oldest child died. The oldest surviving child is currently aged 26; the middle child is currently 22 and the youngest child is currently 20.

[3] The parties entered into Minutes of Settlement on October 29, 2007 which were incorporated into the Corollary Relief Judgment. The Minutes of Settlement included provisions for child support.

[4] The Minutes of Settlement provided for the father to pay for the oldest child, who was no longer a child of the marriage, the amounts as follows: (a) \$100.00 per month, paid directly to the oldest child, for all of the months that the oldest child was attending university; (b) the entirety of the oldest child's student line of credit accumulated through the course of his university studies through to October 15,

2007 and thereafter one half of all debt accumulated by the oldest child throughout the course of his post-secondary studies; and (c) seventy-five percent of the oldest child's medical expenses if he was not covered by the mother or father's medical plans until he qualified for a medical plan of his own. The mother was required to provide support to the oldest child as she deemed appropriate.

[5] Child support for the middle child was set at \$200.00 a month to be paid by the father directly to the middle child for all of the months that he attended university and lived independently from the mother. If the middle child returned to live with his mother, the child support would be reviewed. In addition to the \$200.00 a month, the father was to pay one half of the Student Line of Credit debt accumulated by the middle child throughout the course of his first university degree.

[6] The Minutes of Settlement provided that the father pay the table amount of child support for the youngest child based on income of \$105,000.00 per year. The parties also agreed that the table amount would be reviewed on a yearly basis so long as the youngest child fit the definition of "child of the marriage" under the

Divorce Act, with the table amount of child support being adjusted each year commencing in June.

[7] Between the time the Minutes of Settlement were signed and the variation application was heard, the oldest child experienced mental health issues. The oldest child does not have a clear diagnosis but he lacks insight into his problems. The oldest child takes a number of medications to assist with his mental health. The oldest child has lived independently, has lived with his mother and is currently living independently again.

[8] The middle child was 18 years old and in his first year of university when the Minutes of Settlement were signed. He was not living with the mother. He was not in school for the 2008/2009 academic year. He returned to school in the Fall of 2009 in a different course of studies. He continued in this program for two years and lived on his own. In February 2011, the middle child was accepted to a program of game design in Vancouver. The overall cost of the program is \$32,250.00 for one year. The middle child started this program in September 2011 and is living in Vancouver.

[9] The youngest child was in high school when the Minutes of Settlement were signed. He attempted suicide and was hospitalized for four weeks in 2007. The youngest child had further suicide attempts, was involved in an altercation at school resulting in his hospitalization and had an accident with a table saw resulting in a partial amputation of his fingers, four surgeries and further medical attention. The youngest child did not complete grade 12 and he entered into an apprenticeship program to become a carpenter. The youngest child left this program in June 2011. He continues to reside with his mother.

[10] On July 27, 2011 the mother applied to vary the amount of child support paid by the father, both table and extraordinary expenses.

Issues:

- [11]
1. Has there been a material change in circumstances since the making of the last order?
 2. Does the father owe anything in relation to the oldest child?
 3. Does the middle child remain a child of the marriage and if so, what amount of child support should the father pay for the middle child?

4. Are there arrears owed by the father in relation to child support for the youngest child?
5. Does the youngest child remain a child of the marriage and if so, what amount of child support should the father pay for the youngest child after he attained the age of majority?

Analysis:

Has there been a material change in circumstances since the making of the last order?

[12] Before I can consider the merits of the case I must decide whether there has been a change in circumstances since the making of the last order dealing with child support (**Divorce Act**, s. 17(4)). Section 14 of the **Federal Child Support Guidelines** sets out circumstances for a variation which include: (a) for the table amount, any change in circumstances that would result in a different child support order or any provision thereof; and (b) for child support not made in accordance with a table, any change in the conditions, means, needs or other circumstances of either spouse or of any child who is entitled to support. The changes should be

changes not considered at the time of the Corollary Relief Judgment which incorporated the Minutes of Settlement.

[13] The father's income has increased significantly since the making of the order which would have resulted in a different table amount of child support payable for the youngest child. The Minutes of Settlement in 2007 show the father's income to be \$105,000.00 for the year 2006. The father's income was \$113,076.00 for 2008; \$111,049.00 for 2009 and \$142,574.00 for 2010 which included RRSP income of \$28,122.00. There has also been a change in the mother's income. At the time of the Corollary Relief Judgment her income was \$39,169.50. Her income was \$45,696.00 in 2008; \$50,406.00 in 2009 and \$52,785.00 in 2010. The change in the mother's income would also constitute a change in circumstances as it is a change in her means.

[14] When the Minutes of Settlement were signed and then incorporated into the Corollary Relief Judgment the parties had decided what the father's support would be for the middle child while he was attending post-secondary school in Nova Scotia, working part-time and living independently from the mother. There was provision for the support for the middle child to be reviewed if he returned to live

with the mother. Things have changed since the time the Minutes were signed.

The middle child is still in school but he has changed schools and the cost of school has increased significantly. The middle child is no longer living in Nova Scotia and is unable to work part-time while attending school. These are changes in the condition, means, needs and other circumstances of the middle child.

[15] In relation to the youngest child the parties agreed in the Minutes that the father would pay the table amount of child support and it would be adjusted each year in June based on the previous year's income. There are no changes in circumstances based on the income of the father as that was already contemplated at the time the Minutes were signed. However, there are other changes in circumstances in relation to the youngest child. He is now over the age of majority and he is not in high school. Those are changes in the condition, means, needs and other circumstances of the youngest child.

[16] I am satisfied that there has been a change in circumstances since the making of the last order for child support for the middle child and youngest child.

Does the father owe anything in relation to the oldest child?

[17] With regard to the oldest child, pursuant to the Minutes of Settlement the father was to pay \$100.00 a month while the oldest child was attending university and the entire student line of credit accumulated to October 15, 2007. The father complied with both of these provisions. The father was also required to pay one half of the student line of credit accumulated after October 15, 2007 and 75% of the uninsured medical expenses. The father did not comply with either of these provisions.

[18] The oldest child has had significant mental health issues since the parties have separated. His older brother died in 2006. He has had periods where he was self-sufficient and others where he was totally financially dependent on his mother. The mother has paid the oldest child's rent, bills and groceries for significant periods of time. The oldest child was unable to maintain employment and returned to live with the mother for approximately ten months. The mother made the minimum payments on the line of credit for which the father was supposed to pay half but did not. While living with his mother he was able to stabilize his mental health and return to employment and independent living. His mental health issues require expensive medications to keep him stabilized. The mother has supported him both emotionally and financially through these turbulent times.

[19] The application before me is for a variation of child support pursuant to the **Divorce Act** and my jurisdiction comes from that **Act**. The oldest child was not a child of the marriage pursuant to the **Divorce Act** at the time the Minutes of Settlement were signed, he was not a child of the marriage at the time of the application to vary child support and he was not a child of the marriage at the time the application was heard. I do not have jurisdiction under the **Divorce Act** to vary the provisions dealing with the oldest child. I do not have the jurisdiction to deal with any amounts owing by the father under the Minutes of Settlement.

[20] The evidence is clear that the father has failed to live up to his contractual and perhaps moral obligations to his oldest son by failing to pay one half of the student line of credit and 75% of the uninsured medical costs. As stated above, the oldest son has had significant medical costs and other costs since the signing of the Minutes of Settlement. The financial support needed by the oldest child, as well as the significant emotional support, were born by the mother.

Does the middle child remain a child of the marriage and if so, what amount of child support should the father pay for the middle child?

[21] The middle child is attending an educational program in Vancouver.

Whether or not a child is a “child of the marriage” has been considered by our

Court of Appeal in **MacLennan v. MacLennan**, 2003 NSCA 9 at paragraphs 37 -

41:

[37] The issues here are framed by ss. 15.1 and 2(1) of the Divorce Act, R.S. 1985, c. 3 (2nd Supp.). The Court may make an order requiring a spouse or a former spouse to pay for the support of a child of the marriage: s. 15.1. A "child of the marriage", for the purposes of this case, means a child of the spouses who, at the material time, is the age of majority or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessaries of life: s. 2(1). As pointed out by Freeman, J.A. for the Court in *Giorno v. Giorno* (1992), 110 N.S.R. (2d) 87 (S.C.A.D.) at para. 15, "other cause" includes, but is not limited to the pursuit of higher education.

[38] Freeman, J.A. also provided an admirable summary of the authorities in *Martell v. Height* (1994), 130 N.S.R. (2d) 318 at para. 8:

8 It is clear from the various authorities cited by counsel that courts recognize jurisdiction under s. 2(1) of the Divorce Act to hold parents responsible for children over 16 during their period of dependency. How long that period continues is a question of fact for the trial judge in each case. There is no arbitrary cut-off point based either on age or scholastic attainment, although as these increase the onus of proving dependency grows heavier. As a general rule parents of a bona fide student will remain responsible until the child has reached a level of education, commensurate with the abilities he or she has demonstrated, which fit the child for entry-level employment in an appropriate field.

[39] I agree with the appellant that a child at or over the age of majority is not automatically a child of the marriage for the purposes of support simply by virtue

of being a full time undergraduate university student, although I would add that most such students will qualify as such. As required by the provisions of the Divorce Act to which I have referred, it must be shown that the child is unable to withdraw himself or herself from parental charge. The party claiming support has the burden of establishing entitlement.

[40] The application of this threshold requires, as Chipman, J.A. pointed out in *Yaschuk v. Logan* (1992), 110 N.S.R. (2d) 278 (S.C.A.D.) at para 59, that each case be examined carefully in light of its own facts. The weighing of these facts and exercising judgment in relation to them is, as he said, particularly in the province of the trial judge. The issue is whether the judge made an error of law or a palpable and overriding error of fact in concluding that Allan would be a child of the marriage if he returned to full time university attendance in the coming weeks.

[41] The authorities have developed lengthy lists of factors relevant to determining whether an adult child remains a "child of the marriage" for support purposes: see, for example, *Cole v. Cole* (1995), 143 N.S.R. (2d) 378; N.S.J. No. 362 (Q.L.)(Fam. Ct.) at paras. 12 and 13; *Farden v. Farden* (1993), 48 R.F.L. (3d) 60; B.C.J. No. 1315 (Q.L.) (S.C. Master); T.W. Hainsworth, "Support for Adult Children" (1999 - 2000), 17 *Can. Fam. L.Q.* 39 at pp. 51-53. As helpful as they are, such lists of relevant factors must not be used in place of the language of the statute or be invoked to impose a burden on parties to call evidence about the obvious or on judges to address non-issues in their reasons for judgment. Judges are entitled to draw reasonable, common sense inferences from the proven facts and to take into account notorious facts such as that post secondary education is expensive, well paid part time employment for full time students is scarce and that the demands of full time course work limit the time available for part time work: *Darlington v. Darlington* (1997), 32 R.F.L. (4th) 406; B.C.J. No. 2534 (Q.L.)(B.C.C.A.).

[22] In the present case the middle child is in full time attendance at an educational facility. He has student debt from his prior attendance at university and his father has not paid half. The evidence from the mother is that although the middle child worked part-time while attending school in Halifax, he is unable to do

so in Vancouver because of the demand of the course that he is taking. The middle child has not obtained a university degree but was able to transfer credits from the university in Nova Scotia to the school in Vancouver which will allow him to complete the program in one year instead of two. He has received a student loan and he is currently 22 years old.

[23] I am satisfied that the middle child is unable to withdraw from the charge of his parents or to obtain the necessaries of life. The middle child is a child of the marriage.

[24] The mother is asking that the father be ordered to pay the table amount of child support directly to the middle child for his living expenses as well as the entire amount of the cost of his educational program except for the \$10,710.00 in student loan that the middle child was able to obtain. The total cost of the program is \$32,250.00 for the one year.

[25] The father argues that the middle child is not completing the university degree that was contemplated at the time of the Minutes of Settlement and therefore he should not be required to contribute towards the middle child's

educational expenses. The father also asserts that he has paid a disproportionate share of the educational expenses for the children by co-signing lines of credit for the oldest and middle children and paying one half of the debt owing for the oldest child up to October 2007. He is opposed to paying a proportionate share of the middle child's current educational expenses. The father has not paid one half of the student line of credit debit for the middle child. The father did pay \$1,612.50 towards the middle child's education costs in 2011 and he paid for the middle child to travel to Vancouver in the amount of \$176.73. The father maintains the middle child and youngest child on his medical plan through his employment, although there is no extra cost to the father to do this as his current spouse and children are also on the plan.

[26] There was \$18,720.00 owing to the school in Vancouver at the end of August 2011. This was paid by the student loan and the mother contributed the remainder.

[27] Section 7 of the **Guidelines** deals with special or extraordinary expenses. Ordering a contribution to special or extraordinary expenses is always discretionary and I must take 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 as well as to the family's spending pattern prior to the separation. Post-secondary education expenses are one of the expenses provided for in section 7. The guiding principle is that these expenses be shared by the parents in proportion to their incomes.

[28] It is clear from the Minutes of Settlement that the parties hoped that the three children would attend post-secondary education. They spelled out how that would be shared based on the plans at the time the Agreement was signed. I accept that while the middle child was attending university in Nova Scotia the mother contributed to his living expenses.

[29] I do not accept that the father bore a disproportionate share of the expenses for the children. The mother was the parent in the same city as the children and she contributed financially to all three children. The Minutes anticipated that the mother would contribute more to the living expenses of the children and the father would contribute more to the educational expenses. The mother lived up to her obligations. The father did not.

[30] The father has the ability to contribute to the educational expenses of the middle child. He is in a much better financial position than the mother. I find that the educational expenses for the middle child are necessary to the middle child's best interest; the parents have the means to contribute to the expenses; the child is contributing what he can and that the parents clearly anticipated that the middle child would be attending post-secondary education.

[31] The expenses for the middle child's education clearly exceed what the mother could reasonably cover under section 7(1.1) of the **Guidelines**.

[32] Despite requests to assist with the middle child's educational expenses for 2011/2012 the father only contributed \$1,621.00 and did not pay off half of the student line of credit which would have assisted the middle child and mother who were scrambling to pay the educational expenses for 2011/2012. I do not accept that the middle child would have to remain in the same educational program that he was in at the time the Minutes were signed in order to receive support from the father.

[33] The expenses for the middle child's program are expensive but he is able to complete the course in one year and he was able to use the credits that he had earned while attending school in Nova Scotia. This is the course of study that the middle child hoped to be accepted to and he was. I find that the post-secondary education expenses for the middle child are necessary and in his best interests to set him on the path to self-sufficiency. The child has contributed through a student loan and I accept that the program is too demanding for him to work part-time if he wants to succeed.

[34] In calculating the father's income I have considered his two most recent pay stubs which show a year-to-date income of \$92,000.00 for the 18th of 26 pays for the 2011 year. If that is extrapolated to a full year the father's income for 2011 is expected to be \$133,000.00. The father's sworn statement of income shows a monthly income of \$9,394.36 and a yearly income of \$112,732.32. The father's 2010 income was \$114,454.00 after deducting the RRSP income which I have found was a one time non-recurring amount. The parents have the ability to contribute to the costs of the education. The **Guidelines** in section 2(3) requires that I use the most current information to calculate the amount of income. The father has indicated that he will not necessarily continue to receive the overtime

that he has received so far this year. The father earned \$92,000.00 for the first 18 pays to the end of September; then he will earn \$9,394.00 a month as indicated in his sworn statement of income for the 3 remaining months; therefore his annual income will be \$120,182.00. I find the father's income for 2011 to be \$120,182.00.

[35] The mother's income for 2010 was \$44,385.00 and her sworn statement of income shows income of \$68,271.00 for 2011. I accept that \$68,271.00 is the mother's income.

[36] The middle child's post-secondary expenses are \$32,250.00 for 2011/2012 and the parties will proportionately share those costs of \$21,540.00 after deducting the student loan of \$10,710.00. The mother will pay 36% of the costs and the father will pay 64% which is \$12,165.00 (\$13,786.00 minus the \$1,621.00 he has already contributed). The mother's contribution is \$7,754.00. The father shall pay the \$12,165.00 to the mother and she shall pay the remaining amount owing to the post-secondary institution. This way the mother will receive back the amount that she has already overpaid for the educational expenses. The mother has

provided evidence that she has paid over \$20,000.00 in financial support for the middle child so far in 2011.

[37] The mother is also requesting that the father pay the table amount of child support for the child while he is attending school in Vancouver. The middle child is not living with the mother and he is unable to work. The Minutes required the father to pay \$200.00 to the middle child when he was attending university and living independently of the mother. At that time the middle child was living close to the mother and she was providing support to him. At that time the middle child was able to work part-time to contribute to his own expenses. Now that the middle child is living in Vancouver and unable to work, there has been a change of circumstances and the amount of child support must be adjusted to reflect the big changes in the middle child's circumstances.

[38] The monthly budget for the middle child is approximately \$1,170.00 a month. The mother has been providing financial support for the child since he moved to Vancouver in June 2011. I believe that the appropriate method of determining the amount of child support for the middle child is under section

3(2)(a) of the **Guidelines**. The Alberta table amount for one child, based on income of \$120,182.00, is \$1,058.00.

[39] The middle child is unable to work and attend school and the mother will also be providing financially for the child as she always has. The father is to pay \$1,058.00 a month commencing September 1, 2011. Payment for the months of September, October and November, 2011 shall be paid to the mother less the \$200.00 paid directly to the middle child at the end of August 2011. Commencing December 1, 2011 and continuing each and every month that the middle child continues in school, the father shall pay \$1,058.00 directly to the middle child. The father must also pay one half of the student line of credit accumulated by the middle child.

Are there arrears owed by the father in relation to child support for the youngest child?

[40] The Minutes of Settlement incorporated into the Corollary Relief Judgment set out how the child support would be adjusted for the youngest child. This is different than retroactive child support. In **S.(D.B.) V. G.(S.R.)**, 2006 SCC 37 at paragraphs 1 and 98, Justice Bastarache distinguishes the present case from a retroactive variation which was being dealt with in that case:

1 The present appeals involve the parental obligation to support one's children, and the question of whether this obligation compels parents to make child support payments for periods of time when the responsibility to do so was never identified, much less enforced. This question will arise when the parent receiving child support (the "recipient parent") determines that (s)he should have been paid greater amounts than (s)he actually received, despite the fact that no court order or separation agreement provided for these higher payments. These appeals do not concern the non-payment of arrears; they concern the enforceability and quantification of support that was neither paid nor claimed when it was supposedly due.

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

Clearly in the present case there is a court order that determines the child support to be paid to the youngest child. The provisions in the Corollary Relief Judgment were clear that the child support was to be adjusted yearly on June 1 based on the prior year's income. This is a case about whether arrears are owing on the current

order and not whether there should be a retroactive variation of the order. This is not a case where the father can say that he believed he was paying the correct amount of child support because the order was not varied. As said in **S.(D.B.)**, certainty and predictability militate in the opposite direction.

[41] The father provided his income information to the mother for at least the first year. The amount of child support was adjusted in 2009 for his 2008 income. I find that the father did not provide his 2009 or 2010 income tax information to the mother. The father's position is that the mother was supposed to provide her information to him and she did not. The mother says she provided it to the father's former counsel. Nothing rests on the whether the mother provided her information as child support was not calculated using her income. It was to be adjusted based on the father's income.

[42] During the years 2008 - 2011 the youngest child has been struggling. He did not graduate from high school in 2010. He had suicide attempts, hospitalizations and partial amputation of fingers. He has struggled and has been supported by his mother. He entered the apprenticeship program which included both work

experience and classroom learning. His mother has supported him by paying for necessary courses and equipment.

[43] The Corollary Relief Judgment required that the father adjust the table amount of child support for the youngest child on June 1 of each year based on his income for the previous year. I do not have his income information for 2007 but I accept that he adjusted the income in July of 2008 based on his income for 2007. He should have adjusted it in June of 2008 (not July) so there is \$62.00 owing for the 2008/2009 year (\$987.00 - \$925.00). For 2008 his income was \$113,076.00 which would have required him to pay child support in the amount of \$997.00 per month commencing June 1, 2009, based on the Alberta tables for one child. He paid \$987.00 a month so there is a difference owing of \$120.00 for the year 2009/2010 year. In 2009 the father's income was \$111,049.00 which required a table amount of \$978.00 and he paid \$987.00 for an overpayment of \$36.00 per month for June to September 2010. The total amount of arrears owing by the father is \$146.00.

Does the youngest child remain a child of the marriage and if so, what amount of child support should the father pay for the youngest child after he attained the age of majority?

[44] The definition of child of the marriage is set out above. The youngest child is working toward becoming a carpenter. He attained the age of majority in October of 2010. I accept the evidence of the mother that the youngest child was enrolled in an apprenticeship program which he quit in June 2011. I also accept the evidence of both parties that the youngest son has had many struggles over the last few years and that his mental health is very fragile. He has worked as an apprentice while residing with the mother and his income in 2010 was \$13,822.00. The father acknowledges that the youngest child's health issues require that he receive the financial and emotional support that he receives in his mother's home. I find that the youngest child is unable by reason of illness, disability or other cause to withdraw from the charge of his mother and obtain the necessities of life. The youngest child is still a child of the marriage.

[45] The mother had more than her hands full in the years since the signing of the Minutes of Settlement. The mental health issues of two of her sons required that

she take unpaid leave, obtain a position with a lower income but better hours for the children and use her financial resources for the needs of the children. The mental health of two of the children has resulted in both an emotional and financial drain on the mother.

[46] The mother applied in July 2011 for a variation of child support and there has been a change in circumstances since the making of the Corollary Relief Judgment. Support for the youngest child prior to July 2011 could be considered retroactive. With regard to retroactive child support the leading case is **S.(D.B.) V. G.(S.R.)**, 2006 SCC 37. I find that the youngest child, although over the age of majority, was a child of the marriage at the time that the application was made in July 2011. In considering **S.(D.B.)**, supra, our Court of Appeal said in **Smith v. Selig**, 2008 NSCA 54 at paragraphs 28:

In **S.(D.B.)** Justice Bastarache identified four factors that should be considered when determining whether to order a retroactive award:

- (1) unreasonable delay by the recipient parent in applying for the support;
- (2) conduct of the payor spouse;
- (3) circumstances of the child; and

(4) hardship occasioned by the retroactive award.

The mother did not delay in making an application to vary the child support. The father clearly engaged in blameworthy conduct as he unilaterally stopped child support in the month that the youngest child turned 19 although the agreement in the Minutes of Settlement provided that child support could be varied by the consent of the parties or by a court of competent jurisdiction. The father did not seek the mother's consent or a court order. I also accept that the father did not pay for uninsured medical costs for the children although the Minutes required him to do so. The child continues to be a child of the marriage and the mother has supported the child since October 2010. The father would not suffer any financial hardship in paying retroactive child support from October 2010. The father should pay child support from October 2010 for the youngest child.

[47] In considering quantum, in October 2010 the youngest child turned 19 years of age and was working in the apprenticeship program. He earned \$13,800.00 in 2010. I find that the table amount is not the most appropriate method to calculate child support for the youngest child once he attained the age of 19 and was earning income. Section 3(2)(b) of the **Guidelines** is more appropriate. I must take into

account his income and the youngest child has continued to earn income in 2011. He stopped participating in the apprenticeship program in June of 2011 but I accept that his hours are being logged and he can re-enter the program. During the apprenticeship program he has had to attend courses as well as purchase expensive tools, equipment and clothing. These costs were born by the youngest child with a significant contribution from the mother.

[48] The father's income for 2010 is \$142,574.00. Although I deducted the RRSP amount above in calculating his 2011 income because it is not re-occurring, I have not adjusted it here. The father actually had \$142,574.00 available to him in 2010 and the Minutes of Settlement provided for the adjustment to be made in June of each year based on the prior year's income tax return. The table amount commencing June 2011 would have been \$1,247.00 a month.

[49] Taking into account the youngest child's income, I find that the father should have paid \$200.00 a month in child support for the youngest child from October 1, 2010 to November 2, 2011 for a total of \$2,800.00.

[50] The total amount of child support owed by the father to the mother is \$2,946.00. The father will continue to pay \$200.00 per month in support for the youngest child as long as he is still a child of the marriage.

Conclusion:

[51] There has been a material change in circumstances since the signing of the Minutes of Settlement and the granting of the Corollary Relief Judgment.

[52] Both morally and contractually the father is required to pay one half of the oldest child's student line of credit and 75% of his uninsured medical costs.

However, because the oldest child was not a child of the marriage at the time of the last order and is not a child of the marriage now I do not have jurisdiction to make an order under the **Divorce Act** requiring the father to pay.

[53] The middle child is attending school in Vancouver and remains a child of the marriage. The father shall pay the \$13,786.00 to the mother and she shall pay the remaining amount owing to the post-secondary institution. The father shall pay one half of the middle child's student line of credit. The father is to pay \$1,058.00

a month in child support for the middle child. The months of September, October and November, 2011 shall be paid to the mother. Commencing December 1, 2011 and continuing each and every month that the middle child continues in school the father shall pay \$1,058.00 directly to the middle child.

[54] The total amount of child support owed by the father to the mother for the youngest child is \$2,946.00. The father will continue to pay \$200.00 a month for the youngest child until he is no longer a child of the marriage.

[55] The parties will continue to exchange income tax returns and notices of assessment or before May 15 of each year.

Lynch, J.