

# IN THE SUPREME COURT OF NOVA SCOTIA

[Cite as: MacLean v. MacLean, 2002 NSSC 5]

JOHN GARFIELD MacLEAN

APPLICANT

- and -

DONNA JOYCE MacLEAN

RESPONDENT

Justice Walter R. E. Goodfellow

Halifax, Nova Scotia

S.P. No. 1205-001750

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## LIBRARY HEADING

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**DATE HEARD:** November 28<sup>th</sup>, 2001 (Chambers)

**DECISION:** November 28<sup>th</sup>, 2001 (Orally)

**WRITTEN  
DECISION:** January 9<sup>th</sup>, 2002

**SUBJECT:** FAMILY LAW - TERMINATION - DISCLOSURE

**SUMMARY:** The parties separated after 24 years of marriage. Mrs. MacLean 43 years of age at time of separation. Corollary Relief Judgment provided spousal support of \$1,000.00 per month. Mr. MacLean seeks rescission of obligation for spousal support. Ms. MacLean's relationship with her boyfriend crystalized into common-law relationship March, 2001 and she embarked upon an educational program that might well provide her with meaningful remunerative employment by June, 2004. Mr. MacLean's income stated in Corollary Relief Judgment at \$74,881.00 taken from 1999 Income Tax Return. Concluded his actual income was approximately \$70,000.00 and has been reduced to \$60,000.00 per annum at time of Application. He has more than adequate resources to continue the spousal support payments and they should continue until inclusive August, 2004. Entry into common-law relationship does not per se give rise to rescission. Court must look at circumstances that flow from entering such a relationship

bearing in mind that it was foreseeable. *L.G. v. G.B.*, [1995] 3 S.C.R. 370. Comment that far too many Applications to Vary are taken prematurely and that at the very least, based on cohabitation, one would not expect an Application until sometime after the term of common-law cohabitation resulted in the establishing of a legal obligation for mutual support. Ms. MacLean's program for re-training reasonable and Mr. Maclean fortunate that her common-law spouse was providing such a high degree of support. No rescission appropriate at this time, however, spousal support to be terminated in August, 2004 which will give Ms. MacLean six years of support but she will still have resource to s. 17(10) of the *Divorce Act*.

#### **Disclosure - Costs -**

Full disclosure in family matters is a given. Failure of a party to do so will, in most circumstances, result in adverse consequences. Such could include, a deeming of income, deeming of value, possibly contempt, if the failure persists, if an Applicant, possibly dismissal, stay, adjournment/postponement of relief sought, denial of costs, etc.

Failure to comply with this basic prerequisite, full financial disclosure almost automatically will have cost consequences because compliance of such a fundamental requirement should rarely require the Court's intervention - usually, only if there are major practical/time/confidential issues that need to be addressed.

The Court has developed a zero tolerance policy where full financial disclosure could reasonably have been complied with without Court intervention.

In addition, full disclosure should be timely. In this case, Ms. Maclean, although successful in defending issue of rescission of spousal support, did not provide her up-dated financial information in a timely fashion as should have been and therefore, her costs entitlement fixed at \$1,200.00 is reduced to \$900.00.

**THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.  
QUOTES MUST BE FROM THE DECISION, NOT THIS COVER SHEET.**