

**SUPREME COURT OF NOVA SCOTIA**  
**(FAMILY DIVISION)**

**Citation:** Deagle v. MacFarlane, 2013 NSSC 150

**Date:** May 9, 2013

**Docket:** SFPAOTH - 009440

**Registry:** Port Hawkesbury

**Between:**

Marie Florence Deagle

Applicant

v.

John Eric MacFarlane

Respondent

**Judge:** The Honourable Justice Moira C. Legere Sers

**Heard:** February 19, 2013, in Port Hawkesbury, Nova Scotia

**Counsel:** Tracey Sturmy, for the respondent

**By the Court:**

[1] This is the Confirmation Hearing relating to an application dated February 2012 by Marie Florence Deagle to vary an existing order retroactively and prospectively pursuant to the *Interjurisdictional Support Orders Act, 2002*, Statutes of Ontario 2002, Chapter 13.

[2] The applicant seeks to vary retroactively from January 1<sup>st</sup>, 2005 to December 31<sup>st</sup>, 2011, the child support and consequently the amount of unpaid support arrears owing under the current support order.

[3] The applicant seeks the child support arrears to include the amount of \$4,490, as of December 31<sup>st</sup>, 2004, as tabulated by the documentation provided by the Ontario equivalent of Maintenance Enforcement and further child support arrears from January 1<sup>st</sup>, 2005 to December 31<sup>st</sup>, 2011 in the amount of \$10,476.43.

[4] She asks that the total arrears be fixed at \$14,966.43.

[5] She is also asking for a variation of the amount of the current support order from \$579 to \$800 based on what she speculates is the respondent's annual income for 2012.

[6] There are four children of this marriage: Sarah Joyce MacFarlane, born June 16<sup>th</sup>, 1987; Alexandra Catherine MacFarlane, born July 22<sup>nd</sup>, 1989; Rosemary MacFarlane, born February 16<sup>th</sup>, 1991; and Erica Marie MacFarlane, born August 10<sup>th</sup>, 1994.

[7] Given the age of the youngest child and the fact she is no longer a dependant child within the meaning of the *Divorce Act*, the request on page 2, paragraph 4, for ongoing child support and paragraph 5, 6, 7, and 8 are not matters before the court at this time.

[8] At the time of the application, there was one dependant child remaining in school.

[9] By the time this application came before the court, this child was no longer in school and is currently not considered dependant in accordance with the *Divorce Act*.

[10] While the Applicant made unsuccessful efforts in 2008 to change the 2002 order, since the Divorce Order in 2002 until this application, neither party made a formal application.

[11] In spite of the respondent suffering significant increases and variations in his income levels, periods of illness and periods when two of his children lived with him (for brief periods of time) he made no application to vary.

### **Status of the Children**

[12] At paragraph 89 of **D.B.S v. S.R.G; L.J. W v. T.A.R.; Henry v. Henry; Hiemstra v. Hiemstra** [2006] 2 S.C.R. 231, 2006 SCC 37, the Supreme Court of Canada noted:

“...

An adult, i.e., one who is over the age of majority and is not dependent, is not the type of person for whom Parliament envisioned child support orders being made. This is true, whether or not this adult should have received greater amounts of child support earlier in his/her life. Child support is for the children of the marriage, not adults who used to have that status.”

[13] The authority does not support a retroactive analysis for the three older independent children as of February 2012.

[14] I am left with a retroactive analysis of child support that should have been paid for the youngest child who was dependant at the time of this application and a fixing of arrears.

### **History**

[15] The parties married on March 24<sup>th</sup>, 1984 and separated in January 1998.

[16] After the separation, the applicant and children moved to Pickering, Ontario on March 6<sup>th</sup>, 1996. The parties agreed that the respondent pay child support of \$400 plus. This he did up to December 1998.

[17] They were divorced by Divorce Judgment dated December 23<sup>rd</sup>, 2002.

### **History of Proceedings**

#### *First Order*

[18] The applicant's **1998** Income Tax Summary shows income of **\$14,365**. The applicant had a part time job with a senior's residence at the time.

[19] A confirming order from the Supreme Court of Nova Scotia, Family Division was issued the **10<sup>th</sup> of April, 2000**. The respondent's annual income was set at **\$15,000**. He was required to pay **\$325** per month for the support of his four children commencing April 1<sup>st</sup>, 2000, payable on the first day of each and every month thereafter.

[20] The respondent was required to provide a copy of his Income Tax Return and Notice of Assessment by June 30<sup>th</sup> of each and every year.

#### *Second Order*

[21] Married in Nova Scotia, the parties were divorced by Divorce Judgment in Ontario on November 19<sup>th</sup>, 2002.

[22] This *appears* to have been an Inter Partes Divorce Hearing in which only the applicant was present. The respondent's counsel was in Nova Scotia.

[23] The documentation on file does not give any indication whether the respondent requested that the matter go by way of reciprocal variation proceedings. The Ontario order appears to be a final order. It is unclear on the record whether Mr. MacFarlane agreed to submit to the jurisdiction.

[24] The Ontario Divorce order varied the previous Confirming Order of the Supreme Court of Nova Scotia. This Order endorsed on September 24<sup>th</sup>, 2002 has been treated by Maintenance Enforcement as a final order.

[25] The order changed the amount payable, raising it from \$325 in 2000 to **\$579** (the Nova Scotia Table amount) commencing **July 1<sup>st</sup>, 2002** based on the belief that the respondent's total income for 2001 was **\$25,000**.

[26] Again, the respondent was required to provide a copy of his Income Tax Return and Assessment each year and provide notice to the applicant of any changes to his income or employment.

### **Child Support Termination Date**

[27] I have conflicting evidence about the proper date for the termination of child support for each child. Apparently, none of the children have entered and sustained post secondary education. The evidence on this point is minimal.

[28] The applicant's evidence suggests the following:

-oldest child was no longer dependant as of the end of **November 2005**. (Appendix 2, page 4) From December 2005 to the end of **June 2007** the respondent was responsible for paying for three children;

- the second oldest child was no longer dependant **after June 2007** (Appendix 2, page 8). Thereafter, the respondent was responsible to pay for two children up to and including **August 2009**. (Appendix 2, page12);

-the third oldest child was no longer dependant after September 1<sup>st</sup>, 2009; and

-The Maintenance Enforcement Program ceased taking payments from the respondent in **June of 2012**.

[29] A complicating factor is that in 2010, according to the mother, the youngest child lived with her for 10 months of the year and two months with the father.

[30] The father indicates that in either 2009/2010 the youngest child lived with him for several months from November to February. The father's evidence was supported by his partners testimony. That would amount to four months. Adjustments would have to be made to accommodate that factor.

### **The Mother's Calculations**

[31] The calculations prepared by the mother are based on the previous years salaries as recorded on his Income Tax Statement of Account from 2005 to 2011 and the changes which should have taken place in accordance with the Order in or about June of each year.

[32] She has accounted for and incorporated, at the appropriate times, the termination of the three older children when they ceased to be in school full time.

[33] In accepting when child support should end for each child, I have accepted the mother's evidence for a number of reasons.

[34] The father has arbitrarily used the age 18 which is not necessarily the appropriate age for termination.

[35] The mother appears to have accepted the earlier date as to when the children were no longer in school. The mother's date favours the father.

[36] Set out below is the actual income figures for the respondent incorporating the end dates as provided by the mother, the base amount based on actual income and actual deposits received based on Maintenance Enforcement records.

Year	Annual Income	# of Children	Base Amount Monthly	Base Amount Yearly	Amount Paid	Balance Owing/ Credit
2004	\$27,651	4	\$660	\$7,920	\$3,781.50	\$4,138.50 owing

2005	\$28,401	4 - 11 mths 3 - 1 mth	\$679 \$566	\$8,034	\$7,991.92	\$42.08 owing
2006	\$35,754	3	\$695	\$8,340	\$8,108.38	\$231.62 owing
2007	\$63,336	3 - 6 mths 2 - 6 mths	\$1,169 \$894	\$12,378	\$6,653.88	\$5,724.12 owing
2008	\$110,396	2	\$1,467	\$17,604	\$6,883.97	\$10,720.03 owing
2009	\$22,208	2 - 1 mth 1 - 11 mths	\$325 \$184	\$2,349	\$8,775.42	\$6,426.42 overpayment
2010	\$29,819	1 10months	\$266	\$2,660	\$931.10	\$1,728.90 owing
2011	\$105,231	1	\$879	\$10,548	\$3,539.33	\$7,008.67 owing
2012	\$60,791.	1 - to June 2012	\$513.	\$3078.	\$200	\$2878. owing
					TOTAL :	\$26,045.50 owing

[37] These calculations and the applicant's differ for various reasons.

[38] I have also reviewed the documentation provided. There are discrepancies between her records and the records of Maintenance Enforcement.

[39] The applicant's calculations with respect to what was deposited do not match the Maintenance Enforcement documentation. For example only:

- a) MEP records show a payment of \$174 for November 2005 that is not reflected in the applicant's calculations;

- b) MEP records show a December 2005 payment of \$348 rather than the \$318 in the applicant's calculations;
- c) MEP records show a payment for December 2007 of \$576 which is not reflected in the applicant's records;
- d) MEP records show a payment of \$1000 in February 2008 whereas the applicant's records do not;
- e) Her calculations for 2008 deposits reflect a total of \$2391.87 whereas the MEP records show total deposits of \$6883.97.

[40] This is not meant to be an all inclusive list of differences between the Maintenance Enforcement documents and the applicant's. Nor is it meant to be a suggestion that the applicant's documents are meant to be misleading.

[41] The applicant appears to have recorded payments when she received them; whereas, Maintenance Enforcement reports when they receive payments. The two are not necessarily recorded in the same month or at all.

[42] Where there is a discrepancy I accept the records of Maintenance Enforcement as the most accurate account of payments received absent sufficient evidence to modify the records of Maintenance Enforcement, (Sec. 35(2)(b) *The Maintenance Enforcement Act*. 1994-95,c.6)

[43] In addition, I have used the actual income from the current year given I had the advantage of having actual income figures in this retroactive analysis.

[44] While it is understandable that the applicant worked with the precise language of the order and used the preceding years income, the court has access to actual incomes which varied greatly year to year.

[45] In this history some previous years income would not create a viable order given the material changes that occur in the history of his income earning years.

[46] Creating arrears during periods of time he could not pay or could pay significantly more would be creating a fiction. I would then have to consider the retroactive possibility of a material change triggering a legitimate application to vary.



[47] The applicant used an incorrect annual income of \$67,112 for 2009. His actual income as accepted by Revenue Canada was \$22,208.

[48] Based on his actual income for 2009 using the figures presented by the applicant mother for two children living with her for eight months (January 1<sup>st</sup> to August 1<sup>st</sup>, 2009) at \$325 per month results in a figure of \$2,600 and for one child for the remainder of the year (September 1<sup>st</sup>, 2009 to December 31<sup>st</sup>, 2009) at \$184 per month for an amount of \$736 for a total of \$3,336.

[49] If one were to use the date proposed by the father for the third child, it would be in the month of February and not in the month of August as proposed by the mother.

[50] I have chosen the mother's dates in this circumstance given that the end of June would be the end of the school year.

[51] The respondent states (paragraph 29) that it was in 2009 that the youngest daughter Erica moved to Nova Scotia and lived with him for a number of months. They arranged for her to enroll in the local school. She did not adjust well to living in a rural setting and returned to Ontario.

[52] The payor's current wife's affidavit (paragraph 23) advises it was Erica who lived with them when she was 16 years old from November until February.

[53] The mother stated in her statement that Erica lived with her father for November and December of 2010 and returned to her in January of 2011. There is a discrepancy in the evidence as to whether she returned in January 2011 or February 2011.

[54] I accept the mother's evidence on this point as her evidence regarding the time and dates for children living with her and finishing school have been more precise.

[55] In 2010, the payor earned \$29,819. One child was dependant. Base support should have been \$266 per month for the 10 months that the child lived with the mother.

[56] He should have paid \$2,660; he actually paid \$931.10 for a balance \$1,728.90.

*Factors to consider*

[57] In **D.B.S. v. S. R.G.**, the court is directed to consider a number of factors when asked to consider a retroactive award, including the conduct of the payor; the delay in making the application; the benefit to the children; and whether the retroactive award causes undue hardship to the payor parent.

[58] There are many reasons for caution in moving beyond the three year period stipulated by the Supreme Court analysis.

[59] The court's caution when considering retroactive awards is related to the possible hardship to a payor parent in ways a prospective award would not.

[60] It is not always appropriate for a court to enforce this obligation once the relevant time period has passed. ( paragraph 95)

[61] In this case there are a series of personal circumstances that ought to be considered.

[62] It is not reasonably possible on the evidence to consider with accuracy the short periods of time when two of the children were flown to their father's residence to live for short periods of time and then flown back.

[63] Other factors include the status of the children in the home of the payor parent during the period time of retro activity from 2004 forward; and their conditions, needs, circumstances and hardships that may have occurred, including flooding and damage to the residence in which the payor's children lived during the time in which the payee seeks to have this retroactive analysis.

**Going Beyond a Three Year Retro-Active Award**

[64] The court also must be concerned with blame worthy conduct.

[65] In **D.B.S. v. S. R.G.**, the court instructs that a court can go beyond the three year period when there is conduct such as where the payor parent may have intimidated or lied to the recipient parent or withheld information *or failed to disclose a material change in circumstance including a increase in income that would alter the amount of child support payable. That in itself is considered blame worthy conduct which would move the presumptive date of retro activity back to a time when circumstances changed materially.* (paragraph 124)

[66] There is mixed evidence in this case.

### **Timely Disclosure**

[67] The applicant advises that the respondent has not been forthcoming with reporting changes to his income. She advises that she first made efforts to change, the child support order by consent in 2008.

[68] She retained the services of a lawyer in July 2008 to obtain a varied order to replace the 2002 order and to address the changes in the children's circumstances. They recalculated the child support contributions and she presented this draft to the respondent personally in August 2009

[69] The respondent did not sign the order or respond to her lawyer. The court does not have details of this order.

[70] The applicant indicates that had he signed the draft order, the arrears would have been realizable and she would not be restricted to the presumptive three year retroactive analysis. She argues that she was as diligent as she could be.

[71] This attempt resulted in legal costs to the applicant of \$4000.

[72] She also advises she received information from the ISO officer suggesting (incorrectly) that she would need to have a lawyer to make an application to vary and obtain the changes she sought. The costs of that were prohibitive.

[73] She indicates that had he signed the draft order the arrears would have been realized and she would not be restricted to the presumptive three year retroactive analysis. She argues that she was as diligent as she could be.

[74] Any changes would have to be accomplished provisionally through the reciprocal process given their differing jurisdictions. This process is inherently problematic.

[75] The respondent and his wife suggest that the applicant was in fact aware of the income fluctuations because his income information was attached to her affidavit. Both the respondent and his wife advise that when she made enquiries they responded even though it may not have been in accord with the court order.

[76] The first order (a confirming order from Nova Scotia) in 2000 stated that the respondent **shall provide** a copy of his Income Tax Return and Notice of Assessment each and every year by June 30<sup>th</sup>. This is a positive duty to provide whether or not the applicant reminds him or asks for his disclosure.

[77] The Order from the Ontario Superior Court of Justice, Family Court dated September 24<sup>th</sup>, 2002 also required the respondent to provide a copy of his return and assessment in the same manner annually.

[78] In the analysis to **D.B.S. v. S.R.G.** ( paragraph 54) we see there is a positive duty on parents to support their children in a way that is commensurate with their income. *“This concomitant right to support, exists independently of any statute or court order.”*

[79] A payor parent has the obligation under the federal regime (and this case is a divorce variation) to increase his/her child support payments when his/her income rises. Thus, the court describes more accurately a retroactive award as imposing an obligation that existed at the time a child support award in an amount commensurate to his/her income.

[80] The court confirmed that it is the responsibility of both parents to ensure the payor parent fulfills his/her actual obligation, in the absence of that the court may award an award that corrects this failure.

[81] In this case the applicant did make efforts to ensure there was a child support order that reflected the parents ability to pay. This was accomplished at some expense to herself. The respondent did not .

[82] The respondent had the benefit of an order for child support based on an income in 2000 of \$15,000 and in 2002 an income of \$25,000.

[83] As the chart in paragraph 36 indicates, these incomes reflect the least amount of income he earned in any one year except for 2009.

[84] In a three year analysis in the 2009 year, the respondent would receive the benefit of a retroactive analysis of a reduced income and therefore a reduced payment.

[85] For all other years from 2004 forward, his income was actually higher than 2002 and significantly higher in 2007- \$63,336; 2008-\$110,396; and in 2011 - \$105,231.

[86] A retroactive analysis three years back will adjust with some equity for 2011; **however**, it will not compensate the mother for the many years when she supported their three children at a time when the respondent was not contributing according to his ability to pay. A three year retroactive analysis would produce an inequity.

[87] A three year retroactive analysis is prohibited for the three children who were no longer dependant at the time of the application. However harsh this reality, the mother simply has to bear her losses in this regard.

[88] On the other hand, a three year review for the last child will result in the respondent being compensated for an overpayment in 2009 (when his income reduced drastically) but will not correspondingly call him to responsibility for his significant underpayment in 2008.

[89] The respondent in his evidence acknowledged that he did fall behind in his maintenance payments when he was without work and between jobs. He emphasizes that he attempted to keep his child maintenance payments current and did not apply for a variation to reflect his reduction in income.

[90] A variation in most years would have resulted in a larger payment.

[91] The respondent notes a number of other factors that influenced his ability to pay:

1. He had three children in his current relationship, two of whom are from a previous relationship and one child who is now 14 years old living with him and his current partner. This is in addition to the four children who are the subject matter of this proceeding;

2. His employment clearly fluctuated;

3. He responded to any requests for Notices of Assessment, although he did not provide them as required by the order. Paragraph 15 of his affidavit notes that it was the information that he had provided over the years that was attached to the applicant's affidavit;

4. He alleges he has incurred significant access costs over the years, driving to Ontario to pick them up or flying them both ways to visit him;

5. He advises a flash flood in 2008 destroyed his home and car. While the car was covered by insurance, the repairs to the home was not; and

6. A recent injury requiring physiotherapy put him off work. He was receiving Employment Insurance sick benefits for approximately 15 weeks. His family is assisting him.

[92] The payor's current wife has been living with Mr. MacFarlane since 1998. They were married on July 14<sup>th</sup>, 2007 and have one child together.

[93] She has two children from a previous marriage, one of whom continues to live with them.

[94] This witness has been the contact between the payee and the payor. She testified that when asked, she provided the information as the payor travelled in order to obtain employment.

[95] She confirms that the payor also provided money for driver's tests and driver's education and some money on two occasions in 2012 when the payee had no money for water.

[96] She confirmed that the payor has been unable to go back into the mine since March 2012. He suffers from a lot of pain, they have had money problems and that he has been in the hospital emergency on a number of occasions.

[97] The respondent was diagnosed with H Pylori of the esophagus and once medicated began to feel significantly better and is able to work. His sick benefits ran out in July 2012.

[98] They have cashed in their RRSP and that has been spent maintaining them. She advised that they have topped up their line of credit and they have eventually filed for Social Assistance.

[99] She will have been off work for two years in February 2013. She advises she is off for chronic pain. There is no medial information filed respecting her circumstances.

### **Retroactive Review**

[100] The court must look at a retroactive analysis for the child who is a dependent child at the time of the application.

[101] From February 2012 to June 2012, the youngest child remained dependent.

[102] With respect to her, the court can look at a retroactive assessment at least back for three years.

[103] The court can look further if there is blame worthy conduct and in consideration of the other three factors set out in **D.B.S. v. S.R.G.**

[104] The arrears as of December 31<sup>st</sup>, 2004 on the existing order were \$4,490.

[105] Subsequently on December 21<sup>st</sup>, 2011, the enforcement officer for the Department of Justice, Province of Nova Scotia, forwarded to Mr. MacFarlane a

letter which advised that the Nova Scotia Maintenance Enforcement records show a credit owing to the respondent as of August 8<sup>th</sup>, 2012 in the amount of \$552 **based on the then current order which was based on the income he earned in 2002.**

[106] They advised as follows:

Re: M.E,P case 12028

The reciprocating jurisdiction has recently provided us with a statement of account, which includes direct payments made to the recipient by you in the amount of \$2,100.00 **Please note that the reciprocating jurisdiction also charged \$100.00 against you because of the direct payments.** This will not be done in Nova Scotia. Given the posting of these funds, your file is now in a significant credit position. As of this date there is a credit of \$2,048.00.

Therefore, no further payments will be required on this file for a period of nine (9) months. The next payment which will be due will be in October 2012 and will be in the amount of \$72.00. After October 2012, your regular monthly payment of \$212.00 will be due and owing each month.

[107] If there could be a retroactive analysis back to 2004 (as envisioned by the applicant) based on actual income, the payor would owe \$26,045.

[108] A retroactive analysis completed by the applicant yielded arrears of \$14,966.43. However, as mentioned earlier, her calculations were problematic.

[109] If the court restricted itself to a retroactive analysis for the youngest child only back to February 2009 (three years prior to the application), the respondent would owe \$2,780.15.

[110] If, however, I concluded that there was blameworthy conduct, how far back should that retroactive analysis go?

[111] The review should balance the equities, consider the circumstances and attempt to be reasonable and fair having regard to the rights and responsibilities of each parent.

[112] When the respondent failed to adjust as required for peaks in his income, the children did not then receive support according to his ability to pay and they did not share in the life style afforded by the income he earned as is their right.



[113] Correspondingly, when a parent does not support in accordance with the guideline amount or adjust for increases in their income, this leaves to the other parent the responsibility to meet the children's needs without contribution in accordance with the guidelines.

[114] While the respondents's income increased substantially in 2007, the peaks were in 2008 and 2011. All other years, except for 2009, exceeded the original salary used to calculate his obligations.

[115] In addition, over the years the obligations reduced as did the number of dependant children in the mother's household.

[116] Balancing all evidence, I order a retroactive adjustment to January 2008, one year beyond the three year presumptive analysis having found that there was a failure to abide by the court order and active avoidance of a variation that would have adjusted the respondent's responsibilities accordingly.

[117] A four year retroactive analysis would result in the respondent owing \$15,909.

## **Conclusion**

[118] The respondent is experiencing hard times in an employment market that is not favourable. He has what appears to be some health concerns. His previous employer holds out hope he will be re-employed. He has other children to support.

[119] However, there has been no variation since 2002 and an award in the amount that would reflect on his actual income would be a hardship to his family even though it was clearly a hardship to the applicant at a time when she was entitled to a review of child support.

[120] I conclude there was blameworthy conduct as described in **D.B.S. v. S.R.G.**.

[121] The arrears in child support for the child who was dependant at the time of the application are payable with retroactive adjustments to January 2008. They are fixed and payable subject only to credits for actual direct payments made.

[122] I have received verification that the respondent's family received social assistance for October and November 2012.

### **Late Disclosure**

[123] I have received late filing (May 1<sup>st</sup>, 2013), 2012 income information from the respondent's counsel.

[124] A T4A from Great West Life (statement of pension, retirement annuity and other income) showing taxable benefits paid in the amount of \$22,497 (tax withheld in the amount of \$5,027.); an RRSP contribution payment to TD in the amount of \$795.20; a T4RSP in the amount of \$2,294 and a T4 employment income of \$36,000. This employment income comes from his most recent employer, Cementation.

[125] The total received in the 2012 year without considering social assistance is \$60,791.

[126] His employer provided a letter advising that the respondent has been off work since March 12<sup>th</sup>, 2013. The project where he previously worked had no positions at the time of the February 2013 letter. However, they are making every effort to find the respondent employment at another Cementation project.

[127] The respondent projected his 2012 income in court at \$15,000. The youngest child remained dependant until June 2012.

[128] The revised figures based on his actual income would be \$513 per month adjusting the 2012 arrears to reflect \$3,078 owing, less amount paid which was \$200, for a balance of \$2,878.

[129] The respondent estimate of 2012 grossly underestimated his income.

[130] I still do not have the disclosure required, a full and complete copy of their Income Tax Return.

[131] His family also received social assistance payments from the province of Nova Scotia for October and November are \$3,307.

[132] I have not included this in his 2012 income as I have no accurate method of determining the breakdown of that number to determine how much of that represents assistance for the payor independent from his wife and family.

[133] While on social assistance he is unable to pay down the arrears. Once re-employed he will be able to contribute to the arrears.

[134] The arrears are now set at \$15,909 subject only to the following adjustment:

The respondent provided proof of direct payments made in the 2011 and 2012 year. These direct payments were requested by the Applicant. The Ontario enforcement office penalized the respondent \$100 for paying directly.

I am unable to determine whether the respondent was credited with all direct payments made specifically for child support.

The deposits in evidence are for April, May, June, August, November and December 2011 and February, March 2012 (water payments). The total direct deposits in evidence before me total \$4,690. This includes one deposit where the date is illegible and two deposits for the Applicant's water bill. (i.e. not child support)

**[135] The respondent shall be given credit for direct payments of child support.**

[136] For any other voluntary payment (such as the February and March 2012 payments of \$260.) where the evidence supports these were paid to assist the applicant due to the fact she had to pay a water bill, these are distinct and not in substitution for support payments.

[137] Therefore, this should be sent back to Maintenance Enforcement and there should be discussions between the Nova Scotia office and the Ontario office to determine what if any credit was given to the respondent for the direct payments and whether these direct payments were considered in the calculation of the arrears.

[138] The deposit slips presented by the respondent show when money was taken out of his account. They also note they are generally processed the next day. Most

of the payments went to a common account number and some of the slips bore the applicant's name

[139] The respondent shall provide to the applicant and the Maintenance Enforcement Program within 48 hours of finding employment (part or full time), full particulars of his earnings and benefits.

[140] He shall provide to the applicant and Maintenance Enforcement each year on or before June 1<sup>st</sup>, full particulars of his preceding yearly income as long as arrears exist. This disclosure shall include full Income Tax Returns together with Schedules of Income whether filed with Revenue Canada or not, together with year to date income verified by source.

[141] He shall also provide copies of his Notices of Assessment and Re-assessment until the arrears are paid in full.

[142] Reasonable legal costs borne by the applicant associated with obtaining this disclosure in the event the respondent fails to disclose as ordered shall be recoverable by the applicant.

[143] Upon finding employment the respondent is under an obligation to notify Maintenance Enforcement and to make arrangements to repay these arrears in a manner either agreed upon by the parties and failing that through the ordinary efforts to enforce.

[144] Either party may apply to the court for a determination as to the manner of repayment in the event there is no agreement.

Moira C. Legere Sers, J.