SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: Cormack v. Cormack, 2012 NSSC 398

Date:20121122
Docket: 1201-063444
Registry: Halifax

Between:

Christina Cormack

Petitioner

v.

Dean Michael Cormack

Respondent

Judge:	The Honourable Justice Moira C. Legere Sers
Heard:	September 19, 2012 in Halifax, Nova Scotia
Counsel:	Kenneth Armour for Christina Cormack Patrick H. MacMillan for Dean Cormack

By the Court:

[1] By Petition dated March 30, 2009 Christina Cormack commenced a divorce proceeding.

[2] The respondent Dean Michael Cormack, did not file an Answer until directed to do so by Pre-Trial Memorandum dated September 4, 2012. His Answer was filed on September 12, 2012.

[3] The parties were married on September 6, 1997 and separated in July of 2007.

[4] There are three children of this union: Anna Suzanne, born June 16, 2000; Alexander Michael, born June 16, 2000 and Emily Christina, born August 26, 2004.

[5] There have been Interim Orders dated December 19, 2007; January 29, 2008; September 12, 2008; October 16, 2008 and February 17, 2009.

[6] By Interim Order dated February 17, 2007 the petitioner was granted sole custody of the children.

RELIEF

Divorce

[7] I am satisfied that the jurisdictional elements in this Petition for Divorce have been satisfied and that there has been a breakdown of the parties marriage pursuant to section 8(2)(a) of the Divorce Act. I grant the divorce on that basis.

[8] The petitioner is seeking sole custody; defined access for the respondent; prospective and retroactive child support; contribution to section 7 expenses and an unequal division of property.

[9] The parties were represented by counsel at the pretrial conference at which time the court was informed by their counsel that property and custody matters

were settled except for the division of the remaining assets, the van and the pension.

[10] The petitioner sought division of the value of the van and a payment to her for her share of the value of the van. She proposed that the parties had an agreement that the respondent would pay her $1,500 for the van. The respondent disagrees.

[11] In his Answer filed September 12, 2012 the respondent asked for access and a division of assets including the petitioner's pension.

[12] He is asking for forgiveness of any retroactive arrears.

[13] While this matter was heard September 19, 2012, by letter dated October 30, 2012 the court required further evidence to address the respondent's income and the child care costs.

[14] The parties filed further submissions and subsequently informed the court by letter dated November 13, 2012 they had settled the issue of child support arrears and pension division.

[15] They have agreed that the arrears as noted by Maintenance Enforcement in the amount of $2307.73 are enforceable and payable at a rate of $50.00 per month until paid in full.

[16] The respondent waives his entitlement to a division of the petitioner's pension in return for which the petitioner waives any retroactive adjustment and enforcement of the base amount and special expenses other than the current arrears as noted above.

[17] In reference to the latest order as it relates to access and custody, the respondent states as follows at paragraph 7 in his affidavit of September 12, 2012:

> ...I would like the Corollary Relief Order to reflect that Wednesday pickup will occur after school, or at 3:30 p.m. on days where the children are not in school.

[18] At paragraph 8:

> ...I would like the Corollary Relief Order to reflect that Friday pickup will occur after school, or at 3:30 p.m. on days where the children are not in school.

[19] And at paragraph 9:

> I am otherwise satisfied with the current parenting time schedule, and the provision for additional reasonable access and holiday access.

[20] Having said he was satisfied with the order at the pretrial, in his affidavit he states at paragraph13: “I would like joint custody to ensure I have actual input on major decisions”.

[21] As well, in reference to daily phone calls, he states at paragraph 10: "I would prefer that the Corollary Relief Order allow for daily phone calls but not specify the time."

[22] In relation to summer access, he states at paragraph 11:

> ...the Respondent allowed my (summer) Wednesday night access to be extended, and I had the children from 4:30 p.m. Wednesday to 12:00 p.m. on Thursday. I am hopeful that this change can be incorporated into the . . . order.

[23] He asked that the counselling clause be deleted from the order as he advises he no longer needs counselling.

[24] The petitioner wishes to maintain the status quo on custody and access until the respondent shows some consistency and punctuality in exercising his access.

[25] She is prepared to set a firm time for pick up for greater certainty and she is prepared to extend the weekly access in summer to overnight as requested.

[26] She wishes to impose a half hour grace period for pick ups. Beyond that margin she wishes the respondent to forfeit his access for that day.

Custody/Access
Latest Order (hearing in April 2009) dated November 23, 2009

[27] The petitioner moved out with the children on November 1, 2007.

[28] The respondent agrees that after the order dated November 23, 2009 the petitioner exercised primary care.

[29] The latest order governing these matters is an order of Justice Douglas Campbell dated November 23, 2009. Both parties were represented by counsel.

[30] Justice Campbell had the benefit of an Assessment Report prepared August 22, 2008 by the IWK Health Centre to assist with resolution of the custody and access issues. This study was prepared subsequent to separation.

[31] The parties did not object to this being part of the evidence in this proceeding. I recognize this is a dated study.

[32] The recommendations included the following:

> 5. [The respondent] would benefit from a thorough psychiatric assessment;
>
> 6. [The petitioner] continue to receive therapy, and that this focus on [the petitioner's] history of involvement in abusive relationship and dependency issues. It is recommended that a copy of this report be provided to her therapist;
>
> 7. [The petitioner] would benefit from parent education and support aimed at decreasing her use of physical discipline and learning alternate child management strategies.
>
> 8. [The twins] continue to receive therapy and that a copy of this report be provided to their therapist.

[33] Further recommendation #1, page 52:

> 1. These children be placed in the custody of their mother as their primary caregiver;

[34] The assessor found that the mother was in the best position to promote a relationship with the children's father and to make decisions that were in the best interests of the children.

[35] Further recommendation #2, page 52:

> 2. These children have access with their father every second Saturday plus one evening per week;

[36] The assessor recommended that the location for transfer should change from the matrimonial home to a more neutral and less emotionally charged location.

[37] Further recommendations #3 and #4, page 52:

> 3. [The respondent's] access with his children be supervised by a neutral third party which is agreed upon by both parties;
>
> 4. [The respondent] continue to receive therapy, and that a copy of this report be provided to the therapy in order to focus on identified areas of difficulty for [the respondent];

[38] I am concerned about the privacy of these parents and their children .

[39] These decisions are part of the public record and once published expose the family to lifelong public scrutiny.

[40] For this reason I will indicate that I have carefully read the assessment and the recommendations, considered this report in the context of the family history and make reference in particular to the comments in recommendation 4 (page 52).

[41] I also refer specifically to the formulation at page 50 and 51 and in particular paragraphs 1, 2, 3 , 4 ,6 and 7.

Counselling

[42] Both parties indicate that the therapeutic intervention has taken place.

[43] The petitioner would wish a clause to remain in the agreement indicating that she is able to take the children to counselling in the event it is necessary in the future. As the child's primary care taker, she will be able to do that in any event without the need to have the respondent's consent or court order.

[44] The respondent indicates that he has been told that he does not need to come back to counselling.

[45] The court has no information with respect to the results of therapy and whether that therapy has resulted in a change in behaviour or improvement in insight.

Communication

[46] The petitioner wishes the children to have a relationship with their father. Her complaint relates to the fact that there are occasions when he does not show up, does not call and, more often, occasions when he is late in exercising access.

[47] The petitioner's evidence indicates that since 2009 the respondent has moved ten times.

[48] She has had difficulty obtaining the father's telephone number and address. He has not been forthcoming in providing them upon moving. She is unable to contact him to make simple arrangements; for example for school trips, etc. because he is not reachable.

[49] On one occasion, she had to refuse to let the children go with him until he provided his updated address and telephone number. He has been late and he has returned the children late, keeping them on one occasion until 9:00 p.m. after a 6:30 p.m. deadline.

[50] The respondent has not always been available to communicate by phone and in the weeks leading up to the hearing did not return telephone calls.

[51] Requiring his consent on any particular issue, in the event the mother is unable to contact him, would be unreasonable.

[52] The parties were currently communicating by email, telephone and text messaging two weeks prior to the application.

Major Decisions

[53] The petitioner advises she has not made any major decisions without his consent.

[54] The respondent has not provided information or evidence to support his contention that he has not been consulted or that there is a difficulty with the current order.

[55] The evidence confirms that the parties agree that primary care of the children shall be with the petitioner.

[56] I am not satisfied that a change in the current order is in the best interests of the children.

[57] The most reasonable approach that would accord with the evidence and the respondent's availability is as stated by Justice Campbell in the following clauses in the current order.

> 2. The Applicant shall be the primary caregiver of the children of the marriage.,.
>
> 3. The Applicant shall not make any major developmental decision regarding the Children's education, religious upbringing, medical treatment, province of residence or other general determination without first attempting to engage in meaningful consultation with the Respondent.
>
> 4. The Respondent shall have access to the Children **every second Friday from 3:30 p.m. (my change) until 5:30 p.m. Sunday.** The Respondent shall pick up the children either from the school they attend at the end of the school day and after any organized recreational activities in which they participate are completed or from the child care giver or mother and return the Children to the residence of the Applicant

5. The Respondent shall have access to the Children every Wednesday evening **from 3:30 p.m. (my change)** until 6:30 p.m.

[58] The tweaking that is required for the purposes of this order is confirmation as to timing of pickup for the respondent for his weekend and Wednesday evening visit, after school or at 3:30 p.m. whichever is earlier until 6:30 p.m. under the same terms and conditions as is set out in paragraph 4. I have extended the time to 6:30 p.m. Wednesdays to account for the short turnaround and the requirement that the respondent feed the children supper.

[59] I add the following:

> If the respondent is unavailable for Wednesdays access or any other access, he shall immediately inform the petitioner and he shall make suitable arrangements in advance to ensure the safe pick up and delivery of the children to their mother's home.
>
> The petitioner shall regularly keep the respondent informed of the children's extra curricular activities to assist in timely pickups and returns.
>
> In the event of the respondent's failure to exercise access with punctuality (½ hour grace on returns only) and consistency to ensure the safety of the children, this matter may be returned to the court to vary access times and frequency.
>
> In the event of a storm or emergency, the respondent shall provide immediate personal and direct notice in advance to the petitioner if he is late to ensure they may agree on remedial action to address the storm or emergency.
>
> The petitioner and respondent shall keep each other informed of any changes in address and exchange telephone numbers and changes in telephone numbers where each can be reached directly.
>
> They shall answer messages respecting the children as soon as reasonably possible.

[60] The petitioner shall continue to consult the respondent on extra curricular activities and if he is available, shall obtain his opinion.

[61] Day to day decision making shall rest with the petitioner and consultation on major issues shall take place, if possible, before she makes the decisions she determines reflect the best interests of the children.

[62] The parties agree that every Wednesdaythe respondent shall provide the children their supper .

[63] During the summer, commencing in the month of July, the Wednesdays shall include overnight.

[64] For greater definition, the conditions imposed by Justice Campbell in paragraph 6 shall apply.

[65] If the respondent's weekend access should occur when either Friday or Monday is a statutory holiday, his access to the children shall be extended for the approximate 24 hours.

[66] The parties have agreed that they have not specified holidays other than as stated in paragraph 7 of the order and, therefore, they shall share reasonably and equally the Christmas holiday and school breaks.

[67] The respondent shall have additional reasonable access on reasonable terms with reasonable notice and mutual agreement of the petitioner and the respondent.

[68] I will incorporate paragraph 9:

> 9. The Respondent is entitled to attend at least 50% of each extracurricular activity of each of the Children. The Respondent shall notify the Applicant by email not less than 24 hours prior to such an activity with his request to attend the activity. The Respondent may not attend an extracurricular activity in excess of this 50% allotment without the Applicant's consent. The Applicant is entitled to attend any or all of the Children's extracurricular activities. The Respondent shall facilitate the Children's commitment to extracurricular activities that take place during his weekend access, which will form part of the Respondent's 50% allotment.

[69] I incorporate paragraphs 10 and 11 with minor changes:

10. When either the Applicant or the Respondent does not have the Children in his or her care for an overnight period, she or he is permitted to call the Children once daily **at least one hour before bedtime.** These calls are not to interference with the Children's bedtime regime.

11. Both the Applicant and the Respondent shall have access to all reports regarding the Children held by third party service providers.

Child Support /Section 7 Expenses

[70] The November 2009 Order relating to child support and section 7 expenses are as follows:

14. The Respondent shall pay child support to the Applicant in accordance with the Federal Child Support Guidelines for three children in the amount of $411.00 per month, starting May 1st , 2009. This amount shall be payable in two instalments of $205.50 to be paid to the Applicant by the Respondent on the first and fifteenth of each month.

15. The Respondent shall pay 25% of the after-tax childcare costs the Applicant is currently incurring for the Children, which will require a payment from the Respondent to the Applicant of $137.00 per month, starting May 1, 2009.

[71] The petitioner asked for a retroactive reassessment back to May 1, 2009.

[72] While the parties have subsequently agreed to resolve this issue, these calculations were completed before their agreement was reached. I accept their agreement on these issues. I include my findings to avoid further difficulties should an application to vary seek to address these issues in the future.

The Petitioner's Yearly Income

[73] The applicant/petitioner's income in November of 2009 was said to be $34,000. The Notice of Assessment shows actual income of $39,998 inclusive of the Canada Child Tax Benefit.

[74] For the 2010 year, the petitioner's assessment shows income from all sources of $34,429; $30,354 in 2011; and in 2012 to the date of September 7, 2012 she earned $25,903.56.

[75] In 2012 she receives long term disability biweekly gross of $994.76.

The Respondent's Yearly Income

2009 Income

[76] For the purpose of the order in April 2009, the respondent declared income of $20,784.

[77] At the final hearing the respondent did not provide his 2009 Income Tax returns.

[78] Subsequently and at the request of the Court, he filed his T4s showing total income of $12,889.73.

[79] I have a 2010 T4 from Carsville Limited for the respondent showing income of $54,747.56.

[80] The respondent explains this as follows.

[81] In 2009 he was a cleaner for ASL. At the April hearing he thought his income was approximately $20,784.00.

[82] The actual T4s from ASL show his yearly income for 2009 at $10,387.68 and a total income for 2009 at $12,889.73, considerably lower than he first thought.

2010 Income

[83] The respondent then experienced a period of unemployment where he fell in arrears. He was unemployed for a while, collected $2,842 in Employment Insurance Benefits which he had to repay because his 2010 income was $54,747.00.

[84] This income from Carsville Limited was commission based, resulting in what he says were months without income. When he did receive commissions, Maintenance Enforcement garnished his pay. He advises he was constantly in economic stress.

2011 Income

[85] For 2011, he shows income of $19,260.65 from Carsville Limited. In total with Honda Canada and EI Benefits ($5,229.00), the respondent earned $29,208.20 for the 2011 year. Again no Income Tax Return was filed.

[86] He became employed at Colonial Honda, worked there for three months and left because he found the commission base system too stressful.

2012 Income

[87] The respondent prepared a statement dated August 22, 2012 indicating his annual income as $25,320.10.

[88] In March of 2012 he obtained a job as a superintendent He receives $17,640.64 plus a free apartment which is considered a taxable benefit, for which he receives a credit of $7,679.46, raising his taxable income to $25,320.10.

[89] His own income statement prepared in August of 2012 (and affidavit) shows a monthly income of $2110.01 which yields an annual income of $25,320.12 .

[90] Counsel however appear to use his income without considering the taxable benefit yielding a base amount of child support of $419.00 per month.

[91] If one considers the taxable benefit the respondent receives due to his employment and reduction in rent, his income as declared in his statement is $25,903.56. This actually yields a monthly payment of $502.00 for three children.

[92] I have no explanation why they choose the lower amount or how that could be considered to meet the reasonable needs of the children.

[93] The respondent advises he can not afford a vehicle, found it difficult to commute to work from his home base and he left this job in 2011.

[94] His current job allows him to live close to his children and he is unable to afford a car.

[95] He argues that as a result of his fluctuating employment situation, the accumulation of arrears and garnishment has created undue stress.

[96] This is a factual issue that arises due to the respondents historic failure to provide full disclosure. Indeed, even after the courts additional direction post hearing to provide full financial disclosure for the 2012 year, I have no documentation that confirms that the dollar figure counsel agree upon as his income for child support purposes actually includes the taxable benefit.

[97] Therefore, the annual income for the purposes of determining child support shall be $25,320.00 yielding a monthly payment of $502.00.

[98] The order shall contain the clause indicating that no later than June 1st of each year, both parties must provide each other with a full copy of his or her income tax return, completed and with all attachments, **even if the return is not filed with the Canada Revenue Agency**, and also provide each other with all notices of assessment and reassessment from the Canada Revenue Agency, immediately after they are received.

[99] As well, in the absence of filing, the party who fails to file and exchange the above noted information shall pay the reasonable legal costs incurred by the other parent in order for them to obtain this information from the parent who fails to provide it.

Calculation of Arrears

[100] As of September 2012, based on the current order the respondent was in arrears in the amount of $1,825.45 plus administrative fees of $482.28 for a total of **$2,307.73.**

[101] As a result of financial disclosure depicting a change in income for the years 2010 to 2012 inclusive, the petitioner believes the respondent is in arrears of child support in the amount $11,775.73.

[102] My calculations differ.

[103] In 2009, had the Court had his actual income of $12,889.00 the respondent's child support payment (base amount) ought to have been $189.00. (It was the responsibility of the respondent to provide correct numbers.)

[104] This resulted in an overpayment for eight months starting May 1st of $1,776.00.

[105] In 2010, based on the respondent's income of $54,747.00, his base amount of support ought to have been $1,021.00, for an underpayment of $7,320.00.

[106] In 2011 based on the respondent's actual income of $29,299.00 his base amount ought to have been $584.00 for an underpayment of $2,076.00.

[107] For 2012 based on the respondent's projected income of $25,320.00 his base amount ought to be $502.00 for an underpayment of $1,001.00 for 11 months.

[108] His total underpayment of $10,397.00 less the 2009 overpayment of $1776.00 for 2009 and the credit of $2,123.02 reflecting an overpayment of section 7 expenses results in total arrears of $6,497.98 rounded to **$6,498.00.**

[109] I understand that generally speaking the courts only review three years retroactively.

[110] In this case, the applicant herself asked for a retroactive reassessment. With this amount of arrears in relation to the salaries of the parties and their obligations, it would be unfair to ignore the 2009 overpayment subsequent to the last court order heard in April 2009.

[111] Having reviewed these calculations the parties have agreed to waive these arrears, incorporate only the Maintenance Enforcement Program arrears and waive pension entitlement.

Overpayment of Section 7 Expenses

[112] The petitioner has calculated that the respondent has overpaid section 7 contributions so that as of September 2012 the respondent, according to the applicant's calculations, would be entitled to a credit of $2,123.02.

[113] No contradictory evidence was led and this figure was not challenged.

[114] The petitioner argues for ongoing contribution to section 7 expenses by way of Excel and sporting activities including soccer, band and majorette.

Extra Curricular Activities

[115] Anna Cormack is a competitive twirler with the Society of Nova Scotia Baton. Her annual registration is $175.00 with weekly dues of $9.00; clothing and outfits at $140.00; batons at $45.00; dance shoes at $90.00 and four mandatory local competitions per year at $160.00.

[116] In addition, due to the level of competition she has achieved, she would be expected to attend several away competitions which would include further travel, competition fees, hotel and food expenses.

[117] The parties have agreed and I order that the parties share equally the weekly gym fees associated with their child’s participation with the Society of Nova Scotia Baton.

Child Care

[118] Again, I went back to counsel for clarification as to the existence, the amount and the need for child care expenses.

[119] The petitioner was employed from June 2001 to May 2010.

[120] She took maternity leave (a child born of her current union) from May 2010 and then went immediately to disability benefits due to injuries sustained after delivery. Her benefits end September 2013. A back to work schedule is being put in place for January 2013.

[121] The petitioner has therefore been a stay-at-home mother since March 2010.

[122] She continued to enrol Emily in Excel in 2011 and to June 2012.

[123] Section 7 of the Federal Child Support Guidelines states as follows :

> 7. (1) In a child support order the court may, on either spouse's request, provide for an amount to cover all or any portion of the following expenses, which expenses may be estimated, taking into account the necessity of the expense in relation to the child's best interests and the reasonableness of the expense in relation to the means of the spouses and those of the child and to the family's spending pattern prior to the separation:
>
> (a) child care expenses incurred as a result of the custodial parent's employment, illness, disability or education or training for employment;
>
> (b) that portion of the medical and dental insurance premiums attributable to the child;
>
> (c) health-related expenses that exceed insurance reimbursement by at least $100 annually, including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy and prescription drugs, hearing aids, glasses and contact lenses;
>
> (d) extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child's particular needs;
>
> (e) expenses for post-secondary education; and
>
> (f) extraordinary expenses for extracurricular activities.
>
> (2) The guiding principle in determining the amount of an expense referred to in subsection (1) is that the expense is shared by the spouses in proportion to their respective incomes after deducting from the expense, the contribution, if any, from the child.

[124] Prospectively, child care expenses are not payable during any periods of time when the mother was not working unless she has made a case for this expenses based on a disability.

[125] On a go forward basis both children are in school. While the petitioner is home, there is no need to have the children enrolled in Excel program **or other child care provider unless there is evidence on which the court can properly assess the need, the best interests and the elements outlined in the legislation.**

[126] When the petitioner returns to work, then the child care with respect to the three children who are the children of the respondent is payable.

[127] The order required a contribution to child care expenses at 25% of the designated section 7 expenses.

[128] Should the mother wish more than a 25% contribution for such a future possibility she shall first attempt to reach agreement with the father or make application to vary presenting sufficient details to prove the claim.

Retroactive Support

[129] The case law on retroactive child support is well known. Factors that the court has to consider are outlined in **DBS v. SRG** 2006 SCC 37 ([2006] 2 S.C.R. 231).

[130] The Court noted that:

> Parents have an obligation to support their children in a manner commensurate with their income, and this obligation and the children's concomitant right to support exist independently of any statute or court order.

[131] The Court concluded that the fact that there is a court order:

> ... does not absolve the payor parent -- or the recipient parent -- of the responsibility of continually ensuring that the children are receiving an appropriate amount of support.

[132] The Court concluded that:

> ... where payor parents are found to be deficient in their support obligations to their children, it will be open for the courts ... to vary the existing orders retroactively.

[133] The Court directed a holistic view based on the merits of each case. Certainty in payment must be balanced with fairness for the child and flexibility.

[134] Therefore, I must consider the reason why there is a five year delay since 2009 during which time the recipient parent in this case did not seek to vary the child support award.

[135] I must also consider the conduct of the payor parent, the past and present circumstances of the child including the child's needs at the times the support should have been paid and finally whether this retroactive award might entail hardship. Unless there are exceptional circumstances, the court must not go beyond three years.

Delay

[136] The respondent argues that it is the applicant's fault that this delay occurred and that a retroactive award will be onerous.

[137] The respondent has not provided financial information in accordance with the directions of the court.

[138] I am satisfied based on the evidence he has responded to few inquiries directly from the petitioner or counsel.

[139] The Petition for Divorce was filed on March 30, 2009. There was a delay from 2009 to the date when he was provided notice in the Form 59.36 on April 26, 2012 with a Direction to Disclose, a request for his Parenting Statement, his income statement, and confirmation of his current income.

[140] The request for date assignment conference notice reflects the fact that the respondent's disclosure as of March 19, 2012 was incomplete.

[141] His Statement of Financial Information was filed on August 27, 2012 and his Statement of Property on September 12, 2012. His Income Tax Returns were not filed.

[142] When questioned about this in court, he said "she knew where I was and where I was working and how to get the information."

[143] It is not the responsibility of the petitioner to chase after the respondent for information that ought to be filed on a regular basis.

[144] However ,I do note that the Interim Order did not require the filing on an annual basis.

[145] The petitioner also has not pursued disclosure in a more formal manner until this hearing.

[146] On August 27, 2012, the respondent finally filed his financial statement of Income; his T4s for 2010 and 2011; and his pay statement to July of 2012. I have no Income Tax Returns, and no explanation as to why this information could not have been provided at all and in a timely fashion.

[147] The delay with respect to the extraordinary expenses is not a hardship in that he is actually receiving a credit of $2,123.02.

[148] The information I have with respect to the difficulty the petitioner has in maintaining contact with the respondent and exchanging information would cause me to conclude that the respondent is not available to the petitioner on custody matters let alone financial matters.

[149] There are four children in the petitioner's household, three of whom are the respondent's responsibility.

[150] The oldest two are twins.

[151] In addition, there is evidence that the respondent has earned considerably more income than he is earning currently. Historically, he has been able to work on a commission basis and at least in 2010 earned $54,747.00.

[152] He left that job to take another job on commission and further left that job to take his current employment position, which is a significant reduction in his income although it provides him with an apartment and it also places him in close proximity to the children. So there are benefits and disadvantages.

[153] The respondent could be earning more income. The hardship imposed by a retroactive award is really a hardship that is in part the result of his failure to make adjustments to the child support in a timely basis.

[154] It is also in part because he has reduced his income in order to find a job more suitable, he says, to his personality and to keep him in close proximity to the children.

[155] Perhaps there is some truth to the fact that the petitioner could have pursued this in a more timely fashion.

[156] Given the totality of the information before me, I was not persuaded that the arrears in the base amount as adjusted to reflect his actual income should be forgiven.

[157] The parties have agreed on arrears and included a waiver of pension credits to compensate for these arrears. I accept their decision.

Prospective Child Care Expenses

[158] When the petitioner is working and required to enrol the children in Excel, it is at that point that the respondent's obligation to pay should be triggered. When the children are enrolled in Excel for the purpose of the petitioner's employment, the respondent shall be responsible for 25% before further application to the court for an increase in his contribution.

[159] Traditionally, soccer, majorette and band are extracurricular activities rather than extraordinary or necessary section 7 expenses.

[160] I agree with the petitioner that these expenses are important for the development of the children. They are positive activities and in better circumstances the respondent may be required to contribute.

[161] Given the current payment for three children, the respondent is not in a position to contribute toward extracurricular expenses other than child care required for the purpose of the petitioner's employment.

[162] Should the respondent experience a change in income or in his financial circumstances this may be revisited.

The Van

[163] The van was in joint names. At separation, the respondent took the van without the petitioner's agreement, leaving her without a vehicle.

[164] The petitioner purchased a car subsequently after the separation.

[165] Everything else (except the pension) was divided in half.

[166] The petitioner valued the van at $3,000 in her Statement of Property on June 28, 2011.

[167] The respondent testified that there was no equity in the former matrimonial home (see paragraph 26 of respondent's affidavit dated September 12, 2012). He testified he agreed he would pay the debt in exchange for retaining the 1999 Chevrolet Venture which was, he said, in poor condition and did not last long after the separation in 2007. He valued it at $500.00 at the time.

[168] The petitioner provided the Statement of Disbursements for the sale of the matrimonial home which shows after disbursements a balance to the respondent in the amount of $4,216.75 and to the petitioner $4,812.75. In addition, there was a rubbish removal charge of $1,596.00.

[169] The respondent's recollection is incorrect.

[170] Later in his testimony after viewing the disbursement expenses and distribution of the equity as depicted in the lawyer's letter, he argued that he would get the van in return for which he would pay more of the rubbish removal fee.

[171] There is no evidence upon which I can rely to indicate that this was in fact an agreement reached between them that she would forgo an equal division of the van.

[172] I am satisfied that the petitioner's evidence on this point is a more accurate recollection of events and values.

[173] The respondent shall pay $1,500.00 to the petitioner for her share of the van.

[174] This, shall bring to a conclusion all division of property issues entirely.

[175] Counsel for the petitioner shall draft the order.

Moira C. Legere Sers, J.