

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Darlington v. Moore, 2013 NSSC 103

Date: 20130315

Docket: SFHMCA 068167

Registry: Halifax

Between:

Michelle Darlington

Applicant

and

David Moore

Respondent

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Judge: The Honourable Associate Chief Justice Lawrence I. O’Neil

Hearing: November 13 and 16, 2012

Issues:

1. Are disability payments, income for the purposes of calculating a payor’s child support obligation? and maintenance for a former common law partner?
2. Is a payor parent required to pay child support/special expenses for an estranged child?- deferred
3. Should income be imputed to the payee parent in the circumstances? - deferred
4. Does the need to service debt obligations have priority over the obligations to pay child and spousal support? - deferred

The Court advised the parties it would only rule on a determination of Mr. Moore’s income at this stage of the proceedings.

Summary: The Respondent father is employed and also receives tax free disability “income”. He argues the disability funds are not to be considered when his obligation to pay maintenance for a former common law partner and child support, if any obligation exists, is being quantified. He also argues his former partner should no longer receive maintenance and that income should be imputed to her. The Respondent/father argues that the older university age daughter should not be eligible for child support/payment of special expenses because she is not communicating with him. He argues that his need to service debts should lessen his obligation to pay “spousal” and child support. The Court held the disability income is to be considered when determining the income of a payor parent and it is to be grossed up because it is tax free income for the payor. The Court

distinguished the Federal Court case *Manuge v. The Queen*, 2012 F.C. 499.

The issue of maintenance for a former common law partner, imputed income to the payee, and a determination of any contribution to special university expenses for a child was deferred. The Court directed the parties to report on the status of a related proceeding in the General Division of the Supreme Court.

Keywords: spousal support; disability income; imputing income, estrangement of child; consolidation of proceedings

Legislation: *Maintenance and Custody Act*, 1989, c.160
Child Maintenance Guidelines, N.S. Reg. 53/98
Divorce Act, R.S.C., 1985, c.3 (2nd Supp.)
Federal Child Support Guidelines, P.C., 1997-469
Income Tax Act, R.S.C. 1985, c.1 (5th Supp.)

Cases Considered: *D.B.S. v. S.R.G.*, 2006 SCC 37
Willick v. Willick, [1994] S.C.J. No. 94
L.(G.) V. G.(B.) [1995] 3 S.C.R. 370
Miglin v. Miglin [2003] 1 S.C.R.
Read v. Read, 2000 NSCA 33
Provost v. Marsden, 2009 NSSC 365
Codiac v. Codiac, 2005 NSSC 291(CanLII)
McCarthy v. Workers' Compensation Appeals Tribunal (N.S.) et al, 2001 NSCA 79 (CanLII)
Manuge v. The Queen, 2012 F.C. 499

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