

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Fairfex v. Garland*, 2018 NSSC 168

Date: 2018 – 07 – 12
Docket: SFHD-029489
Registry: Halifax

Between:

Michael David Fairfex

Applicant

v.

Sandra Louise Garland

Respondent

Judge: The Honourable Justice Elizabeth Jollimore

Heard: June 5, 2018

Decision: July 12, 2018

Corrected Decision: The text of the original judgment was amended on July 27, 2018 and the description of the correction is appended.

Counsel: Linda M. Tippett-Leary for Sandra Garland
Patrick Eagan for Michael Fairfex

Introduction

[1] Sandra Garland has applied to vary the child support terms of a 2004 Variation Order, prospectively and retroactively.

[2] In terms of the prospective child support claim, I must decide:

- how child support should be calculated once the parties' daughter, Ryann, reached the age of majority; and
- how, if at all, Ryann's student loans should be considered in determining child support.

[3] If I decide to vary support retroactively, I must decide when the retroactive period starts.

Background and hearing

[4] Ms. Garland filed her variation application under the *Interjurisdictional Support Orders Act*, SNS 2002, c. 9. Once filed, there were difficulties serving Mr. Fairfax. As a member of the Armed Forces, Mr. Fairfax was frequently posted from one place to another. Eventually, Mr. Fairfax agreed to take part in having Ms. Garland's application heard in Nova Scotia and he retained counsel here, though he doesn't live in Nova Scotia.

[5] Mr. Fairfax didn't attend the hearing. His counsel was present and asked to have Mr. Fairfax's affidavit, financial statements (Statement of Income, Statement of Expenses, and Statement of Property), tax returns, and paystubs admitted into evidence.

[6] Ms. Garland objected to admitting the affidavit and financial statements because she wouldn't be able to cross-examine Mr. Fairfax. I upheld her objection and didn't admit Mr. Fairfax's affidavit and financial statements into evidence: *Guptill* (1987), 82 NSR (2d) 390 (NSSC(AD)) and *Magionas* (February 8, 1988), Halifax, SCA No 01866 (NSSC(AD)), (volume 253, c.22), 1988 CarswellNS 38. Other materials were admitted.

Prospective variation claim

[7] I must deal with prospective child support claims before retroactive ones: *Staples v. Callender*, 2010 NSCA 49 at 41.

[8] The prospective period begins when Ms. Garland filed her variation application in January 2013.

[9] The parties agreed Ryann is entitled to ongoing child support. They agreed the 2004 Variation Order should be changed because many circumstances have changed: Mr. Fairfax's income has changed, his province of residence has changed, Ryann is now over the age of majority, and the tables associated with the *Guidelines*, NS Reg 53/98, have been revised three times.

2013

[10] From January 2013 until Ryann turned 19 in 2015, her child support is calculated under section 3 of the *Guidelines*.

[11] Mr. Fairfax lived in British Columbia and had an annual income of \$125,706.00 in 2013. According to the BC tables, he should have paid monthly child support of \$1,132.50.

[12] There was no claim for special or extraordinary expenses in 2013.

[13] Records from the Maintenance Enforcement Program show Mr. Fairfax paid child support of \$7,404.00 in 2013. He should have paid \$13,590.00 for the year ($\$1,132.50 \times 12$). His shortfall was \$6,186.00 and he owes this amount.

2014

[14] Mr. Fairfax's 2014 income was \$92,842.00.

[15] In 2014, Mr. Fairfax moved from British Columbia to Ontario. I don't know when he moved. When staff at the BC Ministry of Justice tried to serve Mr. Fairfax with Ms. Garland's *ISO* documents in September 2014, they learned he was posted to Ottawa. So, in calculating his child support, I use the British Columbia tables for the first eight months of 2014, and the Ontario tables for the final four months.

[16] At an annual income of \$92,842.00, Mr. Fairfax should have paid monthly child support of \$860.00 according to the table for BC payors ($\$860.00 \times 8 = \$6,880.00$). The Ontario table provided for monthly child support of \$823.90 ($\$823.90 \times 4 = \$3,295.60$). Under the tables, Mr. Fairfax should have paid \$10,175.60 in 2014.

[17] For the last four months of 2014, Ms. Garland claimed a contribution to the special expense of post-secondary education, under clause 7(1)(d) of the *Guidelines*. Mr. Fairfax "acknowledges that Ryann is entitled to some contribution from [him] to her post-secondary expenses."

[18] In September 2014, Ryann began university. She was 18, still under Nova Scotia's age of majority: *Age of Majority Act*, RSNS 1989, c. 4, subsection 2(1).

[19] Ryann completed her first year at a university in Halifax. Ms. Garland said that Ryann stayed to help at home. There was no expense for residence or a university meal plan.

[20] Ryann's tuition and fees at the Halifax university cost \$3,879.00 in 2014, exclusive of the interest paid because her account was overdue. Her tuition and fees were partially defrayed by a student bursary of \$641.50 and a \$500.00 entrance scholarship, leaving Ryann to pay \$2,737.50.

[21] I must consider available tax credits or deductions: *Guidelines*, subsection 7(3). I heard no evidence about these, but I am permitted to make estimates: *Guidelines*, subsection 7(1).

[22] In 2014, tax credits were available for education and tuition. The education credit was \$60.00 per month, and the tuition credit was 15% of tuition and fees exceeding \$100.00. Ryann was in university for 4 months in 2014 ($4 \times \$60.00 = \240.00). Her tuition and fees were \$3,879.00 ($\$3,879.00 - \$100.00 = \$3,779.00 \times .15 = \566.85). The 2014 tax saving was \$806.85, leaving a net expense of \$1,930.65.

[23] Mr. Fairfax didn't challenge the necessity or reasonableness of Ryann's post-secondary education expense. He argued that he should not be required to contribute, where Ryann has sufficient student loans to pay the cost herself. In 2014, Ryann didn't receive a student loan. According to the university's account summary, Ryann didn't receive a student loan until 2015. Ryann would have been left to finance her first term (2014) costs without the loan.

[24] Other than her scholarship, I have no evidence of any means Ryann had in 2014 to contribute to her university costs.

[25] Ms. Garland's 2014 income was \$35,640.00. Mr. Fairfax's income was \$92,842.00. The parties will share Ryann's net university expense of \$1,930.65 in proportion to their income: Mr. Fairfax will pay 72% or \$1,390.06.

[26] Between the table amount of child support due in 2014 (\$10,175.60) and the contribution to Ryann's university costs (\$1,390.06), Mr. Fairfax should have paid \$11,565.66.

[27] Records from the Maintenance Enforcement Program show Mr. Fairfax paid \$7,404.00 in 2014. Mr. Fairfax owes \$4,161.66.

2015 to date

How should child support be calculated once Ryann reached the age of majority?

[28] Ryann reached the age of majority in January 2015. When a child reaches the age of majority, there are two options for calculating child support. I may continue to calculate child support as I did before the child turned 19 by applying the child support tables and adding a possible contribution to special or extraordinary expenses. If I decide this approach is inappropriate, I must calculate child support by considering Ryann's condition, means, needs or other circumstances and her parents' financial ability to contribute.

[29] Ms. Garland says I should continue to apply the tables and divide special expenses after Ryann turned 19, while Mr. Fairfax says that it is inappropriate for me to use this approach "given Ryann's resources" - her student loan. With one year left to finish her degree in business administration, Ryann owes \$36,680.00 in student loans. Mr. Fairfax argued this is "high but not extraordinary".

[30] The closer a child's circumstances match those where the *Guidelines* apply (for example, the child lives at home, the parent who provides the home makes a significant contribution to the child's support by providing the home, the child does not earn an income, and the child is dependent on the parents), the less likely the approach in clause 3(2)(a) will be inappropriate: *Wesemann*, 1999 CanLII 5873 (BC SC) at paragraph 31.

[31] Ryann began university in 2014 and completed her first year at a university in Halifax. She turned 19 mid-way through her first year of university. Until September 2015, when she moved away for her second year at university, Ryann's circumstances were sufficiently like those of a child under the age of majority that I find it is not inappropriate to continue to calculate her child support as if she was still under the age of majority, determining the table amount of child support and considering how her university costs should be shared.

[32] As of September 2015, it is inappropriate to calculate Ryann's support as if she was under the majority: she was no longer living at home, Ms. Garland's contribution (by way of providing a home) was reduced, and Ryann had means of her own. As of September 2015, Ryann's condition, means, needs or other circumstances and her parents' financial ability to contribute must be considered in determining her child support.

How, if at all, should I consider Ryann's student loans in determining child support?

[33] In 2015, Ryann began to receive student loans. She received them while she lived with her mother and, later, while she attended university out of town. For the first eight months of 2015, Ryann remained in her mother's home and I've determined I should calculate her child support as if she was still under 19. This decision directs me on how to consider Ryann's student loans.

[34] Mr. Fairfax lived in Ontario in 2015 and his annual income was \$62,027.00. This amount is exclusive of his RRSP withdrawal and the retiring allowances he received when he left military service. Ms. Garland agrees that the RRSP and retiring allowances should not be the basis for child support. The table amount of child support is \$565.24. I determine that Mr. Fairfax owes support of \$4,521.92 for the first 8 months of 2015.

[35] Ryann's university costs in Halifax for the first four months of 2015 were \$3,498.00. A \$500.00 entrance scholarship and student bursary of \$641.50 reduced the cost to \$2,356.50. Ryann's tax credits would reduce this amount by \$696.00, bringing her net cost to \$1,660.50.

[36] During the second term of her first year at university, Ryann received a student loan of \$5,166.79, which would amply cover her costs of \$1,660.50.

[37] The guiding principle in determining the amount of special expenses is that the expense is shared in proportion to the parents' incomes after deducting any contribution by the child: *Guidelines*, subsection 7(2). After Ryann contributed the money from her student loan, she had no need for a contribution by either of her parents and I order no contribution from Mr. Fairfax to this cost for the first nine months of 2015.

[38] Ryann changed universities after her first year, moving to a university outside Halifax. As of September 2015, her circumstances are quite different from those of a child under the age of majority: she was living away from home; she was earning an income; and she was less dependent on Ms. Garland. From September 2015 onward, I calculate child support by considering Ryann's condition, means, needs and other circumstances and each parent's financial ability to contribute to her support. This leads me to consider Ryann's student loans in a different regulatory context.

[39] Mr. Fairfax says that Ryann has enough money to cover her university costs on her own, using her earnings, bursaries and student loans. Ms. Garland accepts that Ryann has some money for these costs (her earnings and grants) and thinks Ryann shouldn't be burdened with a large student loan. Ms. Garland argued that Ryann should pay the first one-third of her costs with her parents sharing the remaining two-thirds in proportion to their income.

[40] It isn't a "hard and fast rule that student loans should be the last resort" and "the higher the parents' income, the less the student should be required to contribute": *Selig v. Smith*, 2008 NSCA 54 at paragraph 20. Noting that the trend seemed to be determining the parents' ability to contribute before resorting to student loans, the Court of Appeal found no error where a judge assumed a child would have a student loan even where the child's parents had a combined income of more than \$96,000.00 in 2008. This application is being heard after student loans have already been secured, so I am past the point of "determining the parents' ability to contribute *before* resorting to student loans" [emphasis added].

[41] The Court of Appeal said that "each case depends on its own particular facts" when it comes to student. I make my decision in the circumstances that exist, where loans have already been incurred.

[42] In 2015, Ms. Garland and Mr. Fairfax had a combined income of approximately \$101,100.00. Ryann's tuition, fees, residence, and meals for the last four months of 2015 at the out of town university were \$9,591.60. I calculated this amount by halving her tuition, residence and meal plan costs for the 2015-2016 academic year. Her costs were partially defrayed by her student bursary of \$641.50 (one-half of her annual bursary). She had no scholarship. Ryann would have to pay \$8,950.10.

[43] In 2015, tax credits were available for education and tuition. The education credit was \$60.00 per month, and the tuition credit was 15% of tuition fees of \$3,497.30. This would mean a tax saving of \$764.60 for the fall of 2015, bringing her net cost for September – December 2015 to \$8,185.50.

[44] Ryann had a student loan of \$7,540.00 during the final four months of 2015. Her loan would cover all but \$645.50 of her university costs. She would need her earnings to pay the remaining \$645.50 of her university costs and her costs for clothing, grooming, a cellphone, operating her car, and paying her taxes, CPP and EI premiums. These costs totalled approximately \$1,100.00 each month. Ryann earned \$7,372.00, according to her 2015 tax return.

[45] Using her earnings to pay her expenses would leave her with a monthly shortfall of approximately \$540.00. I order Mr. Fairfax to share this with Ms. Garland in proportion to their incomes. I order Mr. Fairfax to pay child support of \$340.00 (63% of the shortfall) for each of September, October, November and December 2015.

2016

[46] Throughout 2016, Ryann attended university outside Halifax, living away from home most of the year.

[47] Tuition cost \$7,410.50. Residence and the meal plan cost \$7,639.52. There were additional costs for capital campaigns, laundry, information and technology, in the approximate amount of \$1,800.00. Her total costs were \$16,850.02 for the year. Again, Ryann was eligible for tuition and education tax credits which would reduce her costs by \$1,576.50 and she received a bursary of \$1,283.00 which further reduced her costs to \$13,990.52.

[48] Based on her Statement of Expenses, Ryann had additional costs in 2016 for clothing, grooming, operating her car, paying taxes, CPP and EI premiums of approximately \$13,200.00 for the year (\$1,100.00 each month).

[49] Ryann's net education and living costs were \$27,190.52.

[50] Ryann earned \$6,740.00 in 2016 and she had student loans of approximately \$13,860.00 that year, according to the account details provided by the university. Her means combined to reduce her costs to \$6,590.52.

[51] I order that the deficit of \$6,590.52 be divided between her parents in proportion to their means. In 2016, Mr. Fairfax's income was \$99,404.91 and Ms. Garland's was \$44,993.00. Mr. Fairfax's proportionate share would be 69% or \$4,547.45 and I order him to pay this sum.

2017

[52] Last year, Ryann attended university, living away from her mother's home in metro for most of the year.

[53] Her student account summary shows her tuition cost \$5,974.50. Additional costs for capital campaigns, laundry, information and technology, and facility fees were \$890.14. There were interest and late fee charges of \$218.57. I include these on the basis that prompt payment of child support would have prevented them. Her total university costs were \$7,083.21 for 2017. Her tuition and education tax credits would reduce her costs by \$1,509.62. She received a bursary of \$897.96. Ultimately her university costs were \$4,675.63.

[54] Her 2017 university costs included no amount for residence or meals. Based on her Statement of Expenses, she had additional costs in 2017 for housing, food, clothing, grooming, operating her car, paying taxes, CPP and EI premiums of approximately \$21,066.60 for the year (\$1,755.55 each month).

[55] Ryann's net education and living costs were \$25,742.23.

[56] Ryann's 2017 tax return or T4 weren't attached to her Statement of Income which shows she earns \$11,304.00 this year. In 2016, she earned \$6,740.00. I estimate her 2017 income at approximately \$9,000.00, the average of the two years.

[57] The university's account details for 2017 show Ryann had a student loan of approximately \$5,500.00. The provincial records for her student loan shows her 2017 student loan was \$7,140.00. The portion of the loan above \$5,500.00 was likely paid to Ryann for her other expenses while at university.

[58] Ryann's estimated earnings and her student loan would provide \$16,140.00 to her for her 2017 costs of \$25,742.23, leaving a shortfall of \$9,602.23. I order that the deficit of \$9,602.23 be divided between her parents in proportion to their means. In 2017, Mr. Fairfax's income was \$130,074.18 and Ms. Garland's was \$46,485.00. His income was 73% of their combined incomes and he shall pay 73% of Ryann's shortfall: \$7,009.63.

2018 and 2019

[59] For 2018 and 2019, I use the 2017 amounts because I do not have exact amounts for Ryann's university and other costs. I know that Ryann's current income is \$11,304.00 and I apply this against her costs, bringing them to \$7,297.63.

[60] Ms. Garland's current income is \$29,000.00 and Mr. Fairfax's base salary is \$77,770.00. Additionally, he receives a pension which was \$43,014.60 in 2017. I estimate his income for 2018 and 2019 at \$120,784.60. His proportionate share of Ryann's expenses is 80% or \$5,838.10 per year.

Retroactive variation claim

[61] In deciding whether to exercise my discretion to vary child support retroactively, I must consider Ms. Garland (and Ryann's) interests in flexibility and Mr. Fairfax's interest in the certainty of the 2004 Variation Order. I must also consider the core principles of child support: *DBS v. SRG*; *TAR v. LJW*; *Henry v. Henry*; *Heimstra v. Heimstra*, 2006 SCC 37. I start with the factors that should be considered in deciding whether to vary child support retroactively.

Ms. Garland's delay

[62] Ms. Garland began requesting disclosure of Mr. Fairfax's income in March 2005, just months after 2004 Variation Order. Her requests went unanswered.

[63] Ryann, herself, contacted her dad for money three times while in senior high and university. Each time he sent her money: \$100.00 for back to school shopping in 2012; \$150.00 for prom and graduation costs in 2014; and \$150.00 for textbooks in her first year at university. Her prom and graduation costs were more than \$1,000.00 and her textbooks cost more than \$800.00. Though he had the greatest income, Mr. Fairfax contributed the least.

[64] Ms. Garland began this application in 2013. As an *ISO* application, she was required to file documents in Nova Scotia and to provide an address where Mr. Fairfax could be personally served.

[65] Ms. Garland was employed in the military reserves. She is now disabled as the result of a 2011 accident. One result of her injury is impaired cognitive functioning. She said this impeded her efforts to pursue child support.

[66] Ms. Garland testified that using the military's computer resources for a personal reason (to locate Mr. Fairfax) could result in losing her job – and that Mr. Fairfax had told her he would say she was harassing him. Email exchanges show that as long as Ms. Garland didn't mention child support, she and Mr. Fairfax communicated cordially. When the subject turned to child support, Mr. Fairfax disengaged.

[67] After the *ISO* application was filed and an address for Mr. Fairfax provided, Ms. Garland's application was returned from British Columbia. Mr. Fairfax had moved to Ontario.

[68] Ms. Garland found a career retrospective for Mr. Fairfax on the internet. It showed that between 2004 and 2012, Mr. Fairfax had been posted to three separate provinces. In 2014, there was a further posting.

[69] I accept that her injury and Mr. Fairfax's multiple moves made it harder for Ms. Garland to advance her claim.

[70] *ISO* proceedings require litigants to complete many documents and to provide a personal service address for the responding party. I accept that Ms. Garland feared she would lose her job if she used the military computer system to learn Mr. Fairfax's home address.

[71] Ms. Garland never sought an order for substitute notification so that she could proceed with her claim against Mr. Fairfax without knowing his home address. She had email contact with him and this may have allowed an option for easier service, though this is not certain when dealing with *ISO* applications.

[72] Ms. Garland's efforts to advance her retroactive claim were delayed, reasonably so.

Mr. Fairfax's conduct

[73] When the 2004 Variation Order was issued, it stated Mr. Fairfax's annual income was \$58,116.60. His 2004 tax return shows it was almost \$13,000.00 more: \$70,975.00.

[74] Ms. Garland's lawyer made his first request for income disclosure in March 2005, because of a press announcement that "virtually all members of the Armed Forces" had received a "substantial raise". Mr. Fairfax did not respond.

[75] Mr. Fairfax paid the child support ordered, though there were delays in the early stages.

[76] The 2004 Variation Order compelled Mr. Fairfax to disclose his income annually. He was first required to do this on June 1, 2005. He did not.

[77] Ms. Garland tried to get Mr. Fairfax's address. They were both in the Armed Forces. She testified that he threatened her with the loss of her job if she used the military computer system to find out where he lived.

[78] Mr. Fairfax knew, from communications with Ms. Garland, that she wanted to renegotiate child support.

[79] In the years since 2004, Mr. Fairfax's income has peaked at \$130,074.00. At its lowest, his annual income was \$62,027.10. On average, his annual income from 2004 to 2017 was \$90,535.35. In 8 of the last 14 years, his annual income has exceeded \$90,000.00. His income has never been as low as the \$58,116.60 stated on the 2004 Variation Order.

[80] Despite changes in his income, Mr. Fairfax never increased his child support payments.

[81] The only adjustment Mr. Fairfax made was to *reduce* his child support payments when he learned of Ms. Garland's variation application. In 2015, he reduced his payments by the \$150.00 he had been contributing to Ryann's child care each month - by that time Ryann was 19 and her need for child care had long passed. Mr. Fairfax's income in 2015 was \$62,027.00. Measured against the table amount of child support, his payments (even with the child care contribution), were deficient.

[82] Ms. Garland has never earned more than \$46,845.00 annually. During the years before she filed her *ISO* application - and while she was searching for Mr. Fairfax's address - her income was in the range of \$25,000.00 to \$30,000.00 annually. She couldn't afford to lose her job.

[83] Only after he was served with Ms. Garland's *ISO* application, did Mr. Fairfax disclose his income. Ms. Garland's address didn't change, so he would have been able to send materials to her at any prior time.

[84] When Ryann asked him, Mr. Fairfax made direct contributions to her costs for back to school items in 2012, for graduation expenses in 2014, and for university textbooks in 2014. In total, Mr. Fairfax gave Ryann \$400.00 more than he was ordered to pay. This amount isn't enough to meet his statutory obligation: *DBS v. SRG; TAR v. LJW; Henry v. Henry; Heimstra v. Heimstra*, 2006 SCC 37 at paragraph 209.

[85] Mr. Fairfax complained, in a 2015 email to Ryann, that Ms. Garland used his Facebook account for pictures, so she could advance this application.

[86] Mr. Fairfax's conduct has been blameworthy. He has privileged his own circumstances at his daughter's expense, denying her the benefit of his increased income every day since the 2004 Variation Order was granted. This favours a retroactive variation and is consistent with the core principle that child support should change to reflect the payor's income.

Ryann's circumstances while support should have been paid

[87] Since 2004, Mr. Fairfax's child support payments have not reflected his income.

[88] Ms. Garland couldn't afford new clothing, sports or other activities for Ryann. They relied on food banks and charitable organizations for things like heating fuel.

[89] To support Ryann, Ms. Garland collapsed her RRSPs. Because of her financial hardship, she was able to withdraw the entirety of her locked in retirement account (LIRA). She re-financed the mortgage on her home "several times" and moved out of the home so it could be rented.

[90] A few times, Ryann contacted her father directly, asking for money. She said each time she had to ask her father for money, "I felt very guilty, but I needed the money." She said, "He has never offered to send me money and it was always I who had to ask and he never seemed willing or too happy to help me out."

[91] In an email exchange in 2015, Mr. Fairfax told Ryann, "To you and your mom I am just a bank machine. Tired if [sic] her bleeding me for money."

[92] Ryann has worked, sometimes having more than one job at a time, to contribute to her expenses. While in university she works only during the summer.

[93] With one year of university remaining, Ryann has a student loans of \$36,680.00.

[94] Ryann would benefit from a retroactive variation. Her past and current circumstances favour a retroactive variation.

Mr. Fairfax's undue hardship

[95] I have no evidence from Mr. Fairfax about hardship. His counsel submits that Mr. Fairfax should repay any amount I order by continuing to make monthly payments of \$1,000.00 after Ryann graduates until his debt is retired.

[96] The absence of evidence of hardship favours varying child support retroactively.

Conclusion on retroactively varying child support

[97] As I have assessed each factor, I have said whether it favours a retroactive variation. Overall, the factors support a retroactive variation and I conclude that it is appropriate to vary child support retroactively. While Ms. Garland was reasonably diligent in fulfilling her obligation to pursue additional support, Mr. Fairfax's conduct (failing to disclose changes to his income, threatening Ms. Garland when she sought information to advance her claim, failing to increase his child support when his income increased) prejudiced Ryann. Ryann's past and current circumstances warrant payment and there is no evidence that a retroactive variation would impose hardship on Mr. Fairfax.

When does the retroactive period start?

[98] The default commencement date for a retroactive variation is the date when Ms. Garland gave Mr. Fairfax “any indication” that child support needed to be re-negotiated. The default commencement date isn’t definitive. The alternate date is used when a payor parent engages in blameworthy conduct. The alternate date is the date when increased support should have been paid.

[99] Mr. Fairfax wants retroactive child support ordered no earlier than the default commencement date. For this to happen, he’s required to act responsibly by disclosing material changes in circumstances to Ms. Garland. Mr. Fairfax failed to do this.

[100] Where a paying parent fails to disclose a material change in circumstances, he should not be permitted to profit from his wrongdoing.

[101] Mr. Fairfax’s conduct has been blameworthy. Within months of the 2004 Variation Order, he knew his annual income was greater than the amount on which his child support obligations were calculated. He has, since 2004, failed to meet his obligation to support Ryann. He has known that increased child support was sought and failed to provide information about his income. I find this is an appropriate case to date the variation from an alternate date: the date of the existing order.

[102] The chart below shows my calculation of Mr. Fairfax’s child support obligation from January 2005 to December 2012: Ms. Garland filed her variation application in January 2013, so her prospective claim starts then. For each year, I have noted Mr. Fairfax’s income and his province of residence and I have noted the source of this information: his tax return, Notice of Assessment (NOA) or Notice of Re-Assessment (NOR).

[103] In December 2004, Mr. Fairfax was ordered to contribute \$150.00 each month to Ryann’s child care costs. The next month, Ryann turned 9.

[104] Ms. Garland was hurt an accident and stopped working in 2011, when Ryann was 15. Ryann helped care for her mother after the accident. So, there would have been no child care expenses after 2010.

[105] In the absence of evidence, I can only estimate when Ms. Garland stopped paying for child care. I put this at June 2007. Ryann was 11 and would have just finished Grade 6. I select this date for 2 reasons. First, Ryann would have completed elementary school. There are few child care services provided for junior high school students. Second, Ms. Garland was involved in a car accident in 2007, which may have meant she was at home for a period which would have meant no need for child care. I acknowledge that I am speculating in the absence of evidence.

[106] For 2005, 2006 and the first half of 2007, the chart shows the table amount of support Mr. Fairfax paid. I have not shown his contribution to child care, assuming he was contributing appropriately to this cost. There are two calculations for 2006 because the tables changed in May.

[107] As of July 2007 I have included the \$150.00 monthly contribution to child care costs in the chart: since I've determined Ryann's child care costs ended at June 2007, the \$150.00 is considered in the context of Mr. Fairfax's table-based child support obligation.

Year	Province	Income	Table Amount Payable	Support Paid	Table Amount Owning
2005	Manitoba	66,832.00 NOA	$528.49 \times 12 = 6,341.88$	5,604.00	737.88
January – April 2006	Ontario	68,480.00 NOR	$602.07 \times 4 = 2,408.28$	1,868.00	540.28
May – December 2006	Ontario	68,480.00 NOR	$633.32 \times 8 = 5,066.56$	3,736.00	1,330.56
2007	Ontario	71,648.00 NOR	$658.21 \times 12 = 7,898.52$	6,504.00	1,394.52
2008	Ontario	86,287.00 NOR	$769.26 \times 12 = 9,231.12$	7,404.00	1,827.12
2009	Ontario	94,694.00 NOA	$834.48 \times 12 = 10,013.76$	7,404.00	2,609.76
2010	Ontario	100,842.00 NOA	$886.65 \times 12 = 10,639.80$	7,404.00	3,235.80
2011	British Columbia	95,607.24 tax return	$883.22 \times 12 = 10,598.64$	7,404.00	3,194.64
2012	British Columbia	102,076.00 NOA	$938.63 \times 12 = 11,263.56$	7,404.00	3,859.56
Total owed					18,730.12

[108] In total, Mr. Fairfax owes \$58,192.96. Most of this sum arose after Ms. Garland filed her variation application.

[109] Mr. Fairfax's annual income is in the range of \$120,000.00 - \$130,000.00. I order that he discharge his obligation to pay prospective and retroactive child support by paying \$2,238.19 each month, beginning on July 15, 2018 and continuing on the fifteenth of each month until and including August 15, 2020. Payments must be made through the Maintenance Enforcement Program.

[110] Ms. Tippett-Leary shall prepare the order. If there are submissions on costs, they must be filed by August 10, 2018.

Elizabeth Jollimore, J.S.C. (F.D.)

Halifax, Nova Scotia

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Fairfex v. Garland*, 2018 NSSC 168

Date: 2018 – 07 – 12
Docket: SFHD-029489
Registry: Halifax

Between:

Michael David Fairfex

Applicant

v.

Sandra Louise Garland

Respondent

Judge: The Honourable Justice Elizabeth Jollimore

Heard: June 5, 2018

Decision: July 12, 2018

Corrected Decision: The text of the original judgment was amended on July 27, 2018 and the description of the correction is appended.

Counsel: Linda M. Tippett-Leary for Sandra Garland
Patrick Eagan for Michael Fairfex

Paragraph [108]

Deleted \$54,340.95

Inserted \$58,192.96

Paragraph [108]

Deleted (\$35,610.83)

Inserted --- no insertion made

Paragraph [109]

Deleted \$2,264.24

Inserted \$2,238.19

Paragraph [109]

Deleted June 15, 2020

Inserted August 15, 2020

Paragraph [110]

Deleted August 1, 2018

Inserted August 10, 2018