

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Hovey v. Hanson*, 2021 NSSC 89

Date: 20210309

Docket: SFH1201-070666 (107376)

Registry: Halifax

Between:

Graeme Adam Hovey

Petitioner

v.

Sabrina Lee Hanson

Respondent

Judge:

The Honourable Justice Cindy G. Cormier

Heard:

November 13, 2020

Counsel:

Graeme Adam Hovey, self-represented Petitioner
Sabrina Lee Hanson, self-represented Respondent

By the Court:

Introduction

1. The parties were married in September 2001. They have three children together, Ca, Ch, and D. The parties agreed to rely on December 27, 2019 as the date of separation.

Court Involvement

1. Mr. Hovey asked the Court to address the issues of custody, access, prospective and retroactive child support (both the table amount and special or extraordinary expenses) and division of assets.
2. Ms. Hanson asked the Court to grant a divorce and deal with the issues of custody, access, child support (retroactive to 2011), and division of pension benefits.
3. On December 5, 2017, at the request of Mr. Hovey, the matter was scheduled for a simplified process motion dealing with the discrete issue of Ms. Hanson's responsibility to pay child support.
4. An Interim Consent Order for Child Support was granted requiring Ms. Hanson to pay interim child support of \$943.00 each month, beginning November 1, 2017. The amount was ordered without prejudice to "either party's ability to argue they represent an underpayment or overpayment of child support at a final hearing of the matter".
5. In November 2019, Mr. Hovey requested a date assignment conference. He confirmed he had filed all relevant documents. Specifically, he stated there was "no change to the Statement of Property" he had filed. Mr. Hovey filed a Statement of Property on April 24, 2018 and he filed an Amended Statement of Property on April 25, 2018. No outstanding debts were disclosed by Mr. Hovey.
6. On January 21, 2020, the parties consented to an Interim Consent Variation Order regarding child support. They agreed their eldest child ceased to be a child of the marriage as of September 2019. Based on Ms. Hanson's disclosed annual income for child support of \$54,000, on an interim basis the table amount of child support for two children was found to be \$770 per

month as of November 1, 2019.

7. The parties acknowledged two children were residing with Mr. Hovey. They agreed the children would decide how much time they wished to spend with Ms. Hanson but would be encouraged to visit Ms. Hanson every second weekend. The parties continued to seek a retroactive recalculation of child support.
8. A trial was originally scheduled in April 2020, but it was re-scheduled due to Covid 19 restrictions. Mr. Hovey requested the Court grant the parties' divorce as he planned to remarry in the summer of 2020.
9. On April 15, 2020, the parties confirmed they were satisfied with the status quo custody and parenting arrangements and they were content to have the issue of Ms. Hanson's parenting time resolved at a later hearing.
10. The parties agreed the only outstanding property issue remaining was the division of pensions. The parties consented to split their DND pensions at source to resolve all property issues. The Court confirmed the prerequisites for a divorce were met and granted the parties' divorce.
11. In September 2020, Mr. Hovey withdrew his request to have Ms. Hanson contribute to any prospective or to any retroactive special or extraordinary expenses (driver's education, youth group fees, and school educational trips).

Agreements reached at trial on November 13, 2020

12. The parties agreed the two dependent children would remain living primarily with Mr. Hovey in Halifax, Nova Scotia. Ms. Hanson had been posted to Ottawa, Ontario and Mr. Hovey supported Ms. Hanson having ongoing involvement with the children including regular virtual contact from Ottawa, Ontario.
13. Mr. Hovey confirmed that once Covid 19 restrictions were lifted he would be agreeable to Ms. Hanson having in person parenting time with the children in the summer, for a week during the Christmas break, and during the March school break.
14. The Court granted Ms. Hanson's request to have the issue of her in person

parenting time with the children adjourned to the Summer of 2021.

Issues at trial on November 13, 2020

15. Mr. Hovey sought to have Ms. Hanson pay the table amount of child support prospectively from November 2017 onward and retroactively to April 2015.
16. Ms. Hanson asked the Court to consider the parties' history of child support payment and non-payment from January 2011 through to March 2015, when considering Mr. Hovey's request for a retroactively calculate the table amount of child support to April 2015.
17. Ms. Hanson agreed to meet her financial obligation to pay prospective child support for the parties' two children after the parties' history of child support payments was taken into consideration by the Court.

Parties' separation date of December 2009

January 2010 through December 2010

18. Mr. Hovey acknowledged he did not pay any child support to Ms. Hanson for the parties' three children between January 2010 and December 2010.

Shared care

19. Mr. Hovey claimed that after the parties separated at the end of December 2009, and until April 2011, the children were in the parties' shared care. He provided few details about the time he spent with the children.
20. Ms. Hanson claimed all three children were in her primary care after separation until March 2015. She claimed Mr. Hovey was seeing the children Tuesdays and Thursdays after school and on Saturday mornings but she did not provide a time frame. The parties agreed they shared parenting during the holidays and the summer.
21. The evidence regarding a possible shared care arrangement was insufficient or not specific enough for me to determine if any shared parenting arrangement existed after the parties separated in December 2009, until April 2011.

22.If a shared parenting arrangement did exist at any point, as a starting point only, the Court would consider both parties' annual income for child support to arrive at the "set off" per section 9(a) of the *Child Support Guidelines*. To determine a fair amount of child support the Court would also be required to consider sections 9(b) and (c) of the *Child Support Guidelines*.

Payment of joint debt in lieu of paying the table amount of child support

23.Mr. Hovey claimed that the parties had an agreement that he would pay off the parties' joint debt and Ms. Hanson would pay the children's child-care expenses.

24.Ms. Hanson acknowledged that after separation she was prepared to give Mr. Hovey an opportunity to "get back on his feet". However, she denied Mr. Hovey paid her portion of any joint debt and she confirmed she paid all child-care related expenses between 2009 and 2013.

25.At trial Mr. Hovey suggested he covered a joint debt in the amount of \$56,000.00 in lieu of paying child support. He acknowledged he would be responsible for half the debt. Mr. Hovey did not provide any corroborating evidence.

26.There is insufficient evidence before me to consider whether a joint debt existed and whether Mr. Hovey paid Ms. Hanson's share of any joint debt. There is also insufficient evidence before me to consider what Mr. Hovey's share of any child-care expenses might have been between 2009 and 2013.

Request for retroactive recalculation to 2011

27.Ms. Hanson asked the Court to complete a retroactive recalculation back to 2011. Although Mr. Hovey did not file his financial information for 2010, for illustrative purposes only, I have notionally imputed an income of \$67,000 to Mr. Hovey for 2010.

28.I have calculated the full table amount and the "set off" Mr. Hovey would have notionally owed Ms. Hanson between January 2010 and December 2010.

29.If the children were in a shared parenting arrangement in 2010, Mr. Hovey would owe a "set off" of \$3,934, as a starting point only. If the Court found

Ms. Hanson had primary care of the children in 2010, Mr. Hovey would owe \$14,784.

For illustrative purposes only

January 2010 – December 2010	The incomes, and corresponding child support owed was not factored into any final calculation and is for illustrative purposes only.	If \$67,000 imputed to Mr. Hovey Ms. Hanson's income was \$48,098.00	Hovey \$1,232 x 12 = \$14,784.00 Hanson \$905.00 x 12 = \$10,860.00	Set off only \$3,934 to Ms. Hanson from Mr. Hovey	\$3,934 set off only \$14,784 full table amount
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Retroactive recalculation

January 2011 to March 2012

30. Mr. Hovey did not pay any child support to Ms. Hanson in January 2011 and in February 2011; he claimed that in March 2011 he started paying child support to Ms. Hanson and that he paid by way of e-transfers and cash payments. He suggested he started paying child support because Ms. Hanson was struggling to manage her finances.
31. Mr. Hovey provided no corroborating evidence to the Court for any child support payments in March 2011 or in April 2011. It was unclear how much child support he was suggesting he paid to Ms. Hanson and I am not prepared to credit Mr. Hovey with child support payments for that period.
32. Mr. Hovey claimed the children were in Ms. Hanson's parents' care between May 2011 and April 2012, and that while the children were with Ms. Hanson's parents the parties alternated weekends with the children.
- a. Mr. Hovey did not provide any documentary evidence of child support payments paid to Ms. Hanson between May 2011 and September 2011, when he claimed Ms. Hanson's mother cared for their children while the parties alternated weekends. I do not accept that Mr. Hovey made any child support payments to Ms. Hanson during that period.

- b. Mr. Hovey did not provide any documentary evidence of child support payments paid to Ms. Hanson between October 2011 and April 2012, when he claimed Ms. Hanson's father cared for the children, while the parties alternated weekends. I do not accept that Mr. Hovey made any child support payments to Ms. Hanson during that period.

Retroactive recalculation January 2011 through April 2012 – Mr. Hovey payor

Shared care	Children born October 2000, January 2003, and February 2004	A	B	C	
January 2012 to April 2012 no evidence either parent paid Mr. Hanson	Mr. Hovey claimed Ms. Hanson's father cared for the children	Mr. Hovey's income \$71,450 (\$1,332 NB) Ms. Hanson's income \$54,499 (\$1024 NB)	Mr. Hovey \$1332 x 4 = \$5,328.00 Ms. Hanson \$1,024 x 4 = \$4,096	Difference in child support payment for both for the period is \$1,232	\$0 Neither party credited
December 2011 no evidence either parent paid 2011 tables	Mr. Hovey claimed Ms. Hanson's father cared for the children	Mr. Hovey's income \$66,217 (\$1,237 NB) Ms. Hanson's income \$48,274 (\$908 NB)	Mr. Hovey \$1,237 x 1 = \$1,237 Ms. Hanson \$908 x 1 = \$908.00	Difference for child support payment for both for the period is \$329.00	\$0 Neither party credited
October, 2011 – November 1, 2011 – NB 2006 tables	Mr. Hovey claimed Ms. Hanson's father cared for the children	Mr. Hovey's income \$66,217 (\$1,220 NB) Ms. Hanson's income \$48,274 (\$901 NB)	Hovey \$1220 x 2 = \$2,440.00 Hanson \$901 x 2 = \$1,802 \$1,790.00	Difference in child support for both for the period is \$638.00	\$0 Neither party credited
May 1, 2011 – September 2011-NB 2006 table parties in NB.	Mr. Hovey claimed Ms. Hanson's mother cared for the children, both parties split the weekends.	Mr. Hovey's income \$66,217 (\$1,220 NB) Ms. Hanson's income \$48,274 (\$901 NB)	Hovey \$1,220 x 5 = \$6,100.00 Hanson \$901.00 x 5 = \$4505.00	Difference in child support payment for both is \$1,595	\$0 Neither party credited
January	Mr. Hovey claims	Mr. Hovey's	Mr. Hovey	Set off	\$1,276

2011 – April 2011 No evidence agreement re: debt	shared parenting arrangement until May 1, 2011, when he was posted elsewhere Contino SCC applies	income \$66,217.00 (\$1,220) Ms. Hanson’s income \$48,274 (\$901 NB) Children 10, 7, 6	\$1,220 x 4 = \$4,880.00 Ms. Hanson \$901.00 x 4 = \$3,604	\$1,276 to Ms. Hanson + Hanson paid child care	set off \$4,880 full table amount
Total owing between January 2011 and April 2011					\$1,276 owed by Mr. Hovey

May 2012 to March 2015

33. All three children resided primarily with Ms. Hanson between May 2012 and March 2015. Ms. Hanson claimed Mr. Hovey did not pay any child support to her until Ms. Hanson’s lawyer contacted him and he started paying \$400 in April 2013.

34. Mr. Hovey stated that in 2013, Ms. Hanson’s lawyer contacted him and “he willingly increased his child support to \$400.00 per month”. Ms. Hanson claimed that in 2013, the matter did not go to court as her lawyer left the firm she had been working for and Ms. Hanson was later provided notice that her application was never filed with the Court.

35. Based on Mr. Hovey’s line 150 income for 2013, his table amount child support payment was \$1,344 per month and not \$400.00 per month a significant difference of \$944 per month.

36. Mr. Hovey suggested that for a period up to April 2014, he had extra expenses related to travelling to see the children. He argued he was unable to pay the table amount of child support to Ms. Hanson.

37. The *Child Support Guidelines* provide guidance regarding when a court may award child support different from the amount determined under section 3 of the *Guidelines*:

- 10 (1) On either spouse’s application, the court may award an amount of child support that is different from the amount determined under

any of sections 3 to 5, 8, or 9 if the court finds that the spouse making the request, or a child in respect of whom the request is made, would otherwise suffer undue hardship.

....

10 (2) (b) the spouse has unusually high expenses in relation to exercising access to a child.

...

10 (3) Despite a determination of undue hardship under subsection (1), an application under that subsection must be denied by the court if it is of the opinion that the household of the spouse who claims undue hardship would, after determining the amount of child support under any of sections 3 to 5, 8 or 9, have a higher standing of living than the household of the other spouse.

42.Mr. Hovey did not file an Undue Hardship application.

43.Ms. Hanson acknowledged that for a period Mr. Hovey lived a distance from the children. She claims Mr. Hovey visited the children every two months. Mr. Hovey suggested he travelled to see the children every two weeks. As noted above, they agreed they shared holidays and he had the children for a month in the summer.

44.Between 2012 and 2015, Mr. Hovey's income was approximately \$20,000 more than Ms. Hanson's and he acknowledges all three children were living primarily with Ms. Hanson as of May 2012. Given the circumstances, I find Mr. Hovey should have paid the table amount of child support for the parties' three children and he should have also paid his expenses to exercise his parenting time.

45.Mr. Hovey indicated that he increased his child support payments to \$750 in 2014. Ms. Hanson says Mr. Hovey increased his payment to \$700 when he was posted closer to Halifax, Nova Scotia, in or around April 2014.

46.Based on Mr. Hovey's line 150 income for 2014, his table amount child support payment was \$1,509.00 per month and not \$700 per month. A significant difference of \$809 per month.

47.Considering the evidence regarding the parties' circumstances and

considering Mr. Hovey's line 150 income between January 2011 and March 2015, Mr. Hovey would owe Ms. Hanson \$39,764.

Retroactive recalculation May 2012 through March 2015 – Mr. Hovey payor

2011 tables	Retroactive recalculation	A	B	C	Total
January to March 2015 Ms. Hanson acknowledged receipt of \$700 month	3 children living with Ms. Hanson Children born October 2000, January 2003, and February 2004	Mr. Hovey's income \$70,736.00 (\$1,283) Ms. Hanson's income \$50,863.00	Mr. Hovey \$1283 x 3 = \$3,849 Paid \$700 x 3 = \$2,100.00	\$1,749 notionally owed by Mr. Hovey	
April 2014 to December 2014 Mr. Hovey closer to Halifax, \$700	3 children living with Ms. Hanson	Mr. Hovey's income \$84,108.00 (\$1,509) Ms. Hanson's income \$58,063	Mr. Hovey \$1,509.00 x 9 = \$13,581 \$700 x 9 = \$6,300.00	\$7,281.00 notionally owed by Mr. Hovey	-\$9,030
January 2014 to March 2014 Ms. Hanson paying \$400 NB table	3 children living with Ms. Hanson Children born 2000 (14), 2003 (11), 2004 (10)	Mr. Hovey's income \$84,108.00 (\$1,558 NB) Ms. Hanson's income \$58,063.00 Paying \$400.00	Mr. Hovey \$1,558.00 x 3 = \$4,674 \$400 x 3 = \$1,200	\$3,474.00 notionally owed by Mr. Hovey	-\$12,504
November 2013 to December 2013 paying \$400	3 children living with Ms. Hanson	Mr. Hovey's income \$72,128 (\$1,344 NB) Ms. Hanson \$50,063	Mr. Hovey \$1,344 x 2 = \$2,688 Paid \$400.00 x 2 = \$800.00	\$1,888.00 owed by Mr. Hovey	-\$14,392
January 2013 – October 2013	3 children living with Ms. Hanson	Mr. Hovey's income \$72,128 (\$1,344 NB) Ms. Hanson's income \$50,063.00	Mr. Hovey \$1,344 x 10 = \$13,440	\$13,440 owed by Mr. Hovey	-\$27,832
May 2012 – December 2012	3 children living with Ms. Hanson	Mr. Hovey's income \$71,450 (\$1,332 NB) Ms. Hanson's income \$54,499	Mr. Hovey \$1,332 x 8 = \$10,656	\$10,656.00 owed by Mr. Hovey	-\$38,488
Period between	Retroactive child	Ms. Hanson			\$38,488.00 +

March 2015 and May 2012	support notionally owed by Mr. Hovey	paid for all child-care / Mr. Hovey travelled			1,276 = \$39,764
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April 2015 – August 2016

48. The parties acknowledge that in April 2015, both Ch, and D, began living primarily with Mr. Hovey and Ca remained living primarily with Ms. Hanson.

49. Ms. Hanson claims Mr. Hovey suggested she keep the child tax benefit and that neither would pay child support. Mr. Hovey denies any such arrangement existed.

50. Ms. Hanson did not pay the table amount of child support for their two youngest children as of April 2015 and Mr. Hovey did not pay child support for the eldest child.

Retroactive recalculation split parenting – April 2015 through August 2016 - Ms. Hanson and Mr. Hovey as payors

January 2016 – August 2016 Split parenting	2 children with Mr. Hovey and one child with Ms. Hanson	Mr. Hovey's income \$71,140.00 (\$602 for one child) Ms. Hanson's income \$51,002 (\$714.00 for two) no payments	Mr. Hovey \$602 x 8 = \$4,816 Ms. Hanson \$714 x 8 = \$5,712 \$896.00	\$896.00	-\$896
April 2015 – December 2015	2 children with Mr. Hovey and one child with Ms. Hanson	Mr. Hovey's income \$70,736.00 (\$598) Ms. Hanson's income \$50,863 (\$712) – no payments	Mr. Hovey \$598 x 9 = \$5,382.00 Ms. Hanson \$712.00 x 9 = \$6,408	\$1,026.00	-\$1,922
Total April 2015 – August 2016	Retroactive child support notionally owed by Ms. Hanson				Total -\$1,922

September 2016 through October 2017

51. The parties acknowledge Ca began living primarily with Mr. Hovey in September 2016.

52. Mr. Hovey claims he discovered Ms. Hanson was still claiming the child tax benefit for all three children but he successfully applied for the child tax benefit retroactively. He understood Ms. Hanson was required to pay back the benefits she was not entitled to.

53. Ms. Hanson did not pay the table amount of child support for three children between September 2016 and October 2017.

Retroactive recalculation September 2016 through October 2017- Ms. Hanson as payor

2011 tables	Retroactive	A	B	C	Total
Period of calculation	Children born October 2000, January 2003, and February 2004	Amount previously ordered, if any	Amount paid, if any	Retroactive Amount Owed (A-B)	-\$1,922 carried over
Petition filed October 20, 2017	Mr. Hovey seeking to go back to April 2015 Ms. Hanson seeking to go back to 2011.				
January 2017 – October 2017 2011 tables apply.	3 children living primarily with Mr. Hovey. Ms. Hanson's parenting time interrupted by MCS in April-Sept 2017	Hanson \$57,745.00 (1061) No payments by Ms. Hanson	\$1061 x 10 = \$10,610.00	\$10,610.00	-\$12,532
September 2016 to December 2016	3 children living primarily with Mr. Hovey	Ms. Hanson's income \$51,002.00 Mr. Hovey's \$71,140 No payments	\$943 x 4 = \$3772.00	\$3,772.00	-\$16,304

	February 2004				
2020 January 2020- November 2020 \$770	2 children with Mr. Hovey (Ms. Hanson claimed shared care between October 1, 2019 and October 1, 2020) – insufficient evidence	Mr. Hovey agreed based on pay stubs provided to him by Ms. Hanson, her income for 2020 was approximately \$70,000.00 (\$989 NS Table).	\$70,000.00 2017 Table \$989 – paid \$770 = \$219 x 11 = \$2,409	\$2,409.00 Underpayment	-\$18,713
2019 November 2019 and December 2019 \$770.00	2 children with Mr. Hovey (Ms. Hanson argued the parties had a shared care arrangement October 1, 2019 through to October 1, 2020) – insufficient evidence	Ms. Hanson's income in 2019 \$68,751.00 2017 NS table \$973	\$68,751.00 2017 Table \$973 – she did pay \$770 = \$203 x 2 = \$406.00	\$406.00 underpayment	-\$19,119
October 2019 \$943.00	2 children living with Mr. Hovey, Ch and D only	Ms. Hanson's income \$68,751 2017 NS table \$973	\$68,751.00 \$973 - \$943	\$30.00 underpayment	-\$19,149
January 2019- September, 2019 \$943.00 missed 3	3 children living primarily with Mr. Hovey – 3 months of missed payments by Ms. Hanson June, July and August 2019	Ms. Hanson's income \$68,751.00 (\$1251) Hovey \$82,604.00 + partner \$31,950.00 Eligible dependent Brianna	\$68,751.00 \$1251 - \$943 = \$308 x 6 = \$1,848 \$1251 x 3 = \$3,753	\$5,601.00 underpayment	-\$24,750
January	3 children	Ms. Hanson's	\$54,218.00	\$3,069.00	-\$28,539

2018 to December 2018 Order \$943.00	living primarily with Mr. Hovey Ms. Hanson missed three payments over the “last part of March, April, May, and the first of June, 2018”	income \$54,218.00 (\$1,023) Hovey \$82,904.00	\$1023 – \$943 = \$80 x 9 = \$720 1023 x 3 = \$3,069	+\$720 = \$3,789.00 underpayment	
November 2017 December 2017	3 children living primarily with Mr. Hovey	\$57,745.00 (\$1086)	\$1086 - \$943 = \$143 x 2 = \$286.00	\$286.00 underpayment	-\$28,825
Total	Notionally owed by Ms. Hanson to Mr. Hovey.				Total - \$28,825

The parties’ positions at trial

59. Mr. Hovey was initially seeking the table amount of child support paid prospectively from November 2017 and retroactively to April 2015. Mr. Hovey initially claimed Ms. Hanson owed him “approximately \$20,731.86,” in retroactive child support.

60. At trial, Mr. Hovey claimed that in addition, Ms. Hanson was in arrears of \$5,563.00 for the period between January 2018 and April 7, 2020. He specified that Ms. Hanson had missed six court ordered child support payments.

61. Mr. Hovey claimed Ms. Hanson owed him approximately \$24,000.00 but he would be prepared to accept \$8000.00 as a retroactive child support payment. He stated he would deposit any retroactive award in a bank account to be used for the children’s post-secondary education.

62. Ms. Hanson claimed Mr. Hovey owed her \$41,040.00.

Analysis

63. Mr. Hovey has claimed Ms. Hanson is not entitled to a retroactive recalculation of the table amount of child support the children would have been entitled when Ms. Hanson claims the children resided primarily with her, between January 2011 and March 2015.

64. Mr. Hovey argued that this Court should not recognize the children's entitlement to the table amount of child support between January 2011, and March 2015, but should order Ms. Hanson to pay the table amount of child support the children are entitled to between April 2015 and beyond.

65. At paragraph 41 in *Michel v. Graydon*, 2020 SCC 24, the Supreme Court of Canada confirmed:

Child support obligations arise upon a child's birth or the separation of their parents. Retroactive awards are a recognized way to enforce such pre-existing free-standing obligations and to recover monies owed but, yet unpaid.

66. Mr. Hovey did not provide any documentary proof of any money he paid to Ms. Hanson in March 2011, or in April 2011, or between May 2011 and April 2012 when the children were with Ms. Hanson's parents, or between May 2012 and March 2013, before Ms. Hanson's lawyer contacted Mr. Hovey.

67. Ms. Hanson claims Mr. Hovey did not pay child support until April 2013. I am not prepared to credit Mr. Hovey with any child support payments between January 2011 and April 2012.

68. At paragraph 31 in *Michel*, the Supreme Court of Canada found that:

When a payor parent fails to pay the appropriate amount of child support, the recipient parent is left to shoulder the burden. If the recipient parent does not have the means to provide their child reasonable support, the child suffers. Both the recipient parent and the child may experience hardship because of the payor parent's neglect.

69. Ms. Hanson did not receive adequate financial support, and specifically she did not receive child support for the children, between January 2011, and

March 2015, and Ms. Hanson was left to “shoulder the burden”.

70. In *Michel*, the Supreme Court of Canada found that the *Child Support Guidelines*:

helped shift the focus from the child’s needs to their entitlement to support, embracing in the process the principles of fairness and flexibility, balanced with consistency and efficiency, all in the child’s best interests. While the Courts’ fact-specific inquiries and judicial discretion provide fairness and flexibility (para 52),

and that:

...

Unmet child support obligations, whether they are in the form of arrears or have not yet been judicially recognized, are “a valid debt that must be paid, similar to any other financial obligation... The obligation to support children is not contingent on notice by one party to the other of an intention to seek additional child support. ... Likewise, the fact that the obligation to pay child support is confirmed in a statute does not imply it is any less of a debt. (para 78)

Decision

Table amount of child support

71. The Court must arrive at a “fair standard of support for the children that ensures the dependent children continue to benefit from the financial means of each parent after separation”. To determine a fair standard of support I have calculated the table amount of child support owed by both parties retroactively to 2011, and prospectively from November 2017.

November 2017 – November 2020

72. As noted previously, Ms. Hanson’s 2020 financial information was not available at trial in November 2019, and without prejudice the parties agreed to rely on an approximate annual income for child support of \$70,000 for 2020, attracting a monthly child support payment of \$989 for two children, between January 2020 and December 2020.

73. Ms. Hanson must adjust her 2020 child support payments to correspond with

her total line 150 income for 2020, upon receipt of her year-end income statement from her employer. Once adjusted, the new income will be used to determine her child support payments in 2021, until her year-end income is determined at the end of 2021.

74. Each year, Ms. Hanson shall disclose her year-end income statement from her employer, her T1 General tax return, and any Notices of Assessment or Re-Assessment to Mr. Hovey within one week of receipt of each document. It is Ms. Hanson's responsibility to adjust child support every year based on her year-end income.

75. Ms. Hanson works in Ottawa, Ontario. The administrative recalculation program is not available to the parties. As of January 1, 2021, Ms. Hanson must adjust child support based on the child support tables for Ontario.

76. The commencement date for any child support owed as of December 1, 2020, is dependent on the Court's retroactive recalculation.

Previous year method

77. At trial, the Court must use the parties' annual income for child support for each specific year when recalculating the table amount of child support.

78. For the sake of convenience many parents consent to use the "previous year method". If the parties reach an agreement, to be confirmed in writing, they are free to use the "previous year method".

Retroactive recalculation January 2011 to October 2017

79. When there was a disagreement between Mr. Hovey and Ms. Hanson regarding the parties' past parenting arrangements, I have taken into consideration that the children are currently residing with Mr. Hovey. I have erred on the side of the parent who has the children in their primary care currently.

80. When in doubt about the evidence, I have chosen the outcome which would assure more financial support for the children in the immediate future.

- a. Given Ms. Hanson's request for the Court to recalculate child support to 2011, I have not included in my recalculation the period after

separation in December 2009, January 2010 through December 2010. If I had considered that period, Mr. Hovey would owe the “set off” of \$3,934, as a starting point only. If the Court had found Ms. Hanson had primary care of the children in 2010, Mr. Hovey would have owed \$14,784.

- b. Given the conflicting evidence from both parties regarding the parenting arrangement between January 2011 and April 2011, I calculated the table amount of child support as the set off of \$1,276, the starting point only, and not the full table amount of \$4,880, for a difference of \$3,604.
 - c. I have not factored in Ms. Hanson’s representations that the children were living with both Mr. Hovey and Ms. Hanson almost equally before she left Halifax, Nova Scotia for Ottawa, Ontario.
81. At trial, the parties accepted Ms. Hanson’s financial documentation proving her annual income for child support between 2010 and 2019. The parties also accepted proof of Mr. Hovey’s annual income for child support for the relevant period between 2011 and 2015.
82. Considering all the circumstances and the evidence at trial, I find the notional amount owed by Mr. Hovey to Ms. Hanson for the period between January 2011 and March 2015 is \$39,764, and I find that the notional amount owed by Ms. Hanson to Mr. Hovey for the period between April 2015 and November 2020 is \$28,825.
83. The difference is $\$39,764 - \$28,825 = \$10,939.00$ owed by Mr. Hovey to Ms. Hanson.
84. Notionally, Ms. Hanson’s first child support payment is due December 1, 2020.
85. To account for Ms. Hanson’s notional overpayment of \$10,939, Ms. Hanson is not required to pay child support to Mr. Hovey for 11 consecutive months:
- a. For instance, if Ms. Hanson has not paid child support since trial in November 2020, the period of non-payment would be the period between December 1, 2020, and October 1, 2021, with child support starting in November 2021; or

- b. If Ms. Hanson has continued to pay the table amount of child support between December 1, 2020 and March 2021, while waiting for the Court to render a decision, Ms. Hanson may opt not to pay child support for 11 months following the release of this decision, starting April 1, 2021, for 11 consecutive months.
- c. After eleven months Ms. Hanson must resume paying the table amount of child support based on an estimate of her annual income for child support for the year in question (or the previous year income) and the number of children.

Ms. Hanson's in person parenting

86. This matter may return to court in the summer of 2021, or later to determine Ms. Hanson's future in person parenting time with the children.

Cost of travel for in person parenting

87. A question was raised about whether the table amount of child support should be reduced due to "unusually high expenses" in relation to exercising in person parenting time with the parties' children.

88. Please refer to section 10 of the *Child Support Guidelines*. If Ms. Hanson is going to request a reduction in the table amount of child support, she must file an Undue Hardship Application and she must complete the necessary calculations.

Cindy G. Cormier, J.S.C. (F.D.)