

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Cormier v. Vienneau*, 2022 NSSC 98

Date: 20220404

Docket: Sydney No. 116661

Registry: Sydney

Between:

Tara Cormier

Applicant

v.

Christopher Vienneau

Respondent

LIBRARY HEADING

Judge: The Honourable Justice Pamela Marche

Heard: March 2 and 3, 2022 in Sydney, Nova Scotia

Final Written Submissions: March 25, 2022

Written Decision: April 4, 2022

Subject: Child support, Imputing income, Special or extraordinary expenses, Retroactive support

Summary:

[1] Ms. Cormier sought child support for four children prospectively and retroactive to June 2017. She asked the Court to impute income to Mr. Vienneau on the basis of undeclared earnings and unemployment without valid reason. Ms. Cormier also sought contribution to s. 7 expenses related to medical and dental insurance premiums and horseback riding. Mr. Vienneau denied receiving undeclared cash income and claimed health reasons

prevented him from earning income and paying child support.

Issues:

- (1) Should income be imputed to Mr. Vienneau? If so, what amount of child support is payable?
- (2) What amount, if any, should Mr. Vienneau contribute to s. 7 expenses??

Result:

Ms. Cormier offered insufficient evidence to impute income to Mr. Vienneau on the basis of undeclared cash income. Mr. Vienneau offered insufficient evidence that health reasons prevented his employment. For the purposes of prospective child support, income in the amount of \$26,915 (minimum wage) was imputed to Mr. Vienneau on the basis of intentional unemployment, without reason. Mr. Vienneau ordered to pay child support in the amount of \$658.00, commencing April 15, 2022.

Income tax information for Mr. Vienneau was used to determine income for the years 2017 and 2018. Income (minimum wage) was imputed to Mr. Vienneau for the years 2019 and 2020. Retroactive child support from June 15, 2017 to October 15, 2020 was set at \$20,707.92. In addition to the table child support payment, Mr. Vienneau was ordered to pay \$100.00 per month until the total of \$20,707.92 is fully paid.

No aspect of the decision impacts the authority of the Maintenance Enforcement Program to enforce arrears that have accumulated pursuant to the Interim Support Order that was issued November 15, 2020 and remained in place until April 15, 2022.

THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION. QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Cormier v. Vienneau*, 2022 NSSC 98

Date: 20220404

Docket: *Sydney* No. 116661

Registry: Sydney, NS

Between:

Tara Marie Cormier

Applicant

v.

Christopher Darrin Vienneau

Respondent

Judge: The Honourable Justice Pamela A. Marche

Heard: March 2 and 3, 2022, in Sydney, Nova Scotia

Written Release: April 4, 2022

Counsel: Cassandra Lilley for the Applicant
Pavel Boubnov for the Respondent

By the Court:

Overview

[2] Tara Cormier and Christopher Vienneau have four children, the youngest born in 2012 and the eldest born in 2007. Parenting issues were resolved by consent on the second day of a two-day hearing. This decision, therefore, pertains only to child support, both prospective and retroactive, including expenses related to medical and dental insurance premiums and horseback riding.

[3] Ms. Cormier is asking that income be imputed to Mr. Vienneau on the basis that he receives undeclared income, and he is unemployed without valid reason. Mr. Vienneau claims poor health prevents him from working and, consequently, paying child support.

Background and Procedural Fact

[4] The parties separated in June, 2017. Mr. Vienneau paid some child support to Ms. Cormier in 2017 and 2018. He made no voluntary child support payments after 2018 despite Ms. Cormier's requests.

[5] In November 2019, Ms. Cormier applied for an order under the *Parenting and Support Act* R.S.N.S. 1989, c. 160, (the *Act*) seeking child support retroactive to June 2017, the date the parties separated.

[6] In November 2020, fulltime minimum wage income (at the rate it then was) was imputed to Mr. Vienneau in the amount of \$26,104 resulting in an Interim Order for child support of \$623.45 per month being issued. Income was imputed to Mr. Vienneau because he failed to disclose financial information, despite being given multiple opportunities to do so.

[7] A hearing was held on March 2 and 3, 2022. The court heard from each party as well as two other witnesses whose evidence related entirely to parenting which is no longer at issue. Both parties were represented by counsel.

Issues

1. Should income be imputed to Mr. Vienneau? If so, what amount of child support is payable?
2. What amount, if any, should Mr. Vienneau contribute to S. 7 expenses?

Position of the Parties

Ms. Cormier

[8] Ms. Cormier is asking the Court to impute income to Mr. Vienneau for two reasons: (1) on the basis that he is intentionally unemployed without valid reason and (2) because he earns income that he does not declare.

[9] Ms. Cormier acknowledges she bears the burden of proving income should be imputed. However, given Mr. Vienneau is arguing he is unable to work because of medical reasons, Ms. Cormier asserts the evidentiary burden in this regard shifts to Mr. Vienneau.

[10] Ms. Cormier contends Mr. Vienneau failed to provide sufficient proof to establish his health needs prevent his employment. Ms. Cormier asks that income be imputed to Mr. Vienneau in the amount of \$41,879, based on the mid-range wage of \$20 per hour typical for a local truck driver, according to the Government of Canada's Job Bank website.

[11] In the alternative, Ms. Cormier argues that income should be imputed to Mr. Vienneau in the amount of \$26,915, based on full-time minimum wage.

[12] The table amount of child support payable for four children when a Nova Scotia payor has income of \$41,879 is \$983.23. Ms. Cormier is seeking child support retroactive to June 2017 (57 months). Ms. Cormier is claiming retroactive

child support in the amount of \$49,794.11 (57 months*\$983.23 - \$2,300 child support received in 2017 and - \$3,950 child support received in 2018).

[13] The table amount of child support payable for four children when a Nova Scotia payor has income of \$26,915 is \$657.00. Using the same calculation for determining retroactive child support as the preceding paragraph, but based on minimum wage income, Ms. Cormier is claiming, in the alternate, retroactive child support in the amount of \$31,119.

[14] Ms. Cormier is also asking that Mr. Vienneau contribute to medical and dental insurance premiums attributable to the four children (\$288.76 per month) as well as costs associated with two of the children's participation in horseback riding (\$303 per month). Ms. Cormier argues these costs should be shared between the parties proportionately based on their respective incomes.

[15] Ms. Cormier claims a projected annual income of \$26,657.28 for 2022 comprised of Long-Term Disability and Canada Pension Disability.

[16] Should the court impute income to Mr. Vienneau in the amount of \$41,879, Ms. Cormier argues that Mr. Vienneau should be responsible for 65% of the total s. 7 costs ($65\% * \$591.76 = \384.64 a month).

[17] Should the court impute income to Mr. Vienneau in the amount of \$26,915, Ms. Cormier argues that Mr. Vienneau should be responsible for 54% of the total s. 7 costs ($54\% * \$591.76 = \319.55 a month).

Mr. Vienneau

[18] Mr. Vienneau denies working “under the table.” He argues he is unable to work at all due to medical reasons. Mr. Vienneau acknowledges that he bears the burden of proving that health reasons prevent his employment.

[19] Mr. Vienneau did not offer a medical report or medical records as proof of his health issues. He did submit correspondence dated October 22, 2020 from Dr. Oei containing the following single paragraph:

Mr. Vienneau developed debilitating migraines and had to stop working as of February, 2019, then he ended up having gallbladder attacks and a cholecystectomy had to be performed on September 4, 2019. In the meantime, he developed a hernia and is currently waiting to see a surgeon to have it repaired. He is still unable to work.

[20] Mr. Vienneau explains that he did not offer any other medical evidence because he does not have a treating physician. Mr. Vienneau argues the suggestion that he is intentionally unemployment is ungrounded.

[21] In the alternative, Mr. Vienneau argues that if the Court determines that income should be imputed to him, it should be imputed at a minimum wage level.

[22] Mr. Vienneau argues that no child support should be ordered prospectively or retrospectively and that he should not be required to contribute to s. 7 expenses related to the children. Mr. Vienneau claims any award of retroactive child support will simply result in the further accumulation of arrears.

Applicable Legislation and Case Law

[23] Section 9 of the *Parenting and Support Act, supra*, authorizes the Court to make an order for support for a dependent child.

Imputation of Income

[24] Section 19 of the Nova Scotia *Provincial Child Support Guidelines* made under Section 55 of the *Parenting and Support Act, supra*, (*the Guidelines*) provides the Court with discretion to impute income in certain circumstances.

[25] I have considered and applied the case law around imputation of income as summarized by Justice Forgeron in **Standing v. MacInnis**, 2020 NSSC 304. I have also considered case law submitted by counsel in relation to this issue

including: **Day v. Day**, 2019 NSSC 116; **Syms v. Syms**, 2017 NSSC 243; and **Rideout v. Woodman** 2016 NSSC 205.

[26] I must exercise my authority to impute income judiciously, with an evidentiary basis and not arbitrarily. The goal of imputing income is to come to a fair and reasonable assessment of income. Imputation of income is not meant to be punitive. The burden of establishing that income should be imputed rests with the person claiming it should be, but this evidentiary burden shifts to the person claiming they are unable to earn income due to health reasons.

Retroactive Support

[27] The Supreme Court of Canada in **S. (D.B.) v. G. (S.R.)**, 2006 SCC 37 (**DBS**), considered in **Michel v. Graydon**, 2020 SCC 24, set out factors to consider when assessing whether to award child support retroactively, including:

- the reasonableness for delay in seeking support by the recipient;
- the presence or absence of blameworthy conduct by the payor;
- the circumstances of the child, past and present, giving consideration to the child's standard of living; and
- any hardship to the payor occasioned by a retroactive award.

[28] Hardship factors are less significant if the payor engaged in blameworthy conduct. The payment of a retroactive award is not an exceptional remedy.

A support award should be payable from the date the recipient gave effective notice to the payor. It is generally inappropriate to make a retroactive award more than three years prior to the date when formal notice was provided to the payor (**DBS**, *supra*; **Colluci**, *supra*).

Special and Extraordinary Expenses s. 7 Expenses

[29] Section 7 of the *Guidelines* provides direction on how the costs of certain expenses should be shared. These expenses are often referred to as s. 7 expenses. The general principle is that s. 7 expenses are shared by the parents in proportion to their respective incomes, including any contribution to the expense by the child, after subsidies, benefits or deductions (s. 7(2) and (3)).

[30] I have considered and applied the case law regarding s. 7 expenses in **MacDonald v. Pink**, 2011 NSSC 421.

[31] A Court may order a parent to pay all or a portion of s. 7 expenses after taking into consideration (1) the necessity of the expense in relation to the child's best interests; and (2) the reasonableness of the expense, considering the means of the parents and the child and the family's spending pattern prior to separations. The portion of the medical and dental insurance premiums attributable to the child is considered such an expense (s. 7(1)(b)). Extraordinary expenses for

extracurricular activities, such as horseback riding, may also be considered (s. 7(1)(f)).

[32] Section 7(1A)(a) defines “extraordinary expenses” to mean:

- (a) expenses that exceed those that the spouse requesting an amount for the extraordinary expenses can reasonably cover, taking into account that spouse’s income and the amount that the spouse would receive under the applicable table or, if the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate; or
- (b) if clause (a) is not applicable, expenses that the court considers are extraordinary, taking into account all of the following:
 - (i) the amount of the expense in relation to the income of the spouse requesting the amount, including the amount that the spouse would receive under the applicable table or, if the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate,
 - (ii) the nature and number of the educational programs and extracurricular activities,
 - (iii) any special needs and talents of the child or children,
 - (iv) the overall cost of the programs and activities,

Findings and Decision

1. Should income be imputed to Mr. Vienneau? If so, what amount of child support is payable?

Imputation of Income

[33] Mr. Vienneau is a Class One certified heavy equipment operator; he is a tow truck and tractor trailer driver by occupation. In 2017, Mr. Vienneau was employed

as a truck driver and a maintenance worker and had a reported income of \$15,724. In 2018, Mr. Vienneau was a long-haul driver and had a reported income of \$41,879. In 2019, Mr. Vienneau had a reported income \$2,159 and he did not file income information with the court for 2020 or 2021.

[34] I am not prepared to impute income to Mr. Vienneau on the basis of Ms. Cormier's allegation that he works for cash. Ms. Cormier bears the onus of proving, on a balance of probabilities, that it would appropriate to impute income to Mr. Vienneau for this particular reason. She did not offer any corroborating evidence in this regard from Kevin's Towing or Hinchey's Rides and Amusement, former employers of Mr. Vienneau who she alleges paid Mr. Vienneau in cash.

[35] Ms. Cormier believes Mr. Vienneau is working for A and P Transmission because she has witnessed Mr. Vienneau's vehicle parked there and because of information relayed to her about Mr. Vienneau doing jobs for that company. Ms. Cormier directly asked the owner of that company, Mr. Peter Shannon Christiansen, via text message, if Mr. Vienneau was working there. A record of that text message was attached to Ms. Cormier's affidavit of February 28, 2022.

[36] I put little weight into the text exchange between Ms. Cormier and Mr. Christensen. Mr. Christensen was not called to testify and was not cross-examined.

That being said, nothing in the text exchange served to prove that Mr. Vienneau was being paid “under the table.”

[37] I do not accept that Mr. Vienneau has proven, on a balance of probabilities, that health reasons prevent his employment. Ms. Cormier applied for child support in November 2019. Mr. Vienneau had ample time to collect supporting evidence to prove his medical condition negatively impacts his ability to work. He did not. The doctor’s note submitted was scant and insufficient to bear the weight of Mr. Vienneau’s burden of proof.

[38] Mr. Vienneau acknowledged, in his affidavit evidence, that he is available for part-time employment, although at other points in his testimony Mr. Vienneau claimed he is unable to work at all. I am more inclined to believe that Mr. Vienneau is, in fact, able to work at least part-time as a truck driver or to find alternative employment on a full time, minimum wage basis.

[39] Weighing all of the evidence, Mr. Vienneau has failed to prove, on a balance of probabilities, that health reasons prevent his employment. I have considered Mr. Vienneau’s driving certification, his earning capacity, his age and employment history. I am also aware that Mr. Vienneau’s driving license has been suspended due to non-compliance with the Maintenance Enforcement Program (MEP),

although this latter factor weighs very little in my analysis, given it results from Mr. Vienneau's own blameworthy conduct. Mr. Vienneau has failed to demonstrate that he can not work at least part-time as a truck driver or full time in another job earning minimum wage.

[40] I am satisfied that it is fair and reasonable in the circumstances to impute income to Mr. Vienneau equivalent to full-time minimum wage. For the purposes of assessing prospective child support, I impute income to Mr. Vienneau in the amount of \$26,915 based on current minimum wage rates. This figure is also approximate to part-time employment for a truck driver.

Prospective Child Support

[41] For the purposes of assessing prospective child support, Mr. Vienneau is found to have an annual income of \$26,915. He is obligated to pay the table amount of child support for four children in the amount of \$658.00 commencing April 15, 2022.

Retroactive Child Support

[42] For the purposes of assessing retroactive child support, I impute income to Mr. Vienneau in the amount of \$26,104 based on the past minimum wage rate.

However, I am prepared to impute this income to Mr. Vienneau for the years 2019 and 2020 only. Mr. Vienneau worked in 2017 and 2018. I will rely on the employment income reported by Mr. Vienneau in 2017 and 2018, \$15,724 and \$41,879 respectively, to assess child support.

[43] Having assessed income, I will now consider the potential retroactive child support claim from June 2017 to November 2020 (when the Interim Order was issued) calculated as follows:

Year	Income	Monthly Table Amount	No. of Months	Owed	Paid	Net
2017	\$15,724	\$206.18	7	\$1,443.26.08	\$2,300	(\$856.74)
2018	\$41,879	\$983.23	12	\$11,798.76	\$3,950	\$7,848.76
2019	\$26,104	\$623.45	12	\$7,481.40	0	\$7,481.40
2020	\$26,104	\$623.45	10	\$6,234.50	0	\$6,234.50
Total Owing						\$20,707.92

[44] Note that I have adjusted child support for the years 2017 and 2018 by \$2,300 and \$3,950 respectively, those being the amounts of child support Ms. Cormier acknowledged receiving from Mr. Vienneau. Other than contending in his affidavit that he paid “much more” than these amounts, Mr. Vienneau did not offer any detailed evidence of further payments. In the absence of such evidence, I will rely on the evidence of Ms. Cormier.

[45] I do not need to consider the retroactive child support claim from November 15, 2020 forward because the Interim Child Support Order put into place at that time was also based on imputed income in the amount of \$26,104. I understand that arrears have accumulated in relation to this interim order, but I do not factor this into my assessment of the retroactive claim and those arrears, as they exist, remain enforceable.

[46] I am satisfied that a child support order retroactive to June 15, 2017 up to October 15, 2020 is appropriate in this matter. There was little delay from the time Mr. Vienneau stopped voluntary payment of child support to when Ms. Cormier commenced legal action. Mr. Vienneau obviously appreciated his obligation to pay child support for his four children. Clearly, there is a presumption that four children between the ages of 9 and 13 are in need of support and there was no evidence offered to suggest the contrary. Any hardship experienced by Mr. Vienneau can be mitigated by a payment plan.

[47] Retroactive child support from June 15, 2017 to October 15, 2020 is set at \$20,707.92. In addition to the regular table amount of \$657.00 per month, Mr. Vienneau will pay an additional \$100.00 per month until the total of \$20,707.92 is fully repaid. No aspect of this decision impacts the authority of the Maintenance

Enforcement Program to enforce arrears that have accumulated pursuant to the Interim Support Order that was issued November 15, 2020.

2. What amount, if any, should Mr. Vienneau contribute to s. 7 expenses?

[48] Ms. Cormier claims a projected annual income of \$26,657.28 for 2022, comprised of Long-Term Disability and Canada Pension Disability. Since neither party raised the issue whether either of these benefits are tax exempt, I will assume they are not.

[49] Mr. Vienneau's 2022 annual income has been found to be \$26,915.

Medical and dental insurance premiums

[50] Ms. Cormier is asking that Mr. Vienneau share in the cost of medical and dental insurance premiums attributable to the four children (\$288.76 per month). Medical and dental insurance premiums need not be extraordinary to warrant a judicial allocation of expenses, but they still must be necessary and reasonable.

[51] I am quite satisfied that the medical and dental insurance are both necessary, within the context of children's best interests, and reasonable, considering the means of both parties. This is particularly true given the special health needs of the

eldest child, who has mental health issues, and one of the twins, who has a form of cancer that requires ongoing monitoring.

[52] Given I have assessed the income of the parties to be relatively equal, I am directing that Mr. Vienneau cover 50% of the cost of medical and dental insurance premiums attributable to the four children. More specifically, Mr. Vienneau will pay to Ms. Cormier \$144.50 per month commencing April 15, 2022 as his contribution to this expense.

Horseback Lessons

[53] Ms. Cormier is asking that Mr. Vienneau share in the cost of horseback riding lessons attributable to two of the children (\$303 per month).

[54] First, I must determine whether this cost is “extraordinary” as per s. 7(1A)(a) of the Guidelines. The specific question I must consider is whether the cost exceeds what Ms. Cormier can reasonably cover, given her income and taking into consideration child support. Given Ms. Cormier’s low income, I find that the horseback riding cost of \$303 per month is an extraordinary cost that can not reasonably be covered by the table amount of child support.

[55] Having found this cost to be extraordinary, I need not consider the factors laid out in s. 7(1A) (b) of the Guidelines. However, I must still be satisfied that the cost is necessary and reasonable.

[56] Ms. Cormier's contends, in her affidavit evidence, the two girls who participate in horseback riding enjoy it very much and gain valuable physical and social interaction from participating in this activity. Ms. Cormier also points out that Mr. Vienneau did not offer any evidence to dispute her position on this issue. That being said, I am not satisfied that this expense, while no doubt of value to the two children, is necessary or reasonable given the economic realities of Ms. Cormier and Mr. Vienneau.

Conclusion

[57] For the purposes of prospective child support, income in the amount of \$26,915 is imputed to Mr. Vienneau on the basis of intentional unemployment, without reason. Mr. Vienneau must pay monthly child support to Ms. Cormier in the amount of \$658.00, commencing April 15, 2022.

[58] Retroactive child support from June 15, 2017 to October 15, 2020 is set at \$20,707.92. In addition to the regular table amount payment of \$658.00 per

month, Mr. Vienneau must also pay an additional \$100.00 per month until the total of \$20,707.92 is fully paid.

[59] In addition to the table amount of child support, Mr. Vienneau must also pay to Ms. Cormier \$144.50 per month commencing April 15, 2022 in contribution to medical and dental insurance premiums attributable to the children.

[60] No aspect of this decision impacts the authority of the Maintenance Enforcement Program to enforce arrears that have accumulated pursuant to the Interim Support Order that was issued November 15, 2020 and remained in place until April 15, 2022.

[61] I ask that counsel for the Applicant kindly draft the Order. Any party who wishes to be heard on costs must file written submissions within 30 days of the Order being issued.

Marche, J.