

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Lilly v Playford*, 2024 NSSC 243

Date: 20240827

Docket: HFD *SFH*, No. 1201-067634

Registry: Halifax

Between:

Josephy Lilly

Applicant

v.

Tracy Playford

Respondent

Judge: The Honourable Justice Cindy G. Cormier

Heard: December 18, 2023

Final Written Submissions: January 19, 2024 and February 12, 2024 from the mother;
February 5 and February 12, 2024 from the father.

Counsel: Joseph Lilly, self-represented Applicant
Tracy Playford, self-represented Respondent

By the Court

1 Introduction

[1] The father claimed to be unemployed since February 3, 2023 and to be in receipt of employment insurance benefits between April 2023 and October 2023. He filed a Variation Application on or about July 11, 2023, enclosing his Statement of Income signed on July 4, 2023. He asked the Court to assign to him a yearly income for child support based on the employment insurance he had been receiving, which would be equivalent to an approximate yearly income of \$26,304.00.

[2] The father communicated with the mother, seeking a “small amount of relief,” stating he was trying to start a business and that he would do his best if they could make a “temporary deal.” In September 2023, the father stated to me that he was seeking to “temporarily” vary his yearly income for child support as of February 2023. The father’s child support was based on an income of \$62,000.00 (\$880 as of January 2022 and an additional \$100 as of April 1, 2022 – June 1, 2024 – to pay arrears of \$2,700), per Consent Variation Order issued June 6, 2022.

[3] The mother was seeking to have the father’s request to retroactively reduce his income for child support back to February 2023 dismissed.

2 Issues

1. Has there been a change in circumstances?
2. Should child support be recalculated?
3. What is the father's income for purposes of child support?
4. Should income be imputed to the father?
5. What amount of child support should the father pay, starting when?

3 Background

3.1 The early years

[4] The parties, Joseph Edwin Lilly (the father) and Tracy Nicole Playford (the mother), met while they were both employed by the City of Brampton, Ontario. They were married on August 12, 2004, and they separated on January 1, 2012.

[5] The parties have two children together, M, born in January 2007 and V, born in October 2008. The mother stayed home to care for the children.

[6] The parties' relationship became strained after M was born. From the mother's perspective, a component of the parties' difficulties was money. The parties maintained separate bank accounts and the father would not share information with the mother about his income.

[7] During the parties' relationship, they purchased a house in Dartmouth, Nova Scotia. In or around 2008, the father was offered a three-year work term with

Parks Canada, and the family moved to Thunder Bay. While in Thunder Bay, the mother attempted to start a small interior design business, however, she struggled to provide care for the children and manage the business.

[8] The father's three-year term with Parks Canada in Thunder Bay was coming to an end, and the parties discussed the possibility of the father relocating his employment to Nova Scotia where the father's family lived, and where the parties still owned a two-unit home in Dartmouth, Nova Scotia. Instead, it was the mother who was successful in securing a job with Public Works & Government Services Canada in Halifax, Nova Scotia.

[9] In July 2011, while the father remained in Thunder Bay to sell their home, the mother and the parties' children moved back to Dartmouth, Nova Scotia and they stayed with the father's parents until the parties' moving truck arrived with their household items. The mother and the parties' children then moved back into one of the two units in the parties' former home in Dartmouth, Nova Scotia.

[10] The father did not move back to Dartmouth, Nova Scotia but instead he chose to remain in Ontario. He began working for Parks Canada in their Cornwall Office. The father ended the parties' relationship in September 2011, but he

travelled to Dartmouth, Nova Scotia in December 2011 to spend Christmas with the family. The parties did not reconcile.

[11] In or around March 2012, the father suggested to the mother that he planned to return to live in Nova Scotia and evict the tenants living in the upper unit of the parties' matrimonial home in Dartmouth, Nova Scotia. He suggested to the mother that he would take the children out of their day care placements, and he would stay home and care for the children.

[12] From the mother's perspective, the father's plan would have resulted in the mother no longer having access to the rental income of \$1,500 (half arguably her income), which was assisting the mother with expenses for the children. In addition, if the father was unemployed and caring for the children, the mother would be solely responsible for paying the mortgage and the utilities for both units in the matrimonial home and for all other expenses for herself, the children, and possibly the father.

[13] The mother sought legal advice and in May 2012, the parties sold the matrimonial home. With respect to other outstanding issues such as the father's parenting time and child support, the father claimed undue hardship, but he did not complete the required documentation. The father argued that he should pay less

than the table amount of child support given his ongoing travel costs to Nova Scotia to exercise his parenting time.

[14] The father suggested he should be paying 75% of the table amount and 25% would be attributed to his travel costs to have parenting time with the children. The mother stated she was earning \$56,000, and the father was earning \$84,236.52. The mother pointed out that the father stayed with his parents at no cost while visiting the children in Nova Scotia and that the father would not provide her with a breakdown of his travel costs.

[15] The mother has suggested that although the parties reached an agreement that the children would spend six weeks with the father in Ontario each year, the father did not take the entire parenting time available to him. In addition, the mother suggested the father made it difficult for the mother to plan for the children's childcare with her in Nova Scotia in the summer, and that the father sometimes changed his plans which sometimes resulted in her having to re-arrange childcare or to take time off work.

3.2 Father's work term with Parks Canada ended

[16] In August of 2014, the father's work term with Parks Canada came to an end. The father suggested he had been paying the mother \$1,200 per month in

child support until then. There is no record of those payments. The father began collecting employment insurance in September 2014, and he told the mother he would only be paying \$500 per month in child support.

[17] In December 2014, the mother and her children and the mother's intimate partner and his children moved into a bigger home within the parties' children's school district. The father took the position that the mother should not have changed residences without his approval.

[18] In September 2015, the father advised the mother that his employment insurance was coming to an end, but he did not tell her he would no longer be paying any child support. In November 2015, the mother's intimate partner and his children moved out of the new home the mother and her partner had been living in together, and her former partner secured a new housing arrangement.

[19] The mother was reluctant to sell the new home she had recently purchased as she would sustain a financial loss. For a limited time, the mother's intimate partner continued to assist with the mother's extra expenses with the expectation that the father would recommence paying child support to the mother.

[20] The mother considered various ways to supplement her income to assist with the extra expenses for the new home, including renting out the large bedroom on

the main floor of the home or hosting an international student. The father took the position that nobody could live in the mother's home without his permission, however, in April 2016, the mother rented a room in her home.

[21] The mother expressed concern about the father's attempts to control who resided in her home and who stayed overnight in her home. The mother provided evidence that in the father's email exchanges with her, the father had referred to her as "pond scum"; "lying, greedy, self-righteous trash"; "greedy lying piece of trash"; "lying white trash"; and "piece of garbage."

[22] The parties were granted a divorce in 2017. At that time J. Jollimore imputed a minimum wage income to the father of \$20,520.00 at \$313.00 per month on Ontario tables. Arrears were fixed at \$4,400 and a moratorium was placed on their collection.

[23] The father was ordered to notify the mother of any changes to his employment status within two weeks of such changes going into effect. The father's claim for a reduction in the monthly amount of child support payable due to access costs was dismissed. The Maintenance Enforcement Program of Nova Scotia Record of Payments information was only available for the period between

June 22, 2017, and August 2024. According to the records, between July 1, 2017, and December 2, 2021, the father paid the mother \$313.00 per month.

3.3 The father relocated to Nova Scotia

[24] In the spring of 2020, the father relocated to Nova Scotia, and he stayed in his father's cottage, which was approximately a two-hour drive from the children's home. The mother applied to vary the child support amount, to enforce arrears, and to add a recalculation clause. In or around 2020 / 2021, the father was working for the Confederacy of Mainland Mi'kmaq, and he was earning approximately \$62,102.76.

[25] In or around March 2022, the mother's legal counsel sent correspondence indicating the mother was seeking to have the court adjust the father's income for child support to \$62,000.00, attracting a monthly child support payment of \$880.00. The mother requested child support be adjusted immediately to correspond with the father's actual income. The mother also requested payment of arrears owing.

[26] In or around March 30, 2022, the parties reached an agreement which was communicated to the court via telephone conference. A Consent Variation Order was issued June 6, 2022, which included a recalculation clause. The father's

income was found to be \$62,000.00 attracting a child support payment of \$880 per month, no section 7 expenses were included, and the father agreed to pay an additional \$100 per month toward arrears of \$2,700.00, for a total child support payment of \$980 per month until the \$2,700 is paid off, and \$880 each month thereafter.

3.4 Recalculation Order recalculated June 2023

[27] The father did not provide sufficient financial information to permit the administrative recalculation of his annual income for child support based on the 2022 taxation year per section 16 of the *Child Support Guidelines* and as required by the Recalculation Authorization Order. The father's annual income for 2021, which had been determined to be **\$62,000**, as of January 1, 2022, was increased by ten percent (10%) by the administrative recalculation clerk, for a yearly income for child support of **\$68,200** for 2022, attracting a table amount of child support of \$965.00.

[28] The mother suggested the father still owed \$1,200 in arrears at the time the order was recalculated. If arrears were outstanding, this would attract an extra payment of \$100 per month, until all arrears are paid in full. The Maintenance Enforcement Program of Nova Scotia Record of Payments suggests the father stopped paying the extra \$100 in July 2024.

4 The father's recent July 2023 application to retroactively reduce child support

[29] On September 25, 2023, the parties appeared for a case conference, and the father was notified there was outstanding financial disclosure required. The mother agreed to provide the father with an updated list of financial disclosure items to supplement the list she had already provided to the father in correspondence to the father dated September 18, 2023.

[30] I directed the father to file his financial information, including, but not necessarily limited to: paystubs for employment insurance benefits if enrolled; documentation as evidence he is unemployed; information from the recalculation program; his T1 Tax and Benefits returns; his insurance plan; his pension plan; all evidence of his job search information ; anything else on the list of missing disclosure provided to him by the mother, and that his documents should be provided by October 18, 2023.

[31] The mother specified she wanted documentary evidence to support the father's claim that he was unemployed and had made reasonable efforts to obtain employment. The mother also requested the father's T1 Tax and Benefit Returns to clarify what other income from pensions or RRSPs the father may have received. The father stated that he could provide the outstanding financial

information by October 25, 2023. As noted above, the mother was seeking to have the father's request to retroactively reduce his income for child support back to February 2023 dismissed.

[32] I explained to the father that it was not sufficient for him to prove he was unemployed for a period. In addition, he would need to provide the Court with evidence of his job search or what other monies might be available to him, such as a pension in pay or RRSP income.

4.1 Trial December 18, 2023

[33] On December 18, 2023, the matter was scheduled for an in-person trial.

[34] The father, who had been living in Nova Scotia, wrote to the Court stating he was "out of province" and that he was living in Ontario, although his telephone number remained the same. The father was reminded to provide the Maintenance Enforcement Program with any new mailing address and / or contact information as required pursuant to the previous Consent Order.

[35] The father stated that he had "met a girl [he] knew from decades past," and she just wanted a "simple life" too. He claimed he was living with his partner of two plus years, and they shared expenses, which was providing him with a "cushion."

[36] The father stated that she lived in a “rent controlled” apartment, and he was paying less to live with his girlfriend and her ex-husband than he had been paying when he was living in Nova Scotia. The father suggested he could not afford to live in Nova Scotia by himself, and he had moved back to Ontario as he could not find a job in Nova Scotia, but he had not yet found a job in Ontario.

[37] When he was asked how much he was contributing to expenses with his partner of two years, the father explained he was living in the rent-controlled apartment with his partner, and his partner’s husband who was dying of multiple sclerosis. He did not clarify what his expenses were except to say that it cost him less to live in Ontario, that taxes were lower in Ontario, and that he did not have to pay gas as he could use transit.

[38] The father stated, but provided no documentary evidence to support his claim, that he had not quit his job in Nova Scotia, but his employer in Nova Scotia had given him an opportunity to resign. The father suggested he could not gain access to the email account containing the information from his previous employer.

[39] In addition, the father also claimed that:

- He had been sick in hospital for six weeks, but he provided no medical documentary evidence; and
- He had been suffering from depression and anxiety. The father did not provide any documentation from a qualified physician or mental health practitioner to support his claim that he was suffering from depression and anxiety to an extent which would prevent him from earning an income.

4.2 Other sources of income

[40] With respect to any extra funds the father may have from a pension / RRSPs to pay child support, the father suggested he had “sunk everything he had left” into a “crappy house” in Nova Scotia to be “close to my kids and hopefully work something more reasonable out” with the mother. The father confirmed that since on or about December 8, 2023, he had been renting out the house. He claimed he had just started renting it for \$1,600 or \$1,800 per month “with the management fee.”

4.3 What the father’s plans were to resume child support payments at the previous payment level

[41] The father had previously suggested to the mother that he was attempting to open a new business, however, when the father was asked what his plans were

“moving ahead” and whether he was actively looking for jobs, the father claimed he was looking for “anything” he could find. The father confirmed he was qualified to legally officiate marriages in Ontario, he was qualified to work in the fields of professional planning and management, urban planning, construction, and in restaurants (he had worked as a bartender for ten years while in university).

[42] The father suggested he had applied for 76 jobs, including jobs he believed he would be overqualified for, however, he did not provide sufficient evidence of his reported job searches.

4.4 Ongoing disclosure issues

[43] In or around October 2023, the father filed information related to: his federal pension transfer / liquidation (he filed a document suggesting \$86,306.20 in 2022); his RRSP’s investment of \$89,321 / RRSP \$33,966 / \$36,638 after taxes; a letter from Employment Assistance; information from the Maintenance Enforcement Program suggesting that as of October 16, 2023 he had a credit balance; and a number of copies of employment applications. As of August 21, 2024, the father was in arrears of -\$100.

4.5 The father's arguments

[44] The father argued that his 2022 income had been “artificially inflated” when he withdrew RRSP income and that he could not pay child support based on his 2022 tax return, especially when he was on employment assistance. The father suggested that previously, when the Court had reduced his income due to employment issues, he had later advised the mother when he had been re-employed.

[45] The father claimed that he'd had sporadic employment over the previous 10 years. On cross examination, the father acknowledged he had been employed by Kings County, and he had not advised the mother that he had resumed employment.

[46] When the father was asked what his plan was if he did not have a job in a month's time, the father stated that he planned to resume regular child support payments January 1, 2024, presumably based on an income of \$62,000 as consented to in March 2022. When I asked the father, he stated he would provide his Notices of Assessment for 2020, 2021, 2022 and that he would file a Statement of Income attaching his T1 Tax and Benefit Returns for 2020, 2021, and 2022. The father confirmed that his employment insurance statements indicate he was receiving **\$638.00 weekly (\$33,136)**.

[47] In his post-hearing submissions filed on or about February 5, 2024, the father indicated that he “just wished to be left alone.” The father stated in part:

...

All I asked for was reasonableness. I asked for an agreement due to circumstances and despite the law which I believe notes something like \$13,000 as being a mark of not paying support at all, I never aid or claimed such. Despite the actual law.

I asked her to just take less.

...

The never making a deal never stops though. Ever.

4.6 The mother’s arguments

[48] The mother highlighted:

- There had been an oversight by the **Administrative Recalculation Program providing the father a credit of \$2,081 which was identified as overpayment – but in reality the mother believed the father actually owed her \$1,888.00 –**

I noted that it appeared the parties had come to an agreement on this issue, which was placed on the record at the end of March 2022 and an order was issued in June 2022. I consider the issue final.

[49] The mother filed her trial brief on January 19, 2024. She argued in part:

- The father owed \$1,200.00 in arrears, and he had ceased payments of those arrears on or about July 1, 2023, and she is requesting the amount be paid in full. Based on the Consent Order issued in June 2022, I will not be revisiting this issue.
- Although the father filed a Statement of Income, he did not attach the most recent three years of his financial records, including his T1 Tax and Benefit Returns; Notices of Assessment; and monthly EI statements;
- After being asked to do so, he did not file: a Statement of Expenses; full tax returns for 2020, 2021, and 2022; proof of all self-employment income; and copies of his most recent Records of Employment;
- That without looking at copies of the father's T1 Tax and Benefit Returns, and other documentation about his expenses, it is difficult to determine what discretionary income the father may have earned while self-employed (under the table earnings);
- Line 150 of the father's income for 2022 was \$148,319.00 but the father did not increase child support, and he failed to file this information with the Administrative Recalculation Clerk;

- In 2022, the father contributed \$33,966.00 to an RRSP and had a gross deposit to his bank account of \$59,072.00;
- The father has never voluntarily disclosed his annual income; and
- The father became more forthcoming when he was claiming to no longer be employed, and he was seeking to reduce the amount of child support he pays.

[50] The mother argued that if the father had documentary evidence to support his claims, he would have and should have supplied that evidence. Or in the alternative, she suggested there is documentary evidence contrary to the father's claims and the mother asked that I draw an adverse inference based on the father's lack of evidence.

[51] The mother suggested that based on the evidence the father did file, he earned \$50,168.25 in 2020, \$49,862.50 in 2021; and \$148,319.32 in 2022. The mother suggested that using the test of reasonableness, I should determine that the father has not done everything he could to pay child support.

[52] She suggested that looking at the evidence based on a balance of probabilities and reasonableness scale, I should find the father can earn an income, and he can pay child support according to the latest determination

made by the Administrative Recalculation Program or more, and that his application should be dismissed. The mother reminded the Court that previously, when it appeared the father had legitimately lost his job and he was not working, she had not asked for more than she thought he could pay. However, the father failed to advise her immediately when he became employed.

[53] The mother asked the Court to confirm / impute a higher income to the father of at least \$68,200.00 based on historical data and the facts before the Court. The mother noted that with respect to imputation of income, the Honourable Justice Forgeron in *Standing v MacInnis*, 2022, NSSC 304 quoted from *Parsons v Parsons*, 2011 NSSC 293 at paragraph 21:

The court is not restricted to actual income earned, but rather, may look to income earning capacity, having regard to subjective factors such as the payor's age, health, education, skills, employment history, and other relevant factors. The court must also look to objective factors in determining what is reasonable and fair in the circumstances. [Smith v. Helpii, 2011 NSCA 65 (CanLii)]

[54] The mother suggested that the father:

is still relatively young (53), in relatively good health, is educated and skilled, with experience in the workforce. It is reasonable for him to be earning an income. it is not reasonable for him to claim he is unable to earn more than he receives from EI. There is no current or historical evidence to support his claim.

Lives in rent-controlled apartment with two other people.

Rents his property claiming \$1800 per month. – no copy of lease or other documentation.

The mother claimed that the suspension of the increase in the father's income from \$62,000.00 to \$68,200, which was stayed pending the outcome of the father's Variation Application, should be lifted and the father's application dismissed.

[55] The mother argued that otherwise "not only is the father getting away with not having to pay child support based on his 2022 income (over \$148,000), but he is also avoiding the automatic increase that was designed in the first place to make people file what they are required." The mother requested a retroactive adjustment from June 2023 onward, when the child support was scheduled to be revised by the Administrative Recalculation Program based on the father's 2022 income, which was \$148,319.32 or to set his income at \$68,200.00.

[56] The mother further requested that I impute a minimum income of \$68,200 and adjust child support using the Ontario tables on a go forward basis and that the imputed income of \$68,200 remain in effect until the children are no longer eligible for child support, or until a time that the Applicant's income reported on his T1 Tax and Benefit Return indicates an income of over \$78,000.00, triggering a variation to the higher amount and that the father be ordered to submit his T1 Tax and Benefit Return by June 1 every year.

5 Conclusion

5.1 Material change

[57] The father claimed there was a material change due to his leaving his employment and qualifying for Income Assistance. In addition, the father has moved back to Ontario from Nova Scotia. The father's income of \$62,000 as of January 1, 2022, did change.

5.2 Credibility

[58] In *K.B. v. A.T.*, 2023 NSSC 125, the Honourable J. Forgeron discussed the issue of credibility determinations, reminding me, in part, that evidence presented in all civil proceedings must be considered based on the balance of probabilities test. I must consider the impressions which emerge after watching and listening to witnesses, and I must attempt to reconcile various versions of events. I must rely on evidence which is clear, convincing, and cogent.

[59] I am reminded that when considering the issue of credibility, some of the factors I must consider include the following:

- Inconsistencies and weaknesses (internal inconsistencies, prior inconsistent statements, inconsistencies between the witness'

testimony, and the documentary evidence, and the testimony of other witnesses (*Novak Estate*, NSSC 283)

- Interest in the outcome/ personally connected to either party
- Motive to deceive
- Ability to observe factual matters
- Sufficient power of recollection
- Testimony in harmony with the preponderance of probabilities which a practical and informed person would find reasonable given the particular place and conditions. *Faryna v. Chorney*, 1951 BC CA.
- Internal consistency and logical flow.
- Provided in candid and straight forward manner, or was the witness evasive, strategic, hesitant, or biased.
- Capable of making an admission against interest? Was the witness self-serving.
- Demeanor of the witnesses (*R. v. Norman*) (1993) ON CA.

[60] The father's credibility is in question particularly because he did not provide sufficiently reliable or persuasive evidence about his employment circumstances, at other times his employment circumstances, or his job search efforts since his

employment came to an end in or around February 2023, and he initially failed to disclose his other source(s) of income. The father did not provide the Court with sufficient reliable evidence about his changes of employment or with updated documentary evidence which would provide a clear picture of his entire financial situation as requested by the Court.

5.3 Imputation of income

[61] In *Reid v. Faubert*, 2019 NSCA 42, the Honourable Justice Cindy A. Bourgeois stated:

...

[20] The Guidelines set out a comprehensive scheme for determining the appropriate quantum of child support to be paid in a given situation. The objectives of the Guidelines are stated as follows:

Objectives

- 1 The objectives of these Guidelines are
 - (a) to establish a fair standard of support for children that ensures that they benefit from the financial means of both parents;
 - (b) to reduce conflict and tension between parents by making the calculation of child support orders more objective;
 - (c) to improve the efficiency of the legal process by giving courts and parents guidance in setting the levels of child support orders and encouraging settlement; and
 - (d) to ensure consistent treatment of parents and children who are in similar circumstances.

- [21] For children under the age of majority, the Guidelines presume that the quantum of child support will be determined by the applicable table, and based on the paying parent's income (s. 3(1)(a)).
- [22] Section 3(3) requires that child support be paid based on the table for the province in which the parent against whom support is sought, resides. Here, the parties agree the Ontario tables are applicable.
- [23] One way in which the Guidelines strive to meet the above objectives is to provide a method for the determination of a parent's annual income. Sections 15 through 20 set out a mechanism for determining income; however, only 16 through 18 are relevant to the issues before us. They provide:

Calculation of annual income

- 16 Subject to Sections 17 to 20, a parent's annual income is determined using the sources of income **set out under the heading "(Total Income)" in the T1 General form issued by the Canada Revenue Agency and is adjusted in accordance with Schedule III. Section 16 replaced: O.I.C. 2000-554, N.S. Reg. 187/2000; amended: O.I.C. 2007-321, N.S. Reg. 294/2007.**

Pattern of income

- 17(1) If the court is of the opinion that the determination of a parent's annual income under Section 16 would not be the fairest determination of that income, the court may **have regard to the parent's income over the last 3 years and determine an amount that is fair and reasonable in light of any pattern of income, fluctuation in income or receipt of a nonrecurring amount during those years. Subsection 17(1) replaced: O.I.C. 2000-554, N.S. Reg. 187/2000.**

...

- [24] **The starting point for an income analysis is s. 16, often referenced as a determination of "line 150" income. In *Johnson v. Barker*, [2017 NSCA 53](#), Justice Hamilton said:**
 - [23] **Section 16 of the *Child Support Guidelines* provides the starting point for determining the appellant's income:**

16 Subject to sections 17 to 20, a spouse's annual income is determined using the sources of income set

out under the heading “Total income” in the T1 General form issued by the Canada Revenue Agency and is adjusted in accordance with Schedule III.

...

- [24] Section 17 provides that if the court is of the opinion that s. 16 does not provide the fairest determination of the appellant’s income, the court can determine an amount based on the spouse’s pattern of income over the last three years.

See also *M.C. v. J.O.*, [2017 NBCA 15](#) at para. 14; *Gosse v. Sorensen-Gosse*, [2011 NLCA 58](#) at paras. 90-91; and *Bembridge v. Bembridge*, [2009 NSSC 158](#) at para. 9.

- [25] Failing to start with a consideration of a payor’s line 150 income as directed by s. 16 may open a trial judge’s income determination to appellate review. This is especially so where the reasons do not illustrate the judge’s rationale.

...

- [62] In *J.H. v. R.H.*, 2023 NSSC 237, the Honourable Justice Forgeron reviewed the law in relation to the court’s determination of income pursuant to section 19 of the *Child Support Guidelines*:

Law

- [46] Section 19 of the Guidelines provides me with the discretion to impute income in specified circumstances based on the following principles:
- My discretionary authority must be exercised judicially, not arbitrarily. A rational and solid evidentiary foundation, grounded in fairness and reasonableness, must be shown before I can impute income: *Coadic v Coadic*, 2005 NSSC 291.
 - The goal of imputation is to arrive at a fair estimate of income, not to arbitrarily punish the payor: *Staples v Callender*, 2010 NSCA 49.

- The burden rests on the party making the claim, however, the evidentiary burden shifts if the payor asserts that their income has been reduced or that their income earning capacity is compromised by ill health: *MacLellan v MacDonald*, 2010 NSCA 34; and *MacGillivray v Ross*, 2008 NSSC 339.
- I am not restricted to actual income earned, but rather, I may look to income earning capacity, having regard to subjective factors such as the payor's age, health, education, skills, and employment history. I must also look to objective factors when assessing what is reasonable and fair in the circumstances: *Smith v Helppi*, 2011 NSCA 65.
- A party's **decision to remain in unremunerative employment; or to adopt an unrealistic or unproductive career; or to create a self induced reduction in income may result in income being imputed: *Smith v Helppi*, supra.**
- The test to be applied when determining whether a person is intentionally under employed is reasonableness, which does not require proof of a specific intention to undermine or avoid a support obligation: *Smith v Helppi*, supra.

...

[63] I am satisfied on a balance of probabilities that the father's lack of an income is a result of his "persistence in unremunerative employment" and / or his "unrealistic or unproductive career aspirations" (*Smith v. Helppi*, 2011 NSCA 65, Oland J.A. at paragraph 16). I am also satisfied that the father is capable of earning at least \$68,200.00 based on his history of employment and other evidence before me.

5.4 Order

[64] I order the following:

- The father's yearly income for child support is imputed to \$62,000 for the period from February 1, 2023 to June 30, 2023.
- Beginning July 1, 2023, the father's yearly income for child support is set at a minimum income of \$68,200 and child support shall be paid using the Ontario tables while the father continues to reside in Ontario;
- The imputed income of \$68,200 shall remain in effect until the children are no longer eligible to receive child support, or until a time that the father's yearly income for child support based on his T1 Tax and Benefit Return indicates an income of over \$78,000.00, triggering a variation to the higher amount, or further variation by the Court; and
- That the father shall submit his T1 Tax and Benefit Return to the mother by June 1 every year, while the children remain dependent children.

6 Costs

[65] If the parties would like to be heard on costs, the mother, who was the successful litigant should file her brief within one month of receipt of my advanced

copy of the written decision. The father should file any response within two weeks after receiving the mother's brief.

Cindy G. Cormier, J.