SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: Livingstone v. Livingstone, 2013 NSSC 309

Date: October 16, 2013
Docket: 1206-003368
Registry: Port Hawkesbury

Between:

Leon Alexander Livingstone

Applicant

v.

Margaret Doreen Livingstone

Respondent

Judge:	The Honourable Justice Moira C. Legere Sers
Heard:	April 30, 2013 and August 30, 2013, in Port Hawkesbury, Nova Scotia
Counsel:	Terrance Sheppard, for Leon Livingstone Gerald MacDonald, for Margaret Livingstone

By the Court:

[1] By application dated September 18th, 2012, the applicant seeks the following:

> 1. To terminate child support effective May 4th, 2004;
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> 2.To terminate his obligation to pay special expenses and spousal support as of April 1st, 2012;
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> 3.Costs;
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> 4.To have the respondent's name removed as beneficiary of his life insurance policies as per paragraph 6 of the Corollary Relief Judgement;
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> 5.To absolve him of the responsibility of providing an Income Tax Return on an annual basis; and
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> 6. To remove from him the responsibility to hold as security for maintenance his RRSPs pursuant to paragraph 9 of his Corollary Relief Judgment.

[2] The application is contested by the respondent.

[3] Both parties are represented by counsel.

[4] The parties were married on December 22nd, 1972 and separated in June of 1997. The co-habitation period is at least 24 and ½ years.

[5] The Divorce Judgement is dated 6th of January, 2000.

[6] The Corollary Relief Judgment confirms that at the time of Divorce in 1999 the applicant's annual income was $82,047; the respondent's was $18,687.

[7] The mother had sole custody of the two remaining dependant children: Megan, born February 19th, 1980, and Andrew, born April 15th, 1983.

[8] The Corollary Relief Judgement specifically identifies that priority was assigned to child support (as opposed to spousal support) pursuant to section 15.1 of the ***Divorce Act.***

[9] The respondent was to pay child support in the amount of $1,383 in two equal installments of $691.50 per month; which sum included the following:

> (a) a monthly table amount of $1,047;
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> (b) a monthly amount of $54.30 as his percentage of his share of the tutor expense on behalf of the youngest child Andrew; and
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> (c) a monthly amount of $281.70 representing his portion of Megan's university expense.

[10] The applicant was ordered to pay $1,200 per month in two equal installments of $600 twice monthly for spousal support.

[11] The applicant was to name the respondent as irrevocable beneficiary of the employment and life insurance he held with Sun Life Insurance for so long as he had a maintenance obligation due the mother and the children.

[12] That designation was to be binding upon his estate.

[13] There were mandatory disclosure requirements, each being obligated to provide the other a copy of their Income Tax Returns complete with all attachments, whether the return was filed or not, along with Notices of Assessment received from Revenue Canada on an annual basis on or before June 1st, commencing June 1st, 2000.

[14] The respondent's RRSPs were to be secured for the payment of maintenance. They were not to be transferred, sold, signed, pledged, mortgaged, encumbered, charged or used otherwise.

[15] This hearing commenced on April 30th, 2013. Due to the absence of critical information, the Court directed the matter be set down for August 30th, 2013 for further evidence.

[16] The respondent's counsel had advised he had not been able to adequately prepare (through no fault of the respondent herself). The applicant provided inexact information about the children.

[17] I determined it was in the interests of the fair administration of justice to give both parties a further opportunity to collect the information necessary, verify the status of the order and put the court in a better position to render judgement in this matter.

[18] The applicant is currently 63 years of age and an engineer by profession.

[19] He obtained his engineering degree in part during the course of the marriage.

[20] While he is currently retired, the evidence discloses that he is available as a consultant for work nationally and internationally and has, in fact, been employed in this capacity.

[21] The respondent is 66 as of March 9th, 2013 and is retired from her employment as a library technician due to medical illness. She actively looks for work but is unable to obtain employment in the area.

[22] Three children were born of this union, all of whom are independent adults at this time.

[23] The oldest graduated with a Bachelor of Education Degree; the middle child, a Bachelor of Arts Degree, a Bachelor of Education Degree and a Psychology Degree. The third child attended the University College of Cape Breton, moving into the Nova Scotia Community College for two years with an additional two years at University, graduating with his Degree in Business.

[24] The father provided what he thought was an order of the New Brunswick court *varying* the original Nova Scotia order. It was this order that he suggested verified his case for a termination of child support effective May 2004 .

[25] Neither counsel had a certified court order. Neither counsel had a clear idea of what process was followed to obtain this order.

[26] The father had been working in New Brunswick at the time of this payment order. The mother had no notice of any proceedings that effected a change in enforcement.

[27] Both counsel believed it varied the original order. However, it was not in fact an order that arose out of a variation of the original order. It was an administrative collection order with no notice to the respondent and no opportunity for the respondent to present evidence.

[28] Counsel agreed with the adjournment of these proceedings to allow the court to make enquiries of the New Brunswick enforcement program to determine if there was ever a variation of the original court order. Their reply was distributed to counsel before the hearing reconvened.

[29] In addition, the Court directed the attendance of Ms. Barbara Larade who spoke for the Maintenance Enforcement Program in Nova Scotia.

[30] She provided documentation confirming the spousal support arrears. Counsel had the opportunity to cross-examine Ms. Larade.

[31] The running file record from the Maintenance Enforcement Program supports both the applicant's and the respondent's testimony that in **June 2004** the father advised the New Brunswick office that his daughter had completed her education, and that his son was 21 and completed trade school "for which he paid tuition".

[32] I will give the father the benefit of the doubt. I will not assume he intended to misdirect the enforcement program by indicating that (1) he paid tuition and (2) that he was no longer responsible to pay through the mother.

[33] I will consider the possibility that he meant he paid tuition by continuing to pay base amount child support up to June 2004 and that he operated under the belief that he no longer was responsible to pay for his son because he was 21 years of age.

[34] The only relevant order did not reflect payment for section 7 expenses to account for his son's post secondary education.

[35] The father testified in court that he never paid tuition directly to either of his children or to the university.

[36] The father advised the New Brunswick Maintenance Enforcement office he was no longer required to pay child support. He also advised the Maintenance Enforcement Office in New Brunswick and this court that he paid the children directly.

[37] Relying on his information and without consulting the mother, the New Brunswick office issued a change of payment order dated June 21st, 2004 to reduce their enforcement to spousal support only.

[38] As of June 2004, the office ceased enforcing prospective child support and started enforcing retroactive child support and spousal support.

[39] By 2007, when the mother actually advised the Maintenance Enforcement Program office to cease collecting prospective child support, significant arrears had accumulated.

[40] The New Brunswick Court confirmed that the Nova Scotia order has never been varied in New Brunswick.

[41] The current appropriate order from which I am working, as well as the order upon which the Nova Scotia Maintenance Enforcement Program had based their calculations, is the Corollary Relief Judgement dated January 26th, 2000.

[42] On July 23rd, 2004 the mother advised the Nova Scotia office of Maintenance Enforcement that their son was still in the process of completing his education. That information was sent to New Brunswick.

[43] The Nova Scotia Maintenance Enforcement Program office again contacted the New Brunswick office to ask that child support be enforced. They, in turn, advised the applicant if he wished to vary the order he would have to make an application to vary.

[44] He was again advised in December 2004 that to change the order he had to apply to vary the original order.

[45] His application to vary was not made until September 2012.

[46] Therefore, the issue of effecting a termination date when the applicant sought to terminate his obligations in June 2004 and the issue of how long and for how many degrees should a parent support a child was never put before a court.

[47] The applicant insisted he was not obliged to pay child support and paid only what he considered to be spousal support. Thus, arrears accumulated with the enforcement of spousal support and child support arrears.

[48] The information the applicant gave regarding his children did not accurately and fully set out the facts as they existed.

[49] The father lived and worked in New Brunswick when he went to the New Brunswick Maintenance Enforcement. He advised them that at 21 his son became a man. He (the father) believed he was no longer obliged to pay support pursuant to the court order and he should deal directly with his son. At that time, he told the New Brunswick office of enforcement that his son was, in fact, continuing in college and living with his mother in Port Hawkesbury.

[50] On that basis, according to the father, they issued a new 'work order' enforcing only the spousal support.

[51] Subsequently, by a letter date August 21st, 2007 directed to the Maintenance Enforcement Program offices, the mother advised that her daughter finished her courses in September 2007. She advised them to stop collecting (prospective) child support for both children effective May 1st, 2007 and continue collecting and reducing child support arrears and collecting spousal support.

[52] The respondent advised the Maintenance Enforcement Program and the Court she had to take a line of credit on her house to address educational costs. The line of credit was $38,647.44 as of October 17th, 2012 (Statement of Expenses).

[53] Her spousal support had taken second place to the collection of child support and payment towards arrears from 2004 forward.

[54] The applicant has filed his Income Summaries from 2001 up to 2012.

[55] To cover his living expenses he drew on approximately $20,000 of his investments.

[56] Income for the applicant from 2001 forward is as follows:

Year	Total Income
2000	$84,4999
2001	$90,242
2002	$108,980 - of which $5,000 is RRSP; $10,403 is taxable dividends
2003	$118,398 Including $117,537 - taxable dividends $486; interest in investment income $375;
2004	$120,177
2005	$107,576
2006	$110,378
2007	$191,180 - there are T4 earnings of $128,632 and capital gains of $61,487
2008	$179,721 including $132,948 - taxable capitol gains of $36,000 and other income
2009	$128,653 - T4 $107,008 and his taxable gains of $16,113
2010	$107,266 - of that T4 earnings - $105,434
2011	$112,792 - total earnings $110,681
2012	$87,172

[57] As of September 8th, 2012 the applicant has been in receipt of Employment Insurance (EI), having been approved for 45 weeks, at a benefit amount of $485 weekly, set to expire in April, 2013.

[58] In addition to his then current income, he receives dividends annually in the approximate amount of $2,000 per year.

[59] The applicant's 2012 Notice of Assessment was filed at the August hearing. Not included in his original return was the $12,600 he earned from fishing, which he forgot to claim in his 2012 return.

[60] He advises that his 2013 year to date is $27,466. This includes private contract work, fishing income and EI payments. He has a pending application to reopen his EI benefits.

[61] Income for the respondent was as follows:

Year	Income
2009	$47,696 - including employment income of $24,598; EI income of $3,075; support payments of $14,550 (taxable $13,200); other income (RIF) - $6,823
2010	$64,366 - inclusive of RRSP income of $20,448; taxable support payments of $14,400; EI of $682; T4 earnings of $20,941; CPP of $1,695
2011	$43,104 - CPP, EI and taxable support payments and RRSP of $5,000
2012	30,728.16 incl of Old Age security and CPP benefits other pension or superannuation and support payments .

[62] The mother's tax form reflects an agreement with the father to allow him to claim support payments for a duration not known to the court, in return for which he was to pay his tax return to his daughter.

[63] I am unclear whether he followed through with this agreement once he obtained her consent to allow him to claim his payments; although the mother suggests he did not.

[64] The Maintenance Enforcement Program has updated the applicant's payment schedule and provided proof of payments. Their evidence is that the current arrears are spousal support arrears.

[65] Ms. Larade provided to the Court the running notes from their Maintenance Enforcement Program file relating to action on the file between May 2002 to December 2004.

[66] During the relevant period of time, the respondent sought enforcement of child and spousal support through the Nova Scotia office. However, she had to rely on enforcement proceedings though the New Brunswick program.

[67] The Corollary Relief Judgement of January 26th, 2000 made provision for base amount support for two children, section 7 tutoring costs of $54.30 per month for their son and a contribution towards the daughters post secondary costs of $281.70 per month. This contribution amounted to $3,380.40 per year.

[68] Their son was not then in college.

[69] The order does not reflect an allocation for the youngest son's costs over the seven years he was in post secondary education. Nor was an adjustment made when he left his mother's home during the last two years to complete a program at Mount St. Vincent University.

[70] The original order was made based on a salary that was the lowest salary the respondent would make over the life of his obligation to pay child support.

[71] A view of the disparity in their incomes would have resulted in a change in his obligations, an increase in his proportionate contribution.

[72] The evidence does disclose that the tutoring stopped when the son finished Community College in the local area while he lived at home. This *may* have resulted in an overpayment of tutoring costs only.

[73] While tutoring costs would have been eliminated, if either party had made an application to vary earlier, a more current assessment of their incomes, the children's status and section 7 needs likely would have resulted in a higher award.

[74] There is no clear evidence on the end date for tutoring.

[75] The weight of the evidence supports a conclusion that the costs of the son's educational pathway was not included in the original order and there never was an appropriate adjustment.

[76] Certainly, the payments for the daughter's education were subsidized by the mother and the daughter's considerable student loan.

[77] As the father's income increased, his payments did not increase proportionately.

[78] The mother testified that she took out a line of credit of approximately $38,000 to assist her children through their post secondary education.

[79] She advises that her son had considerable difficulty getting through school. At one point she asked the father to assist by allowing their son to live with him for a six month period. He determined, due to his travel requirements, that he was unable to assist. She turned to her family for assistance.

[80] In the end, the youngest son graduated in October 2008 after completing a summer school course. He became independent at 25 years of age.

[81] Even though his route was somewhat troubled and circuitous, 25 is not an unreasonable age to graduate and become independent of parental support.

[82] I certainly have no evidence from the father that would suggest there is an earlier date at which I could determine he was independent and able to withdraw from the parental support.

Enforcement

[83] The records show that enforcement of payments was troublesome.

[84] The applicant alleges that the Maintenance Enforcement Program continued to garnish his wages for child support long after the children had been independent. It is his view that they collected $3,600 in 2010; $150 in 2009; and $600 in 2008, all of which resulted in an overpayment.

[85] Arrears began to accumulate in July 2004 such that by May 2007, when the respondent authorized Maintenance Enforcement to cease taking child support despite the fact that the youngest had another year and five months to graduate, the father had accumulated $38,616. in arrears of support.

[86] Something went wrong with the enforcement process.

[87] While the respondent insisted on enforcement up to May 2007, she was unsuccessful until someone with Nova Scotia Maintenance Enforcement became involved and began to pursue arrears of child support.

[88] The mother was certainly diligent in her efforts to enforce her support.

[89] She advises that while her daughter finished college in September 2007, her son had another year to go. He had been approved for a student loan.

[90] The letter sets out her difficulties with enforcement and advises that the New Brunswick office ceased enforcing child support when the children reached 21, leaving all educational expenses to her.

[91] She advised the Maintenance Enforcement Program that the applicant had not been honouring the court order regarding child support and adding more arrears was not helping.

Calculation of Arrears

[92] The Maintenance Enforcement Program advised that payments collected are paid towards child support first and thereafter spousal support.

[93] Their notes indicate the applicant was advised on more than one occasion to make an application to vary to have the order changed. He did not do so.

[94] The issue as to whether the children were independent was never placed before the Court at the time.

[95] The respondent had no say into the reduction of her child support and the deferral of her spousal support.

[96] She bore the immediate financial consequences of his actions.

[97] On cross examination, the father admitted that although the son was in school he did not assist in payment of the tuition, did not co-sign any lease agreements, did not contribute to the damage deposit for an apartment, support the household, etc.

[98] This testimony contradicts his statements to the Maintenance Enforcement Program in New Brunswick that he was paying tuition.

[99] The father said he provided funds to the children and that he would transfer money into their account. He believes he paid about $10,000 from 2004 to 2011 in direct contributions through his bank account.

[100] This Court is concerned with payments made up to May 2007 when the mother advised Maintenance Enforcement she was tired of attempting to enforce and to cease collection of prospective child support.

[101] The father's documentation does not prove he paid directly during the period they were in school.

[102] The father did not know exactly when his son finished his post secondary education. He confirms his son finished sometime in 2007. He said he continued after that to support him.

[103] The father offered proof of his contribution in two emails between himself and his son; one dated January 21st, 2010 and May 13th, 2011.

[104] These e-mails are well beyond the 'dependancy stage' of his son's life and refer to a gratuitous contribution concerning a $5,000 payment into his son's TFSA account.

[105] In 2010, the father approached his son to suggest he open up such an account and he would transfer a lump sum payment. At this time, the son would have been 26 years old.

[106] The second email in time is one in which his son asked for a loan of $300 to assist him to fix his car. The son gave him his promise to repay within 31 days. The father wrote back indicating he would deposit $600 into his account.

[107] The son did not appear to be the recipient of direct regular support from the applicant after 2004.

[108] While the father testified he paid approximately $10,000 between 2004 and 2007 in direct payments, the only proof offered included the above noted payments of $5,600 well after his dependancy expired.

[109] The mother gave evidence that while she was trying to get her son through post secondary education, her daughter asked her father and she believes he paid one lump sum payment for the daughter directly in the amount of $800.

[110] Thus, after the enforcement program ceased enforcing the child support payments and while the son was living with the mother and was still pursuing his education, the father was no longer paying base amount child support.

[111] The father acknowledged that his daughter had student loans but when she got into trouble he transferred money into her account. On (January 5th, 2009) the date of the correspondence he provides verifying his contribution, she was 29 and out of school.

[112] The proof offered did not allow for any conclusions that he contributed independently of the Maintenance Enforcement Program collection during her dependancy or any reliable conclusion as to how much he actually transferred to each of the children after their schooling ceased.

[113] What he did provide was a series of emails subsequent to 2007:

-On May 8th, 2008 there appears to be a $200 transfer. It is not clear whether this was intended for Megan or for Andrew.

-On May 21st, 2008 a $500 transfer.

-On June 24th, 2008 he gave his oldest gas money to go to Halifax to help her brother find an apartment.

-On December 7th, 2010 he provided his oldest, at Christmas, with a sum of money with which she was going to buy a car seat for her baby and other safety devices as well as put the balance towards some snow tires for the family car. Again, this appears to be a Christmas gift, well removed from her education.

-On November 8th, 2011 the father brought her car to be serviced (amount unknown).

[114] In contrast to the father's evidence, the mother provided a supplementary affidavit advising that while she does not have all the receipts to prove every expenditure paid by her towards the children, she could provide sufficient verification to prove she continued to support the children, at least to their graduation.

-In 2003 the mother paid $1,225 for her son's tuition at Nova Scotia Community College while he was living with her.

-In May 2003 she paid various sums totalling $863.33 to her daughter for her needs.

-In 2004 she paid rent for her son for September to and inclusive of December for a total of $1,550.00.

-In 2005 she paid rent from January to December for a total of $4,740.

-In September 2005 she paid his tuition of $4,921.08 and her daughter's tuition in the amount of $3,249.89.

-In 2006 she provided her son $3,160 and paid rent for her daughter in September in the amount of $600, paid her books in the amount of $280.26 and another $655.65 in addition to her tuition of $1,665.96.

-She also paid in 2006 her son's rent in the amount of $1,640.

-Another $450 was transferred to her daughter to defray expenses.

-In 2007 she paid her son's rent of $410 and various expenditures.

-She paid grad photos of $193.00 in 2008 and purchased a couch for him in the amount of $508.49.

[115] She advises that she found the receipts for these expenditures. Unaware she would have to prove all expenses in a future variation application, she simply threw out the rest before this application was commenced.

[116] I am satisfied the mother continued to support the children as she could and as they needed. I find her testimony consistent with the facts and credible.

[117] The applicant alleges that the arrears are, in fact, not owing; that he was paying child support during a period of time when he was not required to do so. That has not been proven.

[118] Given the totality of the evidence before me, the applicant has not satisfied the burden of proof that he, in fact, paid the children directly nor has he proven that the children were no longer dependant in 2004.

Arrears

[119] The total arrears owing, according to the Maintenance Enforcement Program statements as of the 29th of August, 2013, are $12,218.34. In addition, there are fees of $1,049.10.

[120] The parties are in agreement with the calculations.

[121] The applicant wishes the Court to consider this child support arrears and, given his position that he overpaid child support, he asks that they be forgiven.

[122] The respondent asks the Court to treat this as spousal support arrears and given that the Maintenance Enforce Program in New Brunswick paid child support first, deferred enforcing her spousal support until child support was satisfied, she seeks enforcement of the arrears and ongoing spousal support.

[123] The New Brunswick enforcement program ceased collecting child support according to the court order based only on the father's information in June 2004. This action was corrected by the Nova Scotia enforcement program when they

reinstated enforcement; collecting and applying the funds collected first on child support and then on spousal support arrears

[124] It is apparent that the when the applicant did not contribute, the respondent was the default supporter of the two children.

[125] The daughter has a sizeable student loan. In an email provided by the father, she informed him she had student loans with the RBC, Federal and Nova Scotia Student Loans totalling $79,407.57.

[126] The father has failed to provide sufficient proof on the totality of the evidence to convince the Court on the balance of probabilities that the end date for the children's dependency was May 2004. It clearly was not for either child.

[127] He has not provided sufficient evidence to prove that his obligation ought to have ceased in 2004.

Termination Date for Child Support

[128] The burden of proof rests on the applicant.

[129] No court order has varied the amount set out in the original order. No finding was made that the youngest child was in fact independent. By the father's own admission when he asked for enforcement to stop collecting, the youngest son was at 21, still in school (community college) and living in his mother's home.

[130] This draws me to the conclusion that the June 2004 date is not the date at which the youngest child became independent and able to withdraw from the support of his parents.

[131] The date for the oldest child was September 10th, 2007. The date the second child was no longer dependant for the purpose of calculating support was October 2008.

[132] However, I accept that the mother, in her letter of August 21st, 2007, instructed the Maintenance Enforcement Program to cease enforcement of prospective child support as of **May 1st, 2007**. Both could have provided past information, both chose not to involve their children.

[133] The father does not know when each finished their studies. The mother presented the most reliable information.

[134] This court cannot, without reliable information, determine on facts that existed then, what should have been contributed retroactively or whether the educational path was reasonable. I have nothing to suggest it was unreasonable.

[135] The father testified he has a relationship with both children, he has access to the information.

[136] The father knew if he wished to terminate he should have made an application to vary then. He chose not to do so.

[137] I have insufficient evidence to determine that the Court should terminate after one failed attempt or the first degree.

[138] This is the father who is asking for a retroactive assessment and termination, not the mother making an application to retroactively adjust the child support award.

[139] Nova Scotia case law supports the principle that the older the child the higher the onus to establish dependancy. In addition, the higher parental income may influence a court in particular circumstances to prolong support past the first degree. The law does not define the termination date as at the end of a first degree.

Entitlement to Ongoing Spousal Support

[140] This is a traditional marriage of long term duration, ie., 24 years.

[141] The applicant finished his employment with his ordinary employer as of May 2012.

[142] He retired six months in advance of what was he said was his anticipated date. He chose to retire at 62, to live with his aging father in his hometown.

[143] While he continues to live with and provide care for his father, his father has other adult children who are present, able and available caregivers living in close proximity.

[144] The applicant has acknowledged that should he be called to short term contract work, his other siblings step in to fill whatever duties and responsibilities he currently holds with respect to his father, as they have in the past.

[145] He advised that his sisters are in and out of the home daily to attend to their father's health care, drive him to appointments, give him his medication, etc. He is there at night to tend the fire and be present in the home. During the day the applicant is outside, cutting wood or doing other outdoor activities.

[146] His father is mobile and mentally well. Although his father is elderly, he gets up at 4 a.m. and goes to bed at 6 p.m.

[147] Historically, the applicant's income was such he could afford the spousal support as ordered. The evidence is that he continues to work on contract and that his presence is not necessary to assist his father. The evidence is that he continues to work.

[148] The evidence is also that the reduction he currently experiences is temporary, possibly premature and that it is within his control.

[149] The respondent advises, and the applicant agrees, that he is still listed as an employee on the company website and the website shows that he is available for consulting.

[150] Currently, the respondent has had to retire for reasons of ill health.

[151] Her income consists of pension income of $1,464.55 and support arrears of $1,457.15 for a total monthly income of $2,921.70 or an annual income of $35,060.

[152] By letter dated April 24th, 2013 the respondent's family doctor confirmed she recommended the respondent retire due to her medical conditions (including blood pressure that was difficult to control, aggravated by the increasing pressure in her work place).

[153] Her financial situation was aggravated in part due to arrears in child and spousal support and her own contribution to their children's educational costs to ensure they pursued this education.

[154] What I do know from the evidence is that the Corollary Relief Judgment was not varied since January 2000.

[155] The order noted that priority had been assigned to the maintenance of the children.

[156] The father was able to stop payment of child support based on information he provided to the New Brunswick maintenance program in June 2004 despite the fact that the child remained living at home and attending community college at a time when his annual income was in excess of $120,000.

[157] The mother continued to support them after the collection of child support ceased.

[158] In this case, the arrears for child support were satisfied by subsequent collection after which the program enforced the payment of spousal support which had accumulated. The current balance is as stated and agreed upon by the parties.

[159] They shall be enforced.

[160] The mother's right to collect spousal support was deferred pending the payment of child support. The mother borrowed to satisfy the children's needs creating financial hardship for her, delaying her financial recovery.

[161] The evidence supports the fact that this is a long term, traditional relationship. The mother's role was to be in the home and care for the children, make the family meals, etc.

[162] She advised of her desire to be employed.

[163] She advised of numerous opportunities she had for employment outside the home and how these efforts were resisted and thwarted by the applicant such that she was unable to maintain employment outside the home.

[164] What employment income she earned was certainly supplemental to the main family income.

[165] While the mother has been gainfully employed since, her medical situation required she retire to protect her health.

[166] In addition, while she was entitled to spousal support for many years, it is clear that for much of the time after 2004, when he prematurely ceased paying child support, the program enforced and preferred child support, deferring her entitlement until subsequent efforts were made to enforce the considerable arrears.

[167] They separated after a long traditional marriage in 1997. It was determined that she was entitled to spousal support in the Fall of 1999.

[168] There is no reason that would support erasing the arrears.

[169] To support her children she took out a demand loan on the property she received in the division of assets to cover her legal bills, the children's education and to get her son through community college and university.

[170] While the father continued to pay base amount on his outdated 1999 salary, he did not pay section 7 expenses for the son. The mother absorbed all other expenses.

[171] The mother paid for the educational costs for the seven years it took their son to successfully complete community college and university. He has met with success.

[172] She suffered financial loss as a result of the long term marriage and the roles they assumed as well as the effect on her health. Now, the mother continues to be entitled to support.

[173] She continues to require contribution from the father. She heats only one level of the home to save money.

[174] It is unlikely she will be able to be re-employed or achieve self sufficiency.

[175] The father has opted for an early retirement from full time work. There is no evidence that would cause me to conclude that this was other than a matter of choice. He is certainly capable of earning more as is noted in the chart above.

[176] While he has opted for early retirement, he is still marketing himself as an engineer capable of employment in his field.

[177] He has investments of approximately $350,000, although he has not been specific about their exact amounts. These are self directed funds. He will be in a position to receive an income from these investments.

[178] I have reviewed the income and expense statements provided. I have not been provided with proposals as to quantum.

[179] Given the reduction in his income to $27,600 and the possibility of earning from his investments and his other employment pursuits, I order the applicant to pay $900 per month for spousal support.

[180] He is to maintain his life insurance with her as irrevocable beneficiary as required by the Corollary Relief Judgment and to hold as security for the payment of spousal support and arrears, his RRSPs while he continues to be obliged to pay support.

> 4. The respondent's name shall not be removed as beneficiary of his life insurance policies as per paragraph 6 of the Corollary Relief Judgement.
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> 5.The applicant shall continue to be responsible to provide an Income Tax Return together with all Notices of Assessment and Reassessment on an annual basis on or before May 1st of each year.
>
> 6. He shall continue to have the responsibility to hold as security for maintenance his RRSPs pursuant to paragraph 9 of his Corollary Relief Judgment.

[181] All shall continue until further order of the court.

[182] The applicant was unsuccessful in his application, except for a reduction in his spousal support from $1,200 to $900.

[183] The second appearance was necessitated due to a lack of information from both parties.

[184] The father tendered an order which required clarification from the New Brunswick Court. His testimony misinterpreted the significance of the payment order. He had no information to support the dates he suggested ought to be termination dates.

[185] The mother was also required to provide more specific information regarding the dates of graduation for each child.

[186] Ordinarily, the most successful party is entitled to costs.

[187] However, the directions set out in the memorandum were not followed. Counsel for the mother acknowledged that he was in part responsible for the adjournment and additional hearing date .

[188] Each party shall bear their own costs.

[189] Mr. MacDonald shall prepare the order.

Moira C. Legere Sers, J.