

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Murnaghan v Lutz*, 2014 NSSC 3

Date: 2014-01-09

Docket: SFH-MCA-033000

Registry: Halifax

Between:

Crystal Dawn Murnaghan

Applicant

v.

Lorne Bradley Lutz

Respondent

Judge: The Honourable Justice Elizabeth Jollimore

Heard: January 2, 2014, in Halifax, Nova Scotia

Counsel: Crystal Murnaghan, on her own
Lorne Lutz, on his own

Introduction

[1] Crystal Murnaghan has applied to vary child maintenance. She wants both the amount of child maintenance and the date on which it is paid to be changed and she wants these changes to take effect on June 1, 2013. Her application is pursuant to section 37 of the *Maintenance and Custody Act*, R.S.N.S. 1989, c. 160. The current order requires Lorne Lutz to pay child maintenance of \$450.00 each month for Brandice Murnaghan.

[2] Ms. Murnaghan filed an affidavit and Statements of Income and Special or Extraordinary Expenses. She filed information relating to Brandice's university costs and her Canada Pension Plan benefit. Mr. Lutz filed an affidavit, a Statement of Income and a Statement of Expenses.

[3] As the hearing began, everyone realized that each parent had filed documents at the court without providing a copy to the other. Each was given a copy of the documents and a chance to review them during a recess. I offered them the opportunity to adjourn the hearing for two weeks. I wanted to ensure that each had the best opportunity to prepare and to feel confident that they had done their best in presenting their case. Both parents are self-represented. Neither Ms. Murnaghan nor Mr. Lutz wanted to adjourn the hearing: both felt confident that they were sufficiently prepared following the recess.

[4] The hearing was conducted on the basis of the affidavits, with each parent cross-examining the other.

Child maintenance variation threshold

[5] According to subsection 37(1) of the *Maintenance and Custody Act*, I may vary a child maintenance order where there's been a change in circumstances since the most recent order was made. Subsection 37(2) says that I'm to apply section 10 when varying the order. In turn, subsection 10(1) requires me to apply the *Child Maintenance Guidelines*, NS Reg. 53/98, when determining the amount of maintenance to be paid for a dependent child.

[6] Section 14 of the *Guidelines* lists various changes in circumstances that allow for a variation of child maintenance. Where child maintenance is determined based on the tables, the situations include a change in a payor's income, a change in the number of children to be maintained or a change in the payor's province of residence.

[7] Mr. Lutz claims he has a lawful excuse to not support Brandice. If so, this means that there is a change in the number of children to be supported so the order may be varied and Mr. Lutz's maintenance payments should be terminated. Mr. Murnaghan says there's been a change in Mr. Lutz's income. If either of these changes has occurred, I may vary Lorne Lutz's child maintenance obligation.

Does Mr. Lutz have a lawful excuse?

[8] Mr. Lutz says that Brandice moved out of her mother's home in August 2013 and lives on her own or with her boyfriend. As a result of this choice, Mr. Lutz says he isn't required to pay child maintenance for her.

[9] Subsection 8(a) of the *Maintenance and Custody Act* provides that every parent of a child under the age of majority (which is age nineteen in Nova Scotia) is "under a legal duty to provide reasonable needs for the child except where there is lawful excuse for not providing the same." Brandice is a minor: she is eighteen. According to subsection 2(c) of the *Maintenance and Custody Act*, she is a "dependent child". Mr. Lutz has a legal duty to provide for her, unless there's a lawful excuse for him not to do so. According to Judge Niedermayer, at paragraph 17 of his reasons in *Welner*, (1984) 64 N.S.R. (2d) 72 (F.C.), parents must prove that there is a lawful excuse for not maintaining their child while the child must prove any exceptions to that rule: "Unless the burden of proof is discharged, on the balance of probabilities, the duty of the parent is to provide reasonable needs for the child."

[10] It isn't necessary that a minor live with a parent to be entitled to maintenance according to Judge Dyer at paragraph 42 of his reasons in *W.L. v. S.W.*, 2010 NSFC 31.

[11] There have been various decisions considering what constitutes a lawful excuse. In *Welner*, (1984) 64 N.S.R. (2d) 72 (F.C.), Judge Niedermayer addressed a sixteen year old girl's claim for maintenance from her parents. Her parents had divorced and there were serious difficulties between the girl and her mother, with whom she lived. The girl refused to abide by "simple house rules" and stayed out very late. Ms. Welner arranged for her daughter to live with extended family members, but this arrangement broke down when the girl continued to misbehave. On her own, the girl moved in with non-relatives and sought maintenance from her parents.

[12] Judge Niedermayer said that Ms. Welner's rules were not unreasonable and that she didn't cause her daughter to leave home. Ms. Welner was prepared to

maintain her daughter under reasonable conditions. At paragraph 20, Judge Niedermayer concluded that the daughter chose to leave an “acceptable family environment” and her parents had done nothing to expel her. As a result, the parents had a lawful excuse for not maintaining their daughter and no child maintenance was ordered.

[13] A few years later, Judge Levy decided *L.T.G. v. W.H. and M.H.* (1989), 89 N.S.R. (2d) 67 (F.C.). In this case, at paragraph 3, Judge Levy expressed “some real difficulty” with Judge Niedermayer’s conclusion that parents have a lawful excuse for not maintaining their child if the parents haven’t engaged in expulsive conduct. The application before Judge Levy involved an eighteen year old who, years after her parents’ divorce, began using drugs, failed to apply herself in school (she spent eight years in junior high school without completing grade nine), and experienced unexplained health problems which prevented her from attending school and working. The teen moved from her mother’s home into the home of her boyfriend’s family. Historic events between the mother and daughter (including the girl’s physical abuse by her mother’s boyfriend) meant the girl was unwilling to return to her mother’s home. The mother’s rules (no drugs in the house, go to bed and get out of bed at reasonable hours, go to school, maintain reasonable hygiene) were reasonable. There was no evidence from any expert witnesses about the girl’s condition, but her parents agreed she had emotional problems.

[14] When deciding this application in 1989, Judge Levy considered the “drastic rethinking of the role of ‘conduct’ in determining entitlement to maintenance” (as he described matters, in paragraph 63). He concluded, at paragraph 100, that the only excuse that can be lawful is an excuse that is consistent with the child’s best interests. He found no such excuse in the case before him and made the payment of maintenance conditional upon the girl’s attendance at counselling.

[15] *Re Scott* (1996), 150 N.S.R. (2d) 72 (F.C.) was another decision by Judge Levy. Scott was sixteen and applied for child maintenance from his parents. He wasn’t living at home. His parents said he was welcome to return home and that they would support him, but only if he returned home. At paragraph 16, Judge Levy expressed his discomfort that children were pitted against their parents to see who was “at fault” before maintenance could be ordered. He said these were “dreadful inquiries”. He was concerned that if he found a child had left home without cause then the child would be without maintenance and face dire circumstances.

[16] Scott was living with a foster family, attending counseling, going to school and doing very well. He was adamant that he would not return home. Saying it was “just too difficult” to determine who was at fault (and questioning what this would accomplish), Judge Levy ordered the father to pay maintenance.

[17] In *C.D.R.G. v. D.R.G.*, 2006 NSFC 37, Judge Levy resolved a nineteen year old’s application for maintenance from his estranged father. The son was a full-time student in the first year of a two year course at the Nova Scotia Community College. He intended to follow this course with two more years at university, completing a business administration degree. The son lived with his step-brother and his step-brother’s girlfriend. The son’s estrangement from his father began when the father started to cohabit and there was conflict between the son and one of his step-siblings, but both father and son said they wanted to reconcile their relationship. The father said the son could return home, live rent-free and attend school. The father’s home was, according to Judge Levy, “quite a distance” from the school.

[18] Judge Levy said the son’s attendance and performance at school were, respectively, reasonable and appropriate, at paragraph 12. His Honour couldn’t conclude that either the son or the father was responsible for the rupture in their relationship. The son’s conduct didn’t disentitle him from receiving maintenance so father was ordered to pay.

[19] In *W.L. v. S.W.*, 2010 NSFC 31, the issue was maintenance for a sixteen year old who lived with his maternal grandmother. The child sought maintenance from his mother. Initially, the mother was living in a transition house with her two younger children. She said that the transition house wouldn’t let the sixteen year old stay with her, so he moved from home to home until he settled with his grandmother. The mother moved into temporary student housing when she began studies at the community college. She said that the sixteen year old didn’t want to live with her and preferred to live in a one bedroom apartment with his grandmother.

[20] The son told his mother that he was regularly using drugs and that he’d done so since he was thirteen. There was conflict between the mother and son and in June 2009, the mother told her son that he could only return home if he stopped smoking cigarettes and using drugs in her home. He refused.

[21] According to the son, he was a full-time student in a specialized grade nine. He said he was passing his subjects and not in trouble with the law. He admitted

his relationship with his younger brother was “conflicted” and this was a factor in his choice not to return home. The son wasn’t working and was entirely dependent upon his grandmother. The rules at her home were that he couldn’t smoke marijuana in the house, he had to help wash dishes and clean up after himself. He didn’t have a curfew. He testified that every weekend, from Friday after school until Monday morning, he was at his girlfriend’s and that he spent half of each summer there, as well. The grandmother worked and struggled to meet her grandson’s needs. Her work hours meant that she wasn’t at home on evenings or weekends to supervise him.

[22] The school had contacted the grandmother about various concerns such as attendance and cigarette smoking, but she did little to address them. The boy was suspended from school when he didn’t attend during the fortnight that his grandmother was away and left him alone.

[23] In reviewing the jurisprudence, at paragraph 49, Judge Dyer acknowledged that “many, if not most” judges have focused on a minor’s economic dependency, rather than fault when determining child maintenance entitlement and obligations. Judge Dyer believed that the concerns about “chronic drug use, largely unsupervised care and lifestyle, and rocky education” couldn’t be addressed while the son lived with his grandmother unless the court intervened.

[24] At paragraph 57, Judge Dyer held that until the son engaged in services to address his drug use, his estrangement from his family and his education, his mother wouldn’t be required to pay maintenance to him, saying, “I conclude that [the mother’s] case falls within a very narrow range where lawful excuse can and should be sustained.”

[25] From these decisions, it’s apparent that lawful excuse exists in those very few cases where the child’s conduct is extreme. Where this is so, judges have tried to fashion maintenance awards that will serve the child’s best interests. This approach is consistent with Judge Levy’s view that the only possible lawful excuse for the non-support of a child is one which is in the child’s best interests. This reasoning is reinforced by the core principles of child maintenance identified in the Supreme Court of Canada’s decisions in *Richardson*, 1987 CanLII 58 (S.C.C.) and *Willick*, 1994 CanLII 28 (S.C.C.). These principles are, among others, that child maintenance is the child’s right and this right survives the breakdown of the relationship between the child’s parents. According to Justice Bastarache at paragraph 38 of *D.B.S. v. S.R.G.; L.J.W. v. T.A.R.; Henry v. Henry; Hiemstra v.*

Hiemstra, 2006 SCC 37, the core principles “animate” child maintenance. They don’t reflect any notion that a child’s maintenance is dependent on fault.

[26] Brandice is in her first year of a science program at Dalhousie University. According to her mother, Brandice earned good marks in high school, mostly Bs, and she wants to be a marine biologist. After this year, she’ll have two or three more years of study at Dalhousie before having to choose between going to Ontario or Newfoundland for two more years of study. Ms. Murnaghan thinks Brandice will finish at Dalhousie in 2018. Brandice was taking courses in biology, calculus, chemistry, physics and philosophy in the fall. She’s since dropped one of her courses. Ms. Murnaghan says that this isn’t a problem because Brandice was taking more courses than required.

[27] In addition to her studies, Brandice works. When she was sixteen, she started working at Value Village in the Bayers Lake Industrial Park. This fall she began to work at Dalhousie’s campus bookstore in addition to her job at Value Village. Ms. Murnaghan says that, overall, the number of hours Brandice works hasn’t changed.

[28] Ms. Murnaghan’s home is a thirty-five minute drive to Dalhousie. There are no buses which could take Brandice from her mother’s home to her work or school. Ms. Murnaghan lives with Mike Martel and says he can’t help with transportation because his schedule doesn’t coincide with Brandice’s. For example, Brandice’s classes start no earlier than 8:30, but she’d need to leave the house at 6 o’clock in the morning to travel with Mr. Martel, who could drive her to the closest bus terminal. Ms. Murnaghan has a car, but she must take Brandice’s half-brother to school at the same time that Brandice would be going to school. In addition to her trips to Dalhousie, Brandice also needs to get to the industrial park for work and to get home after work. Mr. Martel’s work day ends at 5 p.m., but this is subject to change, as is the hour when he starts work, because he is on call.

[29] According to Ms. Murnaghan, Brandice would prefer to live at home, but she couldn’t do this and manage her transportation needs so she and three others arranged to share an apartment in Clayton Park. Initially, Brandice’s boyfriend planned to get a job and share the apartment with Brandice and the other two. However, this hasn’t happened, and Brandice has been forced to live up to the deal the roommates made: she pays one-half the rent, cable and electricity.

[30] Mr. Lutz invited Brandice to live with him, his wife and their son in Hammonds Plains. There was some confusion about this offer. Ms. Murnaghan

and Brandice were unsure of the sleeping arrangements because there are only three bedrooms in the house and each of Mr. Lutz's sons occupies one. (Mr. Lutz has access with a third child from another relationship.) Mr. Lutz says the boys would share a room.

[31] Mr. Lutz says there's a bus stop that's a ten minute walk from his home. The bus runs at rush hour in the morning and afternoon, but he's unsure of the schedule for the rest of the day. He says the drive into the city is thirty-five minutes long and that he and his wife drive into the city at 7 a.m. for work and that there are "four trips in and out of the city between seven and midnight". Alternately, he suggested that when Ms. Murnaghan or Mr. Martel couldn't transport Brandice, he would. Ms. Murnaghan wasn't aware of this alternative.

[32] At this point, it's too late for Brandice to move in with her father. She's made commitments and signed a lease. As well, Mr. Lutz's proposal that Brandice's transportation be co-ordinated between himself, Ms. Murnaghan, Mr. Martel and Metro Transit seems destined to wreak havoc on Brandice's work and school schedule. She is a full-time student in a challenging program. Based on her income and hourly wage, she works more than one thousand hours each year at two jobs.

[33] As well, Brandice's relationship with her father has been strained. She was close to a former girlfriend of her father's and, according to Ms. Murnaghan, this has tainted her relationship with her father. She didn't want to live with him. Ms. Murnaghan says that Mr. Lutz was not a regular presence in Brandice's life, while Mr. Lutz says that he saw her at least monthly.

[34] Brandice is a motivated young woman. She's been working since she was sixteen. Her 2012 tax materials indicate she earned over \$11,000.00. By October 2013, she had earned an equivalent amount. She has been working long hours, while attending school full-time and earning good grades.

[35] Living in Clayton Park makes travel to school and work easier for Brandice than any other alternative. That she has chosen this option does not, in my view, provide a lawful excuse allowing her father to avoid his obligation to maintain her.

[36] My conclusion that there is no lawful excuse for Mr. Lutz to not pay child maintenance has two consequences: first, Mr. Lutz's request that I terminate his maintenance payments on this basis is dismissed, and second, I must still find that there has been some change of circumstances before I can vary the 2004 order.

Has Mr. Lutz's income changed?

[37] Because Brandice remains under the age of majority, Mr. Lutz's child maintenance is based on the tables. The 2004 order said Mr. Lutz's annual income was \$35,909.00. Currently, his base salary is \$56,850.00. In the past few years he has received an annual incentive of \$4,000.00 to \$5,000.00. In late December 2013, he received an incentive of \$5,000.00. I find his current income is \$61,850.00. This is a change relating to the calculation of child maintenance based on the tables. It meets the requirements of subsection 14(a) of the *Guidelines*, so I am satisfied that there is a change in circumstances that allows me to vary Mr. Lutz's child maintenance payments.

What child maintenance should Mr. Lutz pay?

[38] Child maintenance is comprised of two components: a table amount and special or extraordinary expenses. According to section 3 of the *Guidelines*, unless there is some other relevant provision, child maintenance for a minor is comprised of both components. This is the "presumptive rule" according to Justice Hamilton, writing on behalf of the unanimous Court of Appeal in *Lu v. Sun*, 2005 NSCA 112 at paragraph 24. (Leave was sought to appeal this decision to the Supreme Court of Canada and dismissed SCC 31163, December 22, 2005 at 2005 CanLII 47808 (SCC).) While *Lu v. Sun*, 2005 NSCA 112 (CanLII), was a decision under the *Divorce Act*, R.S.C. 1985 (2nd Supp.), c. 3, there is no reason not to apply the same reasoning to applications under the *Maintenance and Custody Act*.

The table amount

[39] Based on an annual income of \$61,850.00, Mr. Lutz's monthly child maintenance is \$523.00. This is the table amount, referred to in clause 3(1)(a).

Apportioning special or extraordinary expenses

[40] The second component of child maintenance is comprised of special or extraordinary expenses, referred to in clause 3(1)(b) of the *Guidelines*. Determining Brandice's special or extraordinary expenses requires me to refer to section 7 of the *Guidelines* and to conduct the analysis described in that section.

Estimating the expense

[41] Subsection 7(1) of the *Guidelines* says that I may order an amount to cover all or any portion of certain expenses, which expenses may be estimated, taking

into account the necessity of the expense in relation to the child's best interests and the reasonableness of the expense in relation to the means of the parents and the child and the family's spending pattern prior to the separation.

[42] The expense that concerns me is Brandice's expense for post-secondary education which is mentioned in clause 7(1)(e). It is a "special" expense, so it isn't necessary to prove that it is "extraordinary".

[43] Mr. Lutz and Ms. Murnaghan don't dispute that the expense for post-secondary education is necessary in relation to Brandice's best interests. No issue has been taken with the reasonableness of the expense in relation to their means, Brandice's means and the family's pre-separation spending pattern. So I find that the expense for Brandice's post-secondary education is necessary and reasonable.

[44] Brandice is enrolled in a science program at Dalhousie University. It's early in her studies, but her plans are to become a marine biologist which would have her graduate from Dalhousie in 2018 and then undertake two further years of study outside Nova Scotia.

[45] Brandice's costs in 2013 and in 2014 are not identical. For example, her first term tuition was \$3,519.55 and her second term tuition was \$2,242.80. Also, I have information about other amounts that she's paid the university in 2014: student fees, facility renewal fees, service fees and student union fees, for example. Accordingly, I will calculate her post-secondary expense for the four months of 2013, and for 2014 when she will be in university for a complete academic year.

2013

[46] Brandice's 2013 tuition was \$3,519.55. She purchased a laptop computer and mouse and has a warranty on her computer, which is paid bi-weekly. The computer package cost her \$914.99 in 2013. Her first term textbooks cost \$511.61.

Available subsidies, benefits and tax deductions

[47] Subsection 7(3) of the *Guidelines* requires that in determining the amount of an expense, I consider the availability of and eligibility to claim subsidies, benefits, income tax deductions and credits relating to the expense. If it was a scholarship, I would consider it in the context of Brandice's contribution pursuant to Justice Lynch's decision in *Lu v. Sun*, 2004 NSSF 108 where Her Ladyship considered the daughter's scholarships to be part of her contribution to her education expenses. The Court of Appeal took no issue with this characterization in *Sun v. Lu*, 2005

NSCA 112, and described the daughter's scholarships as her "contribution" at paragraph 37 of its reasons. Regardless of how I characterize the bursary it has the same effect in determining the cost of Brandice's post-secondary education.

[48] Brandice's student finance record (headed "Account Detail for Term") from Dalhousie shows a Nova Scotia Student Bursary of \$384.93. Ms. Murnaghan believes that Brandice receives this for each term that she is attending university. I was told that all Nova Scotian students are entitled to this, so I consider it a subsidy.

[49] The tuition tax credit is provided for in section 118.5 of the *Income Tax Act*, R.S.C. 1985, (Supp. 5), c. 1, and described in an Interpretation Bulletin, IT-516R2, December 9, 1996. Expenses that are considered eligible tuition fees are: admission fees, library or laboratory fees, examination fees, application fees where the student subsequently enrolls in the particular institution, confirmation fees, fees for a certificate, diploma or degree, membership or seminar fees, mandatory computer service fees and academic fees. If HST is added, the HST is also an eligible tuition fee. Fees for athletic and health services that are paid to the institution and are required to be paid by all students are also tuition fees. If not all students are required to pay athletic and health services fees, their eligibility is limited to \$250.00.

[50] Fees which are not eligible are: student activity fees, student union dues, medical or health care fees, transportation and parking, room and board, materials with enduring value that the student will keep (books, laboratory items, clothing) and initiation fees.

[51] The tuition tax credit is equal to 23.79% of eligible tuition fees. For 2013, Brandice's tuition is \$3,519.55, at 23.79%, her tuition tax credit is \$837.00.

[52] As well, there's the education tax credit and the textbook tax credit. These are provided for in subsections 118.5(2) and (2.1) of the *Income Tax Act*, respectively. The combined education and textbook tax credits are worth \$88.00 per month for every month of full-time university attendance. In 2013, she was in school for four months, so these credits are worth \$352.00.

[53] As a result of these calculations, Brandice's 2013 post-secondary education expense is approximately \$3,400.00. I've calculated this by reducing the estimated total cost of \$4,946.15 by \$384.93 for the bursary, \$837.00 for the tuition tax credit and \$352.00 for the education and textbook tax credits.

Brandice's 2013 post-secondary expenses	
2013 tuition	3,519.55
Computer and warranty	914.99
Books	511.61
Total costs	4,946.15
Less tuition tax credit	(837.00)
Less education and textbook tax credits	(352.00)
Less NS University Student Bursary	(384.93)
Expense, net of subsidies, benefits and tax deductions	3,372.22

Brandice's contribution

[54] The next step in apportioning Brandice's post-secondary education expense is in subsection 7(2) of the *Guidelines* which states that the guiding principle in determining the amount of an expense is that the parents share the expense in proportion to their respective incomes after deducting any contribution to the expense made by the child. In *Selig v. Smith*, 2008 NSCA 54, at paragraph 17, Justice Roscoe, who wrote the Court's unanimous reasons, said that, "The proper order of the calculations would be to deduct the child's share from the total costs and apportion the remainder between the parents."

[55] When I consider Brandice's contribution, I look to the money she earns and the Canada Pension Plan payment she receives (the disabled contributor's child benefit). Brandice has no student loan or scholarship.

[56] In 2012 and to October of 2013, Brandice earned \$11,000.00. According to her mother, this is likely to continue.

[57] Brandice began to receive the CPP benefit of \$228.66 when she left her mother's home. I'm told this will continue while she's in school. When Brandice lived with her mother, this sum was included in the amount Ms. Murnaghan received.

[58] In 2013, Brandice's means were comprised of her earnings (\$11,000.00) and her CPP benefit (\$914.64). Her total means in 2013 were \$11,914.64.

[59] With means of almost \$12,000.00 and post-secondary educational expenses of approximately \$3,400.00, it would seem that Brandice could cover her own post-secondary costs entirely. As well, Brandice and her mother (mainly her mother) had saved \$6,000.00 toward Brandice's university expenses.

Ms. Murnaghan says that most of this money is gone and only about \$1,000.00 remains.

[60] Brandice isn't living at home and has other costs she must pay. She pays half of the rent, cable bundle and electricity. The rent is \$900.00 and Brandice pays \$450.00. The cable bundle is \$157.01 and she pays \$78.50. The electricity is \$144.00 bi-monthly and Brandice pays \$36.00 each month. She pays \$65.00 each month for her cellphone. Ms. Murnaghan says that she gives Brandice money for groceries, toiletries and clothing. She says that during the first couple of months, she was giving Brandice up to \$100.00 each week, but this has slowed down because Ms. Murnaghan can't afford to continue these payments. Based on this information, I am prepared to assume that Brandice's monthly costs are \$800.00.

[61] These expenses deplete Brandice's means so that she has approximately \$2,300.00 to contribute toward her university costs. This is a reasonable amount for her to contribute. She is attending school full-time and working more than one thousand hours annually. I will not require more of her.

The parents' proportionate shares

[62] Following Justice Roscoe's direction at paragraph 17 in *Selig v. Smith* 2008 NSCA 54 that I'm to deduct Brandice's contribution from the total cost and apportion the remainder between the parents, I turn to calculate each parent's share of her post-secondary costs.

[63] Brandice's 2013 university expense is approximately \$3,400.00. I've determined that Brandice should be responsible for \$2,300.00 of this amount, leaving \$1,100.00 to be shared by her parents.

[64] To calculate each parent's share of Brandice's post-secondary costs, I need to determine each parent's income. The steps for doing this are explained in sections 16 to 20 of the *Guidelines*. There are no adjustments to be made to either parent's income. Ms. Murnaghan's annual income is \$14,054.16. This amount is different from the amount Ms. Murnaghan calculated on her Statement of Income. The difference is because I have reduced her disability benefit for the last four months of 2013 by the \$228.66 which Brandice now receives. Mr. Lutz's income is \$61,850.00. The parents' proportionate shares are outlined in the table below.

2013	Income	Proportionate share
Mr. Lutz	61,850.00	81%
Ms. Murnaghan	14,054.16	19%
Total	75,904.16	100%

Based on the proportions above, Mr. Lutz would contribute \$891.00 and Ms. Gillis would contribute \$209.00 to the \$3,400.00 in university costs, while Brandice pays the remaining \$2,300.00.

[65] Determining child support pursuant to subsection 3(1) of the *Guidelines*, Mr. Lutz would pay monthly child maintenance of \$523.00 based on the tables and he would make a lump sum contribution of \$891.00 pursuant to section 7 of the *Guidelines* for 2013.

2014

[66] In 2014, Brandice will have tuition for two terms. Based on her experience in this academic year, I estimate her tuition for the 2014 year will be \$5,761.90. This is the same amount as she is paying for her first year of study. She has an ongoing expense for her computer warranty that will be \$390.00 in 2014. Ms. Murnaghan didn't have receipts for the purchase of second term texts. I assume that Brandice will pay approximately \$500.00 per term for her textbooks. Where possible, books have been purchased at the used book store or on Kijiji.

Available subsidies, benefits and tax deductions

[67] I will continue to deduct the Nova Scotia University Student Bursary of \$384.93 per term from Brandice's post-secondary costs.

[68] The tuition tax credit is equal to 23.79% of eligible tuition fees. For the calendar year of 2014 (the second term of her first year and the first term of her second year), I've estimated Brandice's tuition will be \$5,761.90 and, at 23.79%, her tuition tax credit is \$1,370.76.

[69] The education tax credit and the textbook tax credit are worth \$88.00 per month for every month of full-time university attendance. In 2014, Brandice will be in school for eight months, so these credits are worth \$704.00.

[70] As a result of these calculations, Brandice's 2014 post-secondary education expense is approximately \$3,800.00. I've calculated this by reducing the estimated

total cost of \$6,651.90 by \$769.86 for the bursary, \$1,370.76 for the tuition tax credit and \$704.00 for the education and textbook tax credits. .

Brandice's 2014 post-secondary expenses	
2014 tuition	5,761.90
Computer warranty	390.00
Books	500.00
Total costs	6,651.90
Less tuition tax credit	(1,370.76)
Less education and textbook tax credits	(704.00)
Less NS University Student Bursary	(769.86)
Expense, net of subsidies, benefits and tax deductions	3,807.28

Brandice's contribution

[71] While Brandice's income in 2014 will be higher because she will receive CPP benefits throughout the year, I am satisfied that her contribution of \$2,300.00 to her post-secondary expenses remains appropriate.

The parents' proportionate shares

[72] Brandice's 2014 university expense is approximately \$3,800.00. Brandice should be responsible for \$2,300.00 of this amount, leaving \$1,500.00 to be shared by her parents.

[73] In 2014, Ms. Murnaghan's income will be less than it was in 2013 because her CPP disability benefits will have been reduced by Brandice's share for an entire year, rather than four months. Her income will be \$12,224.88. Mr. Lutz's income is \$61,850.00. The parents' proportionate shares are outlined below.

2014	Income	Proportionate share
Mr. Lutz	61,850.00	83%
Ms. Murnaghan	12,224.88	17%
Total	74,074.88	100%

[74] Based on the proportions above, Mr. Lutz would contribute \$1,245.00 and Ms. Gillis would contribute \$255.00 to the \$3,800.00 in university costs, while Brandice pays the remaining \$2,300.00.

[75] In 2014, Mr. Lutz will pay monthly child maintenance of \$523.00 based on the tables and he will make monthly payments of \$103.75 pursuant to section 7 of the *Guidelines*.

Conclusion

[76] I grant Ms. Murnaghan's application to vary child maintenance.

[77] Beginning on June 15, 2013, Mr. Lutz shall pay child support of \$523.00 as his basic child maintenance payment. For 2013, he owes \$891.00 as his proportionate share of Brandice's post-secondary education costs, and he shall pay this amount, in full, before February 28, 2014.

[78] I expect there may be a shortfall in Mr. Lutz's payment of maintenance for 2013 because I have increased his payments as of June 2013. Any shortfall between what he has paid and what I am ordering him to pay (other than the lump sum contribution to Brandice's post-secondary education costs) must be paid by August 15, 2014.

[79] Commencing on January 15, 2014, Mr. Lutz will pay \$103.75 as a contribution to Brandice's 2014 university costs.

[80] Ms. Murnaghan asks that I change the date for the payment of child maintenance to two weeks earlier than that stated in the current order (which is the end of each month). She says this will allow the Maintenance Enforcement Program to process the payments and still have them reach her by the end of each month. Payments will be made to Ms. Murnaghan through the Maintenance Enforcement Program on the 15th of each month, commencing on August 15, 2013.

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

Halifax, Nova Scotia