SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
CITATION: *Galbraith v. Galbraith*, 2014 NSSC 337

Date: 2014-09-24
Docket: 1201-057986; SFH-D 027018
Registry: Halifax

Between:

Arthur Barry Galbraith

Petitioner

v.

Sheila Marie Galbraith

Respondent

Judge:	The Honourable Justice Elizabeth Jollimore
Heard:	September 4 and 15, 2014, in Halifax, Nova Scotia
Counsel:	Richard A. Bureau on behalf of Sheila Lavoie Judith A. Schoen on behalf of Barry Galbraith

By the Court:

Introduction

[1] Sheila Lavoie (formerly Galbraith) has applied to vary child support. She asks that child support be varied retroactively and prospectively.

[2] Ms. Lavoie filed her original variation application in September 2012 and she sought a retroactive award from March 2003. Her application is pursuant to subsection 17(4) of the *Divorce Act*, R.S.C. 1985 (2nd Supp.), c. 3. Her retroactive application includes child support calculated pursuant to section 3 of the *Federal Child Support Guidelines*, SOR/97-175, and a contribution to special or extraordinary expenses pursuant to section 7 of the *Guidelines*. She also seeks child support on a prospective basis. She did not claim costs.

[3] Sheila Lavoie and Barry Galbraith divorced in 2004. They have two sons: Brandon, who is twenty-two, and Dennis, who is nineteen.

[4] Mr. Galbraith did not file a response to the variation application. He contested the application, saying that Brandon ceased to be entitled to child support "when he turned nineteen years of age and graduated high school" and Dennis ceased to be a child of the marriage at the end of June 2014 because Dennis is now nineteen and is not involved in any post-secondary studies.

[5] The parties' corollary relief judgment of July 11, 2004 incorporated an Agreement and Minutes of Settlement which stated that Mr. Galbraith's annual base salary was $83,000.00. At the time, Brandon and Dennis lived with Ms. Lavoie and Mr. Galbraith was to pay $1,079.00 in monthly child support. There was no provision for any financial contribution to special or extraordinary expenses, though Mr. Galbraith was to maintain health and medical insurance for Ms. Lavoie and the boys for so long as it was available and the children remained entitled to child support. The order didn't compel Mr. Galbraith to provide ongoing financial disclosure.

[6] In 2007 a variation order was granted dealing with Ms. Lavoie's spousal support. Her monthly spousal support of $1,700.00 was reduced to $750.00 and a termination date was fixed. At paragraph 8 his decision, reported at 2006 NSSC 202, then-Associate Chief Justice Ferguson referred to Mr. Galbraith as having an income "in excess of $83,000.00". Mr. Galbraith, at paragraph 11, described his income as having "remained relatively unchanged". The variation order didn't require Mr. Galbraith to provide ongoing financial disclosure.

Threshold requirement

[7] Neither party has contested the existence of a change in circumstances sufficient to support a variation application. The number of children for whom support is payable has changed as has Mr. Galbraith's income and the province in which he resides, for the purposes of determining which province's tables apply. Any one of these circumstances is a sufficient foundation for a variation of child support pursuant to section 14 of the *Guidelines*.

Approach

[8] According to Justice Bateman in *Staples v. Callendar*, 2010 NSCA 49 at paragraph 41, the impact of retroactive support on Mr. Galbraith's ability to pay prospective support is a relevant consideration in deciding whether to make a retroactive award, so I consider the prospective child support claim first.

Prospective child support

[9] Ms. Lavoie has claimed child support for Dennis until June 2014 when he graduated from high school. At that point, he was nineteen.

[10] Ms. Lavoie admitted that Brandon is no longer a child of the marriage and is not entitled to child support.

[11] Dennis hopes to become an electrician. He has applied to the Nova Scotia Community College for admission into its two year program. He was not admitted into the September class. Dennis is a permanent part-time employee at Boston Pizza. From his earnings, Dennis has paid all his own cellphone and car expenses. He lived at home. At the end of this month, Ms. Lavoie is relocating to Ontario. Dennis will remain in Nova Scotia and share a home with friends. He intends to work as much as he can while waiting for admission into the Community College. Ms. Lavoie anticipates needing to contribute $750.00 to Dennis's living expenses each month.

[12] Mr. Galbraith admitted that Dennis is entitled to receive child support until June 2014 when he graduated from high school.

[13] In his closing submissions, Mr. Galbraith said that child support for Dennis can be revisited if Dennis is accepted into a post-secondary educational program. In her closing submissions, Ms. Lavoie agreed that a "MacLennan order" would be appropriate. At paragraphs 46 and 47 in *MacLennan*, 2003 NSCA 9, Justice Cromwell approved the "pragmatic and just approach" of awarding prospective child support upon the child's full-time attendance in a post-secondary education program, removing the need for either party to apply to vary the existing order. However, Mr. Galbraith did not agree that child support should be automatically paid on Dennis' full-time participation in post-secondary education, so this matter will be subject to a variation application if and when Dennis returns to school.

[14] Mr. Galbraith's evidence did not include a Statement of Income. The parties did agree that his 2013 earnings were $175,789.00. Considering section 16 of the *Guidelines*, I order that Mr. Galbraith pay child support for Dennis, from January 2014 to and including June 2014, of $1,513.00 each month.

Retroactive child support

[15] When Ms. Lavoie filed her variation application in September 2012, Brandon was twenty years old. He had just graduated from high school and had begun to attend Mohawk College. He was not living at home, but this is typical where a child is pursuing post-secondary studies. Dennis was seventeen, living with his mother and attending high school.

[16] I'm satisfied that both children were dependent and entitled to receive child support when Ms. Lavoie applied to vary child support retroactively and that, as a result, I have jurisdiction to deal with her application.

[17] Retroactive claims are governed by the Supreme Court of Canada's decision in *D.B.S. v. S.R.G.; L.J.W. v. T.A.R.; Henry v. Henry; Hiemstra v. Hiemstra*, 2006 SCC 37. Retroactive awards are discretionary ones that are neither automatic nor exceptional. In exercising my discretion to make a retroactive award, I'm to balance the competing principles of certainty and flexibility, while respecting the core principles of child maintenance. Certainty protects Mr. Galbraith's interest in respecting the prevailing order, rather than re-writing the rules for child support over a decade later. Flexibility honours Ms. Lavoie's interest in receiving the appropriate amount of child support. The core principles of child support are that: support is the right of children; the children's right to support survives the breakdown of the parents' relationship; support should, as much as possible, perpetuate the standard of living the children had before the parents' relationship ended; and the amount of support varies, based upon the parent's income.

[18] In determining whether to grant Ms. Lavoie's request for a retroactive order, I'm to consider: the reason for her delay in making this claim; Mr. Galbraith's conduct; the children's past and present circumstances; and whether a retroactive award would result in hardship to Mr. Galbraith. All of these factors must be considered and none on its own dictates my decision, according to Justice Bastarache in *D.B.S. v. S.R.G., L.J.W. v. T.A.R., Henry v. Henry, Hiemstra v. Hiemstra*, 2006 SCC 37 at paragraph 99.

Ms. Lavoie's delay

[19] In her initial affidavit, Ms. Lavoie said that Mr. Galbraith moved to British Columbia after the divorce and that she and the boys have had little contact with him since then. She said there's been "no exchange of financial information since the Interim Consent Order dated March 20, 2003." Initially, Ms. Lavoie sought a variation from the date of the interim order in 2003.

[20] In her supplemental affidavit, Ms. Lavoie said that Mr. Galbraith "would drop by Dennis' place of employment or the boys' school without warning." She said that she heard Mr. Galbraith "might be working in British Columbia" in 2008 and she began to search for information about his whereabouts so she could obtain current financial information from him. She said she learned where he was working in November 2011 and wrote to him.

[21] Mr. Galbraith applied to vary spousal support in 2006. He would have been required to provide financial disclosure in the course of this application.

[22] Mr. Galbraith testified that he has always maintained a home in Nova Scotia and his current wife lives in that home. He travels back and forth from work in British Columbia and lives in this home when in Nova Scotia. He said the home is in the same community where Ms. Lavoie lives. He said that his wife and Ms. Lavoie attend the same fitness centre and run into

each other at the community's only drug store. His home telephone number, he said, has not changed since 2002.

[23] According to Mr. Galbraith, after Ms. Lavoie's 2011 letter was sent to him at his British Columbia workplace, it was delivered to him at his home in Nova Scotia on Christmas Eve, 2012.

[24] Ms. Lavoie has offered no reasonable explanation for her delay in seeking to adjust child support.

Mr. Galbraith's conduct

[25] At paragraph 106 of *D.B.S. v. S.R.G., L.J.W. v. T.A.R., Henry v. Henry, Hiemstra v. Hiemstra*, 2006 SCC 37, Justice Bastarache characterized blameworthy conduct as "anything that privileges the payor parent's own interests over his/her children's right to an appropriate amount of support".

[26] The parties have agreed on Mr. Galbraith's income over the past six years. Their agreement is outlined in the table below.

Year	Income
2008	91,805.00
2009	117,143.00
2010	127,280.00
2011	141,350.00
2012	133,098.00
2013	175,789.00

[27] Mr. Galbraith did not disclose his income figures for 2003, 2004, 2005, 2006 and 2007.

[28] Mr. Galbraith argued that Brandon ceased to be entitled to child support when he finished high school in 2012. If so, and Mr. Galbraith's child support payments reflected his income, he should have paid the amounts shown in the table below. The 2012 payment would be paid until July 2012 when it would be replaced by a payment for only one child.

Year	Monthly amount for two children
2008	1,339.00
2009	1,661.00
2010	1,785.00
2011	1,957.00
2012	1,898.00

[29] I am using the British Columbia tables. According to the note at the beginning of Schedule I to the *Guidelines*, the tables vary by province because each province has its own

income tax rates. Mr. Galbraith said he pays income taxes in British Columbia, so his child support should be calculated based on that province's tables.

[30] Mr. Galbraith was ordered to pay $1,079.00 each month in 2003. According to the table in paragraph 28, his monthly shortfall was a minimum of $260.00 and as much as $878.00. Mr. Galbraith's failure to meet the obligation dictated by the *Guidelines* enhanced his financial circumstances at the expense of his children's.

[31] If Brandon remained entitled to support until he left Mohawk College at the end of 2013, Mr. Galbraith should have paid child support for two children throughout that year. The monthly payment for two children, based on Mr. Galbraith's 2013 income is $2,429.00: $1,350 more than the amount Mr. Galbraith actually paid.

[32] Mr. Galbraith testified that, when asked, he did not provide permission for RESP funds to be withdrawn to finance Brandon's education at Mohawk College. Unused RESP contributions may be refunded, so by denying permission to withdraw these funds, Mr. Galbraith created the possibility that some portion of the funds might be returned to him. Mr. Galbraith didn't contribute to the modest cost of Brandon's participation, at age seventeen or eighteen, in the Katimavik program. Mr. Galbraith cannot recall notifying Ms. Lavoie about his health insurance plan so that she could take advantage of it.

[33] In his testimony, Mr. Galbraith agreed that he knew child support was based on his income and that he knew when his income increased, his child support would increase. Regardless, when he received Ms. Lavoie's 2011 letter asking for disclosure of his income, he did not take steps to adjust his child support. In 2011, Mr. Galbraith earned more than $141,000.00. Brandon was then nineteen and Dennis was sixteen. Even if only Dennis was entitled to child support, Mr. Galbraith did not adjust his child support. He continued to pay less than the *Guidelines* required.

[34] By paying less than the *Guidelines* required him to pay, Mr. Galbraith put his own interests ahead of his children's interest in receiving the appropriate amount of support.

The children's circumstances

[35] I'm to consider the children's past and current circumstances in determining whether a retroactive award is justified.

[36] The boys' circumstances have been difficult. Both parents say that they've had little relationship with their father since the separation, which occurred when Brandon was ten and Dennis was seven.

[37] Mr. Galbraith said that he has not been kept informed of the boys' circumstances. The parents' Agreement, which was incorporated into their corollary relief judgment, provided that Mr. Galbraith was equally entitled to access the boys' medical records and to make inquiries and

obtain information about their health, education and general welfare. As well, as Mr. Galbraith said, he maintained a home in the same community where the boys have lived with their mother.

[38] Both children have struggled at school. There has been significant absenteeism and Ms. Lavoie testified about her efforts to keep them in school. Ms. Lavoie spent $2,955.00 on an academic writing course for Brandon in 2007 - 2008. Brandon participated in the Katimavik program: Ms. Lavoie thought this real world experience would persuade him of the need to complete his education. Brandon graduated from high school after five years and then he attended Mohawk College for a year and one half, failing in his first year there. His expenses for Mohawk College exceeded $10,000.00, of which less than $1,000.00 was refunded when he left the program in December 2013.

[39] According to a July 2014 note provided by his doctor, Brandon is currently being treated for a major depressive disorder which prevents him from working or being a full-time student. Dr. MacFarlane is hopeful Brandon's symptoms will resolve in six to twelve months.

[40] Mr. Galbraith didn't contribute to the Mohawk College expenses or permit withdrawals from the RESP. In his affidavit, Mr. Galbraith stated that the boys' maternal grandmother was "independently wealthy" when she died in 2009 and "I would not be surprised if there were educational funds established by her to assist the children in their educational endeavours." Mr. Galbraith admitted that he has no direct information "if these funds exist or not". Ms. Lavoie was not questioned about this, so I do not know how Brandon's college studies were funded. In any event, the obligation to support the boys was their parents' obligation, not their grandmother's.

[41] Brandon lives with his mother and intends to move to Ontario with her. She hopes that when his health improves, he will be able to find work. She is supporting him financially.

[42] Dennis, like his brother, experienced problems in high school. He graduated in 2014 and intends to study to become an electrician at the Nova Scotia Community College. He has applied, but has not been admitted. Dennis has worked part-time while in school. In 2013, he earned $14,520.00. He lives with friends since his mother is moving from Nova Scotia. Ms. Lavoie anticipates that she'll need to provide him with $750.00 each month to support him.

[43] Since this application was commenced, Mr. Galbraith has made himself aware of his sons' struggles. Mr. Galbraith provided a copy of a 2013 letter from the school vice-principal telling him that Brandon had withdrawn from school in November 2009 (when he was seventeen) and that Dennis was withdrawn from school in early 2012 when he was also seventeen.

[44] A retroactive award could provide for both Brandon and Dennis. While the parents agreed that neither is currently entitled to child support, neither is self-supporting nor, given his education or experience, capable of being self-supporting. Each depends on Ms. Lavoie. They could use their father's support.

Hardship

[45] My final consideration is whether a retroactive award would result in hardship. I am to consider whether Mr. Galbraith is able to satisfy a retroactive award. "Hardship" is to be considered broadly, not within the confines of section 10 of the *Guidelines*.

[46] Mr. Galbraith has offered no evidence on this point. His evidence did not include a Statement of Income, Statement of Expenses or Statement of Property from which I might glean information about his financial circumstances. He provided a summary of monthly expenses he says he incurs for staying in Vancouver while he works in British Columbia. These total $2,421.00. I have no context for these costs because I do not know the expenses he incurs in Nova Scotia. For example, he continues to live in the home he lived in at separation: is there a mortgage on this property? Does his current wife contribute to their household expenses? I have no information to explain why Mr. Galbraith chooses his current living arrangements or if he has any choice in the matter.

[47] I cannot conclude that there would be any hardship to Mr. Galbraith from a retroactive award.

Conclusion with regard to Ms. Lavoie's retroactive claim

[48] Mr. Galbraith's conduct, the boys' circumstances and the absence of any hardship all warrant making a retroactive child support award. The only factor which militates against this is Ms. Lavoie's delay. Considering these factors in the context of the fundamental principles of child support, this is an appropriate case in which to exercise my discretion to make a retroactive award. The children are entitled to the support. A retroactive award would assist them in preparing themselves for independent lives. Without it, their mother bears the burden of supporting them on her own.

Calculating the retroactive amount

[49] Ms. Lavoie asked for a retroactive award based on the tables and a contribution to the boys' special or extraordinary expenses. In her submissions and brief, she sought a retroactive start date of 2008. Mr. Galbraith said the appropriate date is 2011, if a retroactive award is made.

[50] At paragraph 134 in *D.B.S. v. S.R.G., L.J.W. v. T.A.R., Henry v. Henry, Hiemstra v. Hiemstra*, 2006 SCC 37, Justice Bastarache said that a retroactive award should generally be made to the date of effective notice to the paying parent (the "presumptive date"). An earlier date can be chosen, however.

[51] The appropriate approach to fixing the date for the commencement of a retroactive award was summarized at paragraph 125 in *D.B.S. v. S.R.G., L.J.W. v. T.A.R., Henry v. Henry, Hiemstra v. Hiemstra*, 2006 SCC 37, where Justice Bastarache said that if parent who pays support wants "to avoid having the presumptive date of retroactivity set prior to the date of

effective notice, the payor parent must act responsibly". Acting responsibly means disclosing material changes in circumstances to the other parent. If this isn't done, Justice Bastarache said he saw "no reason to continue to protect [the paying parent's] interest in certainty beyond the date when circumstances changed materially." He further said that "where the payor parent engaged in blameworthy conduct, the date when circumstances changed materially will be the presumptive start date of the award."

[52] Once I have determined the start date, I am to determine its quantum of based on the *Guidelines*.

Determining the start date

[53] The date of effective notice is November 2011, when Ms. Lavoie wrote to Mr. Galbraith requesting his financial disclosure. Mr. Galbraith said that this is the correct date from which to make a retroactive award.

[54] In 2008, Mr. Galbraith's annual income was approximately $8,800.00 (over nine percent) greater than it was when child support was ordered in 2004. Mr. Galbraith did not adjust his child support accordingly at that time nor has he adjusted it at any point during these proceedings, though his annual income exceeded $175,000.00 last year. From 2008 to the present, Mr. Galbraith's income has increased in every year but one.

[55] Mr. Galbraith repeatedly referenced the absence of an income disclosure requirement in any court order or agreement. This argument ignores the Supreme Court of Canada's view, expressed by Justice Bastarache at paragraph 64 in *D.B.S. v. S.R.G., L.J.W. v. T.A.R., Henry v. Henry, Hiemstra v. Hiemstra*, 2006 SCC 37 that "The certainty offered by a court order does not absolve parents of their responsibility to continually ensure that their children receive the appropriate amount of support." Mr. Galbraith failed to do this.

[56] Mr. Galbraith's conduct has been blameworthy and I fix the start date for the retroactive award at January 2008, as Ms. Lavoie requests.

Applying the *Guidelines*

The table amount

[57] There are two aspects to the *Guidelines*: the table amount and additional amounts that may be ordered to defray special or extraordinary expenses. Determining the table amount requires me to decide when Brandon stopping being entitled to child support; the parties agreed that Dennis has been entitled to child support from 2008 until June 2014.

[58] Mr. Galbraith argued that Brandon ceased to be a child of the marriage either (a) at the end of high school; or (b) when he finished his first year at Mohawk College. He also argued that the months when Brandon attended Katimavik are months when he was not entitled to

receive child support. Ms. Lavoie says that Brandon's entitlement ended at the end of 2013, when he left Mohawk College for the last time.

[59] I have already determined that Brandon was entitled to child support when he started at Mohawk College. Implicit in this is my decision that Brandon was still a child of the marriage while he took part in the Katimavik program. His mother promoted his involvement in Katimavik as a means of inspiring him to persevere in completing high school. Leslie Broomhead, the vice-principal at Brandon's high school, endorsed the idea of removing a student from school once he'd reached the point where failure was inevitable to allow a "fresh start" with a "clean slate" when the student returned. According to Ms. Broomhead, to remain in school when failure is inevitable, no matter what the effort, "can be damaging to confidence and self-esteem". Brandon was under the age of majority at this point and had not withdrawn from his mother's charge: his mother was a force behind his participation in Katimavik.

[60] Brandon attended Mohawk College during the 2012-2013 academic year. He failed the year. He was able to re-enroll, which he did the very next year. He left the College in December 2013, after the first term. During this time, Brandon lived away from home. I have no evidence that he was working or able to support himself financially. Mr. Galbraith's argument was that Brandon's entitlement is linked to his academic success: since he was failing, he should not be supported.

[61] Out Court of Appeal, in *Yaschuk v. Logan*, 1992 CanLII 2595 (NS CA), *Martell v. Height*, 1994 CanLII 4145 (NSCA) and *MacLennan*, 2003 NSCA 9, has taken a broad view of dependency in the context of the pursuit of post-secondary education. In *Yaschuk v. Logan*, 1992 CanLII 2595 (NS CA), Justice Chipman said that "an education that will fit a child for a career can be properly regarded as a necessity." (He also warned that I must not get carried away with claims by a perpetual "hanger-on".)

[62] At paragraph 8 in *Martell v. Height*, 1994 CanLII 4145 (NSCA), Justice Freeman said that there's no specific point at which a child is no longer entitled to support: "[a]s a general rule parents of a bona fide student will remain responsible until the child has reached a level of education, commensurate with the abilities he or she has demonstrated, which fit the child for entry-level employment in an appropriate field." He cautioned - *twenty years ago* - that an undergraduate degree didn't assure self-sufficiency. Brandon has a high school education. In *MacLennan*, 2003 NSCA 9, Justice Cromwell echoed the need to examine each case on its facts, acknowledging the circumstances of post-secondary education are not straightforward, given its cost.

[63] Mr. Galbraith urges me to consider the "Farden factors" in determining Brandon's entitlement. In *Farden*, 1993 CanLII 2570 (BC SC), Master Joyce outlined circumstances he considered relevant in determining whether a child was still entitled to support. (This decision was appealed on other grounds and upheld by the British Columbia Court of Appeal at *Farden*, 1988 CanLII 3412.) In *MacLennan*, 2003 NSCA 9 at paragraph 41, Justice Cromwell explicitly says lists such as that in *Farden*, 1993 CanLII 2570 "must not be used in place of the language of

the statute or be invoked to impose a burden on parties to call evidence about the obvious or on judges to address non-issues in their reasons for judgment".

[64] So I look specifically to Brandon's circumstances. He struggled in high school, graduating after five years. Ms. Lavoie saw school staff regularly. School records show "interventions" in various years and emails to Ms. Lavoie, as well as a meeting with Mr. Galbraith. They show some success in Brandon's academic work. Ms. Lavoie attempted to engage Brandon in school through the Katimavik program, which Brandon attended from September 2010 to January 2011, believing this would persuade Brandon of the need to pursue an education. She arranged tutoring for him while he was in high school. She tried to access RESP funds to finance his studies at Mohawk College.

[65] In light of this, Brandon's struggles in college are to be expected. He graduated from high school after years of effort. It's reasonable to expect the same would occur once he began college. I find that Brandon remained a child of the marriage, unable to withdraw from his parents' charge until the end of 2013. He was not working and had no history of paid employment during high school. He was furthering his education beyond the high school level.

[66] Based on this conclusion, Mr. Galbraith owes child support, payable for two children, from January 2008 until December 2013. I calculate the amount payable pursuant to section 3 of the *Guidelines* in the table below.

Year	Income	Monthly BC payment for two	Amount due for year
2008	91,805.00	1,339.00	16,068.00
2009	117,143.00	1,661.00	19,932.00
2010	127,280.00	1,785.00	21,420.00
2011	141,350.00	1,957.00	23,484.00
2012	133,098.00	1,898.00	22,776.00
2013	175,789.00	2,429.00	29,148.00
Total table amount due			132,828.00

Special or extraordinary expenses

[67] Ms. Lavoie has asked for a retroactive contribution for health-related expenses and to Brandon's tutoring costs. The parties agreed that I am not to consider the cost of his attendance at Mohawk College.

[68] There are two sorts of expenses to which I can order a parent contribute: special expenses and extraordinary expenses. With regard to both, I am to consider the necessity of the expense having regard to the child's best interests, the reasonableness of the expenses in light of the

means of the children and the parents, and the family's pre-separation spending pattern. For extraordinary expenses, I must also decide whether the expense falls within the definition of "extraordinary" in subsection 7(1.1) of the *Guidelines*. The tutoring expenses must be shown to be extraordinary for me to order Mr. Galbraith contribute to it. This is not the case for health-related expenses.

[69] In submissions it was acknowledged that Mr. Galbraith did not remember providing Ms. Lavoie with the details of the health insurance he was ordered to maintain for the children. Without these details, she made alternate insurance arrangements. He conceded that it "seemed appropriate" that he would pay the health costs Ms. Lavoie claimed. In the context of this requirement, health related expenses for the children are in their best interests, reasonable, and in keeping with the family's pre-separation spending pattern.

[70] According to Ms. Lavoie's evidence, she paid health and dental insurance premiums attributable to the children of $88.67 per month. For the period from January 2008 to June 2014, this totals $6,916.26. Mr. Galbraith was to provide this and he shall reimburse Ms. Lavoie for this amount. Such an order is permissible under section 6 of the *Guidelines*. I do not order that this be proportionately shared: Mr. Galbraith was ordered to provide this insurance outright.

[71] Ms. Lavoie has also paid all the uninsured health costs. For the most part, these have been for dental and orthodontic treatment. These totaled $1,821.20. The health-related expenses have been incurred over time. In 2008, she paid $1,518.80 in uninsured costs. In 2009, she paid $95.20. In 2010, she paid $51.40, while in 2011 she paid $156.80. Most recently, in 2012, she paid $50.40.

[72] The health-related expenses which are to be shared are those which exceed insurance reimbursement by at least $100.00 per year. Only in 2008 and 2011 did health-related expenses exceed this amount.

[73] Subsection 7(3) of the *Guidelines* requires that I consider available income tax deductions when I determine the amount of an expense. The medical expense tax credit is available for expenses which exceed a certain amount or three percent of the tax payer's income. (Federally, the figure is approximately $2,100.00, while provincially, it is approximately $1,600.00.) At Ms. Lavoie's income level, the three percent threshold is generally about $1,300.00. Only in 2008 would she have been eligible for the tax credit. The federal credit is worth fifteen percent of the amount over the threshold and the provincial credit is worth 8.79% of the amount over the threshold. In 2008, her federal medical tax credit was worth $32.82 and her provincial credit was worth about $19.23: the credit would have saved her approximately $51.05. In all other years, her medical expenses were too low to generate a tax saving.

[74] So, Mr. Galbraith would be required to contribute to health-related expenses of $1,366.75 for 2008 and $56.80 for 2011.

[75] I don't have evidence of Ms. Lavoie's income in 2008, so I use her 2009 income amount of $46,104.00. Mr. Galbraith's income was $91,805.00. A proportionate sharing of this cost

would require Mr. Galbraith to pay sixty-seven percent of the expense: $915.72. In 2011, Ms. Lavoie's income was $51,282.00 and Mr. Galbraith's was $141,350.00, meaning his proportionate contribution to the expense of $56.80 would be seventy-three percent or $41. 46. I order him to pay these amounts.

[76] The cost of educational programs during secondary school must be shown to be special or extraordinary before I can order a contribution to them. Ms. Lavoie adduced no evidence with regard to this, so I dismiss this claim.

Conclusion

[77] Mr. Galbraith shall pay lump sum retroactive child support, calculated pursuant to the tables, of $132,828.00, for the period from January 2008 to December 2013. He shall make a lump sum contribution to the boys' health expenses of $7,873.44. He owes child support of $9,078.00 for Dennis for 2014. All these amounts may be offset against the child support payments Mr. Galbraith has made to Ms. Lavoie during the period from January 2008 to date.

[78] All amounts shall be paid forthwith. Much of this money is years overdue and it will provide the greatest benefit to Brandon and Dennis the sooner it is paid.

[79] Mr. Bureau shall prepare the order. It shall include reference to the parties' agreement relating to the sharing of any surplus funds in the RESP.

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

Halifax, Nova Scotia