

IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: A.W.H. v. C.G.S., 2007 NSSC 181

Date: 20070615

Docket: 1201-55478, SFHD-009621

Registry: Halifax

Between:

H. (A. W.)

Petitioner

v.

S. (C. G.)

Respondent

LIBRARY HEADING

Judge: The Honourable Justice Beryl MacDonald

Heard: April 16, 2007 in Halifax, Nova Scotia

Written Decision: June 15, 2007

Subject: Divorce - Corollary Relief - Status of children as “children of the marriage
- Child Support Guidelines, section 3, section 7 - Retroactive child support

Summary: Wife received child and spousal support pursuant to a previous Maintenance and Custody Act order. She sought a variation in a Divorce proceeding seeking a retroactive award and ongoing support for two children. One child, their son, was 19 years old on the date she commenced her application. He had not completed high school until he was 20. He was 22 years old by the date of the hearing, he was working and resided with the wife but had applied to attend university in the fall. The second child was under 19 years of age and was attending university and residing with the wife. The husband’s income had increased substantially since the date of the previous order.

Issue: Was the son a “child of the marriage” and if not when did he lose that

status?

What contribution from employment earnings are children to contribute towards educational expenses and must they apply for student loans before seeking contribution from parents?

What was the appropriate mechanism pursuant to the child support guidelines to quantify the child support payment?

Should there be a retroactive award and if so in what amount?

Result:

The son lost his status as a child of the marriage as at July 1st 2005. By this time he had completed high school and although he was living with the wife he paid room and board and was able to look after the majority of his expenses. Because he was not a child of the marriage on the date the wife filed her application no retroactive award could be made for his support although a retroactive award was granted in respect to the daughter's support. If the son attended university in the fall he would regain status as a child of the marriage and he was entitled to financial support. A calculation was made to indicate what that support would be in the event the son did attend.

The amount a parent is to contribute financially to support a child in university or other post secondary training or educational program is to be calculated without taking into consideration the availability of student loans.

For children under 19, in university or other post secondary program, child support must be calculated using the child support guideline table and section 7.

For children over 19, a section 3 analysis, which may include a consideration of the table and section 7, is to be used.

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