

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *James v. Butler*, 2014 NSSC 438

**Date:** 20141211

**Docket:** PIC No. 1205-002610

**Registry:** Pictou

**Between:**

Lisa Elizabeth James

Applicant

v.

Dallas Martin Gerald Butler

Respondent

**Judge:** The Honourable Justice Suzanne M. Hood

**Heard:** October 24, 2014, in Pictou, Nova Scotia

**Written Decision:** December 11, 2014

**Counsel:** Timothy G. Daley, Q.C., for the Applicant, Lisa James  
Roseanne M. Skoke, for the Respondent, Dallas Butler

**By the Court:**

[1] Lisa James seeks an order to vary child support and seeks retroactive child support and retroactive Section 7 expenses.

**FACTS**

[2] Lisa James and Dallas Butler were in a long term common law relationship, then married in 2001 and separated in July 2004. Their divorce was finalized in May 2009. They have two children: Dawson, age 16, and Hayden, age 13. (Dates of birth: May 17 1998 and May 24, 2001, respectively.)

[3] Both parents have re-partnered: Lisa James is in a common law relationship with Arnold Charron and they have a seven year old daughter. Dallas Butler has remarried. He and Arlene MacDonald have two sons together, ages 6 and 5, and, as well, Arlene has a son age 17 who lives with them part of the time.

[4] In the divorce decision in 2009, MacLellan, J. granted the parents joint custody with shared co-parenting of their sons on the basis that the children spend at least 40 percent of the time with each parent. Dallas Butler's child support payments were not directly set off against Lisa James' payments to him. He was,

instead, ordered to pay \$400 per month, rather than \$236 per month based strictly on the difference between their incomes.

[5] In 2010 Lisa James brought an application for sole custody. At the same time, Dallas Butler brought an application to have his child support decreased since he was going back to school. Rosinski, J. concluded that shared parenting continued and dismissed Lisa James' application. He was not satisfied that Dallas Butler's reasonable educational needs required him to go back to school. He therefore imputed income to Dallas Butler of \$13,873. Based upon that income, Dallas Butler was ordered to pay \$214 per month child support. Although his imputed income was less than that of Lisa James at the time, Dallas Butler did not seek a setoff which would have required Lisa James to pay child support to him.

[6] Dallas Butler returned to school in 2010 and graduated in 2012. He subsequently became employed on October 1, 2012 with Northern Pulp. Lisa James made an application for disclosure of his financial information in March 2013 and brought this application in May 2013.

## **ISSUES**

1. Change in circumstances.
2. Child support.

3. Section 7 expenses.
4. Retroactive child support.
5. Retroactive Section 7 expenses.

## **1. Change in Circumstances**

[7] I am satisfied that there has been a change in circumstances since the last court order as Dallas Butler is now employed. The parties do not dispute this.

## **2. Child Support**

[8] Lisa James seeks child support of \$600 per month.

[9] Both parties and their partners have provided income information. Based upon her Notices of Assessment, Lisa James' income for the past four years is as follows:

2010 - \$43,812;

2011 - \$45,668;

2012 - \$47,490;

2013 - \$49,400.

[10] Lisa James owns a rental property but she says the expenses exceed the rental income. I accept this evidence. Her partner's income for 2013 was \$54,834.21. Arnold Charron too owns a rental property but Lisa James testified that the expenses exceed the rental income. I accept that evidence.

[11] Dallas Butler says his current income is \$59,333.76, from Nova Scotia Power Inc. He became employed there on March 25, 2013, as an apprentice power engineer. His income tax return for 2012 shows his total income to have been \$34,203 including employment income of \$15,308 plus employment insurance income, RRSP income and the childcare benefit. His income tax return for 2013 shows income of \$69,839. Dallas Butler testified that his 2013 income included pension, vacation and benefits payout from Northern Pulp that inflated his actual income for that year.

[12] Dallas Butler's pay stub from Nova Scotia Power for the pay period September 12 to September 25, 2014, shows year-to-date income of \$48,531.74. Prorating that amount results in an annual income of \$66,411.85. An October 6, 2014 letter from Nova Scotia Power says Dallas Butler's base salary is \$58,188. However, the pay stubs disclose that he is earning some overtime income. Dallas Butler testified that he does not actually get overtime but if his shift falls on a statutory holiday he is paid time and a half. If he continues to work on that basis

between September 25 and year end, his income would be approximately \$66,000.

From that, his union dues are to be deducted to arrive at his income for child support purposes. For 38 weeks the total dues were \$785.19, which for the entire year would be \$1,074.47, resulting in income for child support purposes of \$65,337.38.

[13] I do not accept the submission of Lisa James that Dallas Butler's actual income is \$69,274.86. That figure includes paid time off (vacation) which would be double counting since Dallas Butler is paid at his regular rate when on vacation, not paid an additional sum.

[14] Based upon his income, Dallas Butler's child support for two children would be \$907.45. Lisa James' income for 2013 was \$49,400. The child support for two children, based on that income, is \$692.60. The difference between the child support requirements, therefore, is \$214.85 on a strict setoff basis. The issue is whether that should be done.

[15] In his divorce decision in November 2008, MacLellan, J. concluded there would be shared parenting but no strict setoff. He said in paragraph 122 that the difference between their incomes would result in a payment from Dallas Butler to Lisa James of \$236 per month. He continued in paragraph 124 to set the actual

amount of child support at \$400 per month, having first said that Dallas Butler had been paying \$404 per month for some time by agreement.

[16] When the variation application was heard by Rosinski, J. in September 2010, he concluded that shared parenting would continue but did not order a setoff. However, because Dallas Butler had been laid off in 2010 his income was lower than that of Lisa James, therefore any setoff amount would have had to be paid by Lisa James to Dallas Butler. As I have said, Dallas Butler did not ask that child support be paid to him.

[17] Lisa James says she incurs a disproportionately larger share of the children's expenses than does Dallas Butler. She says that when Dallas Butler was in school for two years that also was the case. She testified that she pays for most of the children's clothing and contributes more towards their hockey and school expenses. She provided a detailed list of expenses she incurred from August 2010 to the end of 2013 and provided copies of receipts for those expenses.

[18] Dallas Butler says he shared in the children's expenses but was able to provide only a few receipts. He said he sometimes paid with a credit card but did not provide copies of any credit card statements showing additional expenditures. He also says he pays \$150 to \$160 per month for health benefits which cover

Dawson and Hayden; however, these benefits also cover his two younger sons. As well, when one looks at his September 2014 pay stub, it appears the monthly cost is only \$72.64 with an additional amount for life insurance.

[19] Dallas Butler says he has the responsibility for five children in his household: Dawson and Hayden plus his and Arlene's two sons and Arlene's son, whereas Lisa James has Dawson and Hayden and only one other child.

[20] Lisa James points out that Dallas Butler does not have five children all the time in his household since they share custody of Dawson and Hayden, and Arlene's son spends time with his father.

[21] Dallas Butler also says they have incurred extra medical expenses not covered by his health insurance arising from burns suffered by his and Arlene's son in 2014. He says this has necessitated many trips to Halifax and these continue. He also says Arlene has reduced her work hours to four days per week, with a resultant pay decrease, to allow time for the hospital visits in Halifax because he does not have that flexibility in his workplace. He did not say how much Arlene's income decreased.

[22] Each was cross-examined about expenses each household incurs for such things as vacations, gifts and parties for Dawson and Hayden. After hearing this



evidence, I am not satisfied that either household spends money that could have been spent on the children or that the standard of living for the children varies much from one household to the other.

[23] Lisa James argued that additional income should be imputed to Dallas Butler because there is an apartment in his home which is not presently rented out. He testified he has rented it in the past to a family friend for \$600 per month which included heat and electricity. He says in response that he does not have the present intent to rent it since Dawson and his stepson, who are 16 and 17 years old, may want to use that space.

[24] Lisa James points out that Arlene MacDonald receives child support in the amount of \$300 per month. On the other, hand Dallas Butler says that Lisa James is receiving child support too, and in addition receives the child tax credit since she has claimed on her income tax returns that she is single. As well she claims the fitness credit for the boys' hockey expenses.

[25] Dallas Butler says once he was employed he increased his child support payments from the \$214 per month ordered by Justice Rosinski. Exhibit 4 is the Maintenance Enforcement Program's Record of Payments from April 2010 to October 23, 2014. By November 1, 2012 the arrears totalled \$2,331.54. Those

arrears began to accumulate in August 2011 during Dallas Butler's two year course at Nova Scotia Community College when he was not employed. In November 2012 he began to reduce the accumulated arrears so that by March 4, 2013 his account was in a credit position. Thereafter there were payments made in excess of \$214 per month as follows:

June 3, 2013 - \$400;

July 2, 2013 - \$400;

August 6, 2013 - \$300;

August 23, 2013 - \$350;

October 3, 2013 - \$375.

Thereafter Dallas Butler continued to pay the court ordered amount of \$214 per month so that as of October 21, 2014 there was a credit balance of \$327.08.

[26] Dallas Butler was ordered by Justice Rosinski to report his income on a quarterly basis to Lisa James, but did not do so. He said that there was no change in his income since he was in school. He was also ordered to advise Lisa James of any change in his employment status, but he did not disclose that he was employed

as of October 1, 2012. His evidence was that Lisa James knew within a few weeks anyway.

[27] Lisa James says Dallas Butler should not pay her only the strict setoff amount. She says he should pay \$600 per month effective November 1, 2014. Dallas Butler says he should continue to pay \$214 per month.

[28] As it turns out, Dallas Butler's decision to go back to school was a prudent one. Nova Forge, his previous employer, from which he was laid off in 2010, has since closed. He is now earning more than he ever did at Nova Forge before being laid off and has the potential to earn more once he has completed his apprenticeship as a power engineer.

[29] In *Contino v. Leonelli-Contino*, 2005 SCC 63, Bastarache, J. delivered the reasons for the majority, with Fish, J. dissenting. The court dealt with child support in a shared parenting arrangement.

[30] Bastarache, J. said in paragraph 3:

Shared custody arrangements are not a simple variation of the general regime, they constitute by themselves a complete system.

[31] Section 9 of the *Federal Child Support Guidelines*, SOR/19-175, provides:

9. Where a spouse exercises a right of access to, or has physical custody of, a child for not less than 40 per cent of the time over the course of year, the amount of the child support order must be determined by taking into account

- (a) the amounts set out in the applicable tables for each of the spouses;
- (b) the increased costs of shared custody arrangements; and
- (c) the conditions, means, needs and other circumstances of each spouse and of any child for whom support is sought.

[32] There is neither a presumption in favour of using the *Guidelines* amount nor a presumption in favour of reducing the amount of child support downward from the *Guidelines* amount (paragraph 31).

[33] The first step is to determine what the setoff amount would be. It is the starting point. In this case it is \$214.85 as calculated above.

[34] The court is to consider the increase costs of shared custody arrangements. This includes not only the increased costs of Dallas Butler but also the fact that many of Lisa James' costs do not decrease when the children are with their father; an obvious example is housing costs.

[35] In his supplementary affidavit sworn June 2, 2014, Dallas Butler lists at paragraph 24 the household expenses he and his wife share. He includes in that list clothing for five children which includes Dawson and Hayden. He says they "live from paycheque to paycheque providing for the basic needs of our family"

(paragraph 28). He says Dawson and Hayden do not go without in his home (paragraph 32).

[36] Lisa James provided a list of the children's expenses for which she paid (Exhibit 2, Tab 10). In her second supplementary affidavit sworn July 4, 2014, she listed in paragraph 19 her household expenses.

[37] Based upon the evidence, I conclude the additional costs incurred by Dallas Butler because of shared custody are offset by the increased costs of Lisa James arising from shared custody. The actual sharing of the children's expenses is considered next.

[38] I am to consider the conditions, means, needs and other circumstances of each parent and the children. I am to consider how the actual child related expenses are shared and the standard of living of Dawson and Hayden in each home. The total incomes in each home exceed \$100,000. In Lisa James' home, the total income is approximately \$104,000 plus non-taxable income of \$2,568 (\$214 per month child support) and the child tax credit of \$4,625 (\$385 per month) for a total of \$111,193.

[39] In Dallas Butler's household, his income is \$65,337.38 (as calculated above). Arlene MacDonald's income is \$56,694, based upon her 2013 income tax

return. In addition, Arlene receives \$300 per month in child support for her son (\$3,600 per annum). The total household income is therefore \$122,031.38. That is not a substantial difference from the income in the James household taking into account that the Butler household has at times five children and the James household at times only three children.

[40] I conclude based upon the evidence before me that Lisa James is bearing a greater proportion of the children's costs than Dallas Butler. He has produced little evidence of expenditures for clothing, school supplies and hockey for Dawson and Hayden. Lisa James on the other hand has provided detailed records. This level of disparity was, not unexpectedly, more pronounced when Dallas Butler was out of work and at school. Nevertheless the pattern has continued since October 2012.

[41] There would undoubtedly have been a catch up period in the Butler household after Dallas Butler obtained employment following a two year school program, several months of unemployment thereafter, and a period of layoffs in 2010 before the Community College program began. In spite of that, I see little evidence of any significant difference in the current standard of living in either the Butler or the James households.

[42] In *Contino* at paragraph 69, the court said that financial statements and/or child expense budgets are necessary to do a proper evaluation as is required by Section 9(c). In my view, I have substantial information about the children's expenses. This includes hockey registration and travel expenses, cell phones and gifts for Dawson and Hayden, good quality clothing, hockey equipment and events the children and parents participate in. I can therefore be satisfied that their needs are being met and that there has been a fair standard of support for Dawson and Hayden, although without doubt more difficult for Lisa James in the period when support fell into arrears, when Dallas Butler was in school. Yet returning to school proved to have been a wise decision for both households. Dallas Butler now has the ability to support his sons in his own household and to contribute to Dawson and Hayden's support in Lisa James' household.

[43] I have a broad discretion to analyze "the resources and needs of both the parents and the children" (paragraph 68, *Contino*).

[44] Counsel for Dallas Butler refers to *Clarke-Boudreau v. Boudreau*, 2013 NSSC 173, as support for a strict setoff. That case was decided before *Woodford v. MacDonald*, 2014 NSCA 31. In the latter, the Court of Appeal remitted the matter to the trial judge since the parties had not provided enough information so

Section 9(b) and (c) could be properly considered. In *Woodford*, Scanlan, J.A. said in paragraph 23:

...there is no evidence that remotely resembled budgets and actual child care expenses.

[45] He continued in paragraph 25:

The evidence did not permit a proper analysis of the situations in the parties' homes based on a shared parenting arrangement.

I therefore conclude the *Clarke-Boudreau* decision is not authority for a strict setoff.

[46] I conclude I have sufficient information so that I can use my discretion in making an assessment of the appropriate child support obligations. As I have said the strict setoff amount would be \$214.85 . Because I have concluded that Lisa James has paid and continues to pay substantially more towards the expenses of Dawson and Hayden, the appropriate award of child support to be paid by Dallas Butler is \$400 per month, effective January 1, 2015.

### **3. Section 7 expenses**

[47] Section 7 of the *Federal Child Support Guidelines* provides:



Special or extraordinary expenses

7. (1) In a child support order the court may, on either spouse's request, provide for an amount to cover all or any portion of the following 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 spouses and those of the child and to the family's spending pattern prior to the separation:

- (a) child care expenses incurred as a result of the custodial parent's employment, illness, disability or education or training for employment;
- (b) that portion of the medical and dental insurance premiums attributable to the child;
- (c) health-related expenses that exceed insurance reimbursement by at least \$100 annually, including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy and prescription drugs, hearing aids, glasses and contact lenses;
- (d) extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child's particular needs;
- (e) expenses for post-secondary education; and
- (f) extraordinary expenses for extracurricular activities.

(1.1) For the purposes of paragraphs (1)(d) and (f), the term "extraordinary expenses" means

(a) expenses that exceed those that the spouse requesting an amount for the extraordinary expenses can reasonably cover, taking into account that spouse's income and the amount that the spouse would receive under the applicable table or, where the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate; or

(b) where paragraph (a) is not applicable, expenses that the court considers are extraordinary taking into account

- (i) the amount of the expense in relation to the income of the spouse requesting the amount, including the amount that the spouse would receive under the applicable table or, where the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate,
- (ii) the nature and number of the educational programs and extracurricular activities,
- (iii) any special needs and talents of the child or children,

- (iv) the overall cost of the programs and activities, and
- (v) any other similar factor that the court considers relevant.

Sharing of expense

(2) The guiding principle in determining the amount of an expense referred to in subsection (1) is that the expense is shared by the spouses in proportion to their respective incomes after deducting from the expense, the contribution, if any, from the child.

Subsidies, tax deductions, etc.

(3) Subject to subsection (4), in determining the amount of an expense referred to in subsection (1), the court must take into account any subsidies, benefits or income tax deductions or credits relating to the expense, and any eligibility to claim a subsidy, benefit or income tax deduction or credit relating to the expense.

Universal child care benefit

(4) In determining the amount of an expense referred to in subsection (1), the court shall not take into account any universal child care benefit or any eligibility to claim that benefit.

[48] Lisa James asked the court to set the percentages for sharing Section 7 expenses. She seeks a monthly payment of \$153.60. Based upon their incomes, the sharing would be 57 percent (Dallas Butler) and 43% (Lisa James). Both parties asked the court to set a monthly amount to be paid by Dallas Butler to Lisa James to avoid the necessity of the exchange of information with respect to these expenses and discussions about what will be paid and when. This necessitates an analysis of what are proper Section 7 expenses.

[49] In *L.K.S. v. D.M.C.T.*, 2008 NSCA 61, Roscoe, J.A. said it should first be determined whether the expenses are necessary in relation to the child's best interests and reasonable in relation to the parents' means. There is no dispute

between these parties that the expenses incurred are in Dawson and Hayden's best interests, or beyond the parents' ability to pay. What is at issue is whether they are appropriate expenses pursuant to Section 7.

[50] As I have said Lisa James provided a detailed list of what she claims are appropriate Section 7 expenses. She categorizes them as school supplies and clothing; hockey; "miscellaneous" (mandatory fund raisers and pictures); and medical expenses. She breaks the list down by year. I will deal with the retroactive Section 7 expenses hereinafter. Section 7(1) of the *Guidelines* provides that the court may order a sharing of six categories of expenses). Lisa James claims expenses in three categories: (c), (d) and (f), quoted above.

[51] Under (c), she claims \$8.33 per month. There is no explanation other than her estimate that there is a cost of \$100 per year after reimbursement. Without further evidence of how she arrived at this estimate of these expenses I cannot conclude this amount falls within Section 7(1)(c).

[52] Under (d), Lisa James claims \$114.16 per month "based on an average" over 34 months. In her list of these expenses, she includes such things as clothing from such places as West 49, Winners, Cleves, and Pro Sports, and school supplies from such places as Staples and Walmart. She also includes school sweaters and

yearbook and locker costs. A further number of expenditures related to a school trip taken by Dawson in 2013. With respect to the latter, Dallas Butler testified he paid some of these trip expenses himself. The question is whether these are extraordinary expenses as defined in Section 7(1.1). The same question arises with respect to the extracurricular expenses claimed (Section 7(1)(f)).

[53] In *Parnell v. Hubley-Parnell*, 2012 NSSC 437, Jollimore, J. referred to *L.K.S. v. D.M.C.T.*, *supra*, and applied its principles. Beginning at paragraph 85, she considered whether the expenses were extraordinary. Clause 7(1.1)(a) provides that expenses are extraordinary if Lisa James cannot reasonably cover them considering her income and the child support she receives.

[54] It is Lisa James' obligation to establish that she does not have the ability to pay these expenses. I conclude there is no evidence that she cannot. Her evidence is only that she has paid a disproportionate share of these expenses, but she has paid them. Under the circumstances, I am not satisfied that she cannot afford these expenses.

[55] Clause 7(1.1)(b) lists five factors which should be considered in a determination of whether the expense is extraordinary. In *Parnell, supra*,

Jollimore, J.'s inquiry ended with Section 7(1.1)(a) and she did not have to consider these five factors.

[56] Expenses for school supplies and clothing and for extracurricular activities may be considered extraordinary expenses after consideration of the five factors.

**(i) Amount of the expense in relation to the income of the recipient**

[57] Hockey is a sport which is more expensive than some other extracurricular activities. There are not only registration fees, fundraising and travel expenses for games, but there is more equipment and its costs are greater. For example, in 2012 Lisa James lists \$1,032.81 in hockey expenses. In addition there were fundraising costs of \$140 plus hockey pictures costing \$20. The total hockey related expenses were \$1,192.81. On her 2012 income tax return, Lisa James claimed \$500 per child as the fitness tax credit. That decreased her income tax which in turn reduced the total hockey expenses.

[58] In 2013, Lisa James says the hockey expenses were \$907.36, although the total listed in Tab 10 of Exhibit 2 is \$747.36. She would have been able to claim the child fitness tax credit which would have reduced these expenses. I rely on the figure of \$747.36 since it is supported by the detailed information in Tab 10.

These are relatively modest amounts in relation to Lisa James' income.

[59] Lisa James also claims school expenses for 2012 and 2013 as extraordinary expenses. I referred to these above. I cannot conclude all clothing expenses can be considered school expenses. Even so, less than \$1,400 for clothing and school supplies for two teenage boys does not strike me as inordinate based upon Lisa James' income.

**(ii) Nature and number of educational programs and extracurricular activities**

[60] With the exception of the school trip in the 2012-2013 school year, the boys were not involved in extra educational programs. Their extracurricular activity was hockey and I have dealt with those expenses above. Although their hockey was at a competitive level, it is not at an elite level, although it does not have to be at an elite level to be considered an extraordinary expense.

**(iii) Special needs and talents**

[61] There is no evidence of either in this case.

**(iv) Overall costs**

[62] I have discussed this above.

**(v) Any other similar factor**

[63] I consider the costs which Lisa James claims. I consider too that this is a two income family with one other dependant, their daughter Elisabeth.

[64] Considering all these factors, I cannot conclude that the hockey expense is an extraordinary expense nor are the so-called schoolrelated expenses. They are part of the regular expenses to be paid in part from child support and in part from her own income.

#### **4. Retroactive child support**

[65] Lisa James claims retroactive child support. She says Dallas Butler did not advise her, as required by the court order, when he obtained employment after finishing his school program. He began employment on October 1, 2012 but, with a few exceptions, has continued to pay child support only in the amount of \$214 per month as ordered by Justice Rosinski in 2010.

[66] I have mentioned above that Dallas Butler did increase his child support payments after he became employed. He began to do so in November 2012, but the payments first went to reduce his arrears. Thereafter five payments of increased child support were made in 2013: \$400 in each of June and July, \$300 and \$350 in August, and \$375 in October. He then recommenced paying \$214 per month.

[67] Because there was a previous order requiring disclosure of employment income, I conclude retroactive child support should be paid from the date Dallas Butler became employed. There are at present no arrears so the question is what amount should Dallas Butler have been paying since October 1, 2012.

[68] According to the information provided by Northern Pulp, Dallas Butler's income commencing on October 1, 2012 was \$32.86 per hour for a 40 hour work week. That would result in annual income of \$60,000.

[69] Dallas Butler's income was \$60,000 effective October 1, 2012 while Lisa James' income in 2012 was \$47,490. Child support payments therefore would be:

Dallas Butler \$60,000 - \$837.00;

Lisa James \$47,490 - \$666.37;

difference \$170.63.

[70] Dallas Butler's Notice of Assessment for 2013 shows total income of \$69,839. He testified it was as a result of pension and benefits payouts when he left Northern Pulp. However, he was employed there for just under six months. Furthermore, he has not provided a copy of his income tax return or said what those amounts actually were. His T4 for 2012 from Northern Pulp is an exhibit to



his affidavit of October 16, 2013 (Exhibit 2, Tab 6). It discloses income of \$15,308 from Northern Pulp for the period October 1, 2012 to December 31, 2012.

[71] If he earned a similar amount in 2013 (\$15,000) between January 1 and March 25 (the date on which he became employed by Nova Scotia Power) and earned a proportionate share of his Nova Scotia Power income from March 25 to December 31, 2013 (two thirds of \$65,337.38), his total income from employment for the year would have been approximately \$58,500. I am not satisfied that the difference between that amount and the amount of \$69,839 shown on his 2013 Notice of Assessment can be attributed to a payout from Northern Pulp for whom Dallas Butler worked less than six months. I conclude he earned more income at Northern Pulp or more at Nova Scotia Power than \$58,188, his base salary in 2013. Without knowing the actual amount, I impute income of \$65,000 to Dallas Butler for 2013.

[72] Lisa James' income for 2013 was \$49,400. The difference in child support on a strict setoff basis is calculated as follows:

Dallas Butler	\$65,000	\$903
Lisa James	\$49,400	\$692.60

Difference            \$210.40

[73] I have concluded above that it is appropriate that Dallas Butler pay a greater amount of child support than the strict setoff amount to Lisa James commencing January 1, 2015. For the same reasons, I conclude that he should have paid more than \$214 per month commencing October 1, 2012. In my view the appropriate amounts are:

October, November and December 2012 - \$270 per month (\$810);

2013 - \$307 per month (\$3,684); and

2014 - \$400 per month (\$4,800).

These amounts total \$9,294. During this period Dallas Butler paid \$214 per month for 27 months (\$5,778), and an additional \$186 in June and July 2013; \$86 and \$136 in August 2013; and \$161 extra in October 2013 (\$841 extra); for a total of \$6,619. The arrears are a net of \$2,675. However as I have said, in 2010, Dallas Butler did not seek a setoff payment from Lisa James when they appeared before Justice Rosinski. If he had, Lisa James would have been required to pay him child support until he became employed, based on the income of \$13,873 imputed to him. In recognition of that, yet also recognizing he fell into arrears

thereafter and did not disclose his employment status on October 1, 2012, I set the arrears payable at \$1,500.

## **5. Retroactive Section 7 expenses**

[74] I have dealt above with Section 7 expenses. I concluded there are none on a go forward basis. Accordingly I conclude there are no arrears of Section 7 expenses because the school supplies and clothing and the hockey expenses are not appropriate Section 7 expenses.

Hood, J.