

<u>CASE NO.</u>	<u>VOL. NO.</u>	<u>PAGE</u>
BERNADETTE DIANE MILLER (Appellant)	- and -	JAMES FRANCIS MILLER (Respondent)
CA 164860	Halifax, N.S.	HALLETT, J.A.

[Cite as: **Miller v. Miller, 2001 NSCA 31**]

APPEAL HEARD: January 22, 2001

JUDGMENT DELIVERED: February 9, 2001

SUBJECT: **Divorce Act, R.S.C. 1985, Chap. D-3 (2nd Supp.), c. 3, s. 17(4.1); s. 17(7)**

SUMMARY: A chambers judge reduced spousal support from \$650 a month to \$350 a month. He also forgave eight months plus of arrears of \$5,500.

The appellant asserted that the chambers judge erred in that he did not give adequate consideration to the means and needs of the parties, nor did he consider the objectives of s. 17(7) of the **Divorce Act**.

On appeal the Court of Appeal held that the trial judge did not err in focusing primarily on the ability of the payor spouse to pay the support of \$650 a month as this was the key issue on the evidence. His oral judgment clearly disclosed that he was well aware of and considered the objectives of s. 17(7) of the **Divorce Act** in relation to Mrs. Miller's circumstances. The Court of Appeal held that he did not err in reducing the spousal support from \$650 to \$350 a month as there was evidence to support his finding (**Hickey v. Hickey**, [1999] 2 S.C.R. 518).

The Court of Appeal held that the chambers judge erred in forgiving the arrears of support of \$5,500 as he significantly misinterpreted the evidence with respect to the money advanced to Mrs. Miller by her boyfriend, Mr. White. He also erred in basing the forgiveness of the arrears on his speculation that Mr. Miller could have successfully applied for retroactive forgiveness of arrears on the grounds of Mrs. Miller's relationship with Mr. White. The forgiveness of the arrears was clearly wrong.

The Court of Appeal, based on the trial judge's finding that Mr. Miller had the ability to pay \$350 a month spousal support ordered that he pay on the

arrears eight months plus support at the rate of \$350 a month for a total of \$3,000 in full satisfaction of the arrears.

This information sheet does not form part of the court's decision. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 19 pages.