FAMILY COURT OF NOVA SCOTIA
Citation: *D.L.M. v. D.R.W.*, 2016 NSFC 13

Date: 20160304
Docket: FATMCA-097030
Registry: Antigonish

Between:

D.L.M.

Applicant

v.

D.R.W.

Respondent

Revised Decision:	The heading "Supreme Court" has been corrected to read " Family Court" at the top of the decision on June 28, 2016. This decision replaces the previously released decision.
Judge:	The Honourable Judge Timothy G. Daley
Heard:	January 21, 2016 and March 4, 2016, in Pictou, Nova Scotia
Oral Decision:	March 4, 2016
Counsel:	Karen Killawee, for the Applicant Adam Rodgers, for the Respondent

Orally By the Court:

[1] This is the oral decision in the matter of D.L.M. and D.R.W.. I first want to thank counsel for their able assistance throughout the matter. It has been a bit of process to get here and I do appreciate the assistance you have given the court and your briefs, they have been of great help to me and I certainly want to thank the parties for their patience throughout.

[2] This case concerns the parties, D.L.M. and D.R.W., and the issues before the court are the determination of child maintenance and some Section 7 expenses and the primary issue of spousal maintenance.

[3] On spousal maintenance specifically, the question is whether D.L.M. is entitled to spousal maintenance and if she is, what amount should she receive, on what basis should she receive it, and for what period of time.

[4] There is some common ground between the parties. Counsel informed the court, for example, at the beginning of this hearing that the parties had reached an agreement respecting division of assets and debts. Given that there can be an inter-play between spousal maintenance and property division matters, it was appropriate to put that agreement on the record. As I understand it, D.R.W. will retain the home in Boylston and will pay $65,000 to D.L.M. within 30 days as an equalization payment. D.R.W. will retain and assume the mortgage of approximately $35,000 and the line of credit of the parties of approximately $22,000. Further, the RRSP's will be divided equally between the parties. Finally, D.L.M. will retain and retrieve some belongings from the home.

Custody and Access

[5] The parties have two children together, one of the children remains a dependent child, that is M.B.W.. She resides with D.L.M. and according to the agreement reached between the parties there will be an order of joint custody for the child M.B.W., with primary care and residence with D.L.M. and D.R.W. will have reasonable access at reasonable times upon reasonable notice in accordance

with M.B.W.'s wishes. I find this to be a sensible agreement given M.B.W.'s age and the circumstances of the parties.

Child Maintenance

[6] The parties have also placed on record an agreement respecting retroactive child maintenance. The amount agreed to between the parties is an accurate calculation of what is properly due and owing. I do find, that it is based upon D.R.W.'s 2013 income of $89,832; 2014 income of $103,038; 2015 ongoing income of $103,831, and an agreed income for purposes of child maintenance going forward of $85,332. The various calculations result in the amount agreed to, for retroactive child maintenance to be $6,812.

[7] Going forward the parties agreed that the child maintenance will be determined based upon D.R.W.'s current projected income for 2016, being $85,332. Therefore, child maintenance under the *Child Maintenance Guidelines* will be $721 per month commencing March 1st, 2016. I understand D.R.W. had been paying child maintenance of a slightly higher amount up to that point and that takes into account all of the adjustments.

Spousal Support

[8] Respecting the issue of spousal maintenance, there is now an agreement that D.L.M. is entitled to spousal maintenance. That said, it is necessary to determine on what basis that spousal maintenance entitlement is founded before determining the quantum or amount. Any adjustments to that amount on a retroactive basis and the duration, or for how long it will be paid.

[9] In the present circumstance I must consider the applicable legislation which in this case is the *Maintenance and Custody Act*. Section 3 of the *Act* empowers me to make an order of spousal maintenance and I may make that order definite or indefinite or until a specified event occurs. Section 4 of that same *Act* sets out the factors which I must consider in determining an appropriate quantum, entitlement and duration of spousal maintenance. The factors, among the ones set out in

Section 4 that apply to this case, because there are others which are inapplicable in this circumstance include:

> (a) the division of function of the parties in their relationship;
>
> (b) the custodial arrangements made with respect to the children of the relationship;
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> (c) the obligations of each spouse or common-law partner towards any children;
>
> (d) the contribution of a spouse or common-law partner to the education or career potential of the other;
>
> (e) the reasonable needs of the spouse or common-law partner with the right to maintenance;
>
> (f) the reasonable needs of the spouse or common-law partner obliged to pay the maintenance;
>
> (g) the separate property of each spouse or common-law partner;
>
> (h) the ability to pay of the spouse or common-law partner who is obliged to pay maintenance, having regard to that spouse or common-law partner's obligation to pay child maintenance in accordance with the *Guidelines*, which is the circumstance we have here;
>
> (g) the ability of the spouse or common law partner with the right to maintenance to contribute to his own maintenance.

[10] Section 5 of the *Act* requires that a maintained spouse or common-law partner has an obligation to assume responsibility for his or her own maintenance unless, considering the ages of spouses or common-law partners, the duration of the relationship, the needs of the maintained spouse or common-law partner and the origin of those needs, it would be unreasonable to require the maintained spouse or common-law partner to assume responsibility for his or her maintenance and it would be reasonable to require the other spouse or common-law partner to continue to bear this responsibility.

[11] While that is the structure of the *Act* there are well-known, leading decisions from the courts and particularly the Supreme Court of Canada which have set out

the applicable principles as well. The two very well-trodden and well-known cases are those of *Moge v. Moge* [1992] 3 S.C.R. 813 and *Bracklow v. Bracklow* [1999] 1 S.C.R. 420 from the Supreme Court of Canada.

[12] To briefly summarize the principles which arise from these decisions, the court found that there are three grounds on which spousal maintenance can be founded. They are contractual, compensatory and non-compensatory.

[13] I will first rule out the contractual ground which deals with circumstances where there is an existing marriage contract or cohabitation agreement or other agreement which may set out limits, rights and obligations respecting spousal maintenance, is simply not applicable in this particular case.

[14] Compensatory spousal maintenance may be payable in circumstances where one spouse has contributed significantly to the marriage by way of unpaid work, often found in the area of child care and rearing or in care of the home and housekeeping. It may also be found where one spouse has compromised a career, education or other financial opportunities in maintenance of the other spouse's career or the family in general. There are other circumstances in which compensatory spousal maintenance may apply but those are some of the more common ones.

[15] In the former circumstance, it was common to find that a mother stayed home to raise children and thereby gives up career opportunity, income, seniority and other benefits. This could apply to a father as well. In the case of a mother doing so, she may also be the primary responsible parent respecting the unpaid work in the home in support of the children, the spouse or both, and will often be responsible for organizing the family's life so that the other spouse may focus on career, thereby generating income, advancing career opportunities, developing pension entitlement and generally improving the family's financial circumstance.

[16] As well, where spouses relocate to advance the career of one, the other spouse may well be compromised by having to restart employment or failing to find a full or satisfactory employment circumstance. When the marriage ends, the

spouse for whom the moves were made to benefit a career advancement or increased income and security of the family is left with the benefit and the other spouse who may have compromised with lower income, lower career prospects, reduced pension entitlement, and increased financial vulnerability is left in a vulnerable circumstance.

[17] In the case of compensatory maintenance, need is not the primary focus of the analysis. The entitlement arises over the course of many years of unpaid contribution to the family, sacrifice in terms of career and other factors which create an entitlement based not upon current circumstance necessarily but based upon past sacrifice and support within the family.

[18] In contrast, in the case of non-compensatory maintenance, this is often based on need. It may arise, for example, where a spouse is disabled and unable to improve their financial circumstances and might be left in a financially difficult situation after a separation or where there is an otherwise healthy spouse that has limited means to increase income and has significant and material financial need that cannot be satisfied other than through a spousal maintenance award.

[19] In the case of non-compensatory maintenance awards, the analysis of the needs of the spouse seeking the maintenance is often more detailed and material but in either event both in compensatory and non-compensatory circumstances the need and ability to pay do play into the analysis.

[20] As to duration, it is more common that compensatory awards are awarded for lengthier periods, often indefinite, whereas non-compensatory awards may more often be limited in time though not necessarily so.

[21] The positions in this particular case are different. D.L.M. says that she is entitled to spousal maintenance on both compensatory and non-compensatory bases. D.R.W. says that D.L.M.'s entitlement is solely based on non-compensatory grounds.

[22] D.L.M. seeks compensatory and non-compensatory spousal maintenance based on the *Spouse Support Advisory Guidelines* at the high end of the range on an indefinite basis subject to review. This review will include when the child M.B.W., the child, completes her education or otherwise is not attending university. D.R.W. says that the lower end of the *Spouse Support Advisory Guidelines* calculation should be applied for a period of 12.5 years for which he should receive 2.5 years credit based upon the fact that he paid all the expenses in relation to the family home after separation, that is the family home in Boylston.

[23] The evidence is that the parties began residing together in 1989 and D.L.M. says the parties were together in a common-law relationship for 25 years and have two children. This is not disputed by D.R.W.. D.L.M. says the parties began living separately and in separate lives in July 2013 but accepts that the date of separation for purposes of these proceedings should be set at September 2013 when she moved out of the family home. Again, there is no dispute on that assertion and position.

[24] The parties were both born in Nova Scotia. They have two children together, one of whom I have mentioned, M.B.W., born June 2, 1998. M.B.W. resides with D.L.M. and, as noted earlier she sees her father, subject to her wishes, and he pays maintenance for her.

[25] I find that the evidence is that the parties moved around Canada throughout their relationship and that these decisions regarding relocation were mutual and driven by the family's desire to improve their financial circumstances based largely on the earning potential of D.R.W.. He obtained journeymen tickets as a plumber, pipefitter and gas fitter and the parties resided with their children at various times in Banff, Calgary, Jasper as well as in locations in Nova Scotia. While out west with his family and later after separation, D.R.W. worked in various areas including, as I understand it, the gas and oil industry, earning and increasing his income to benefit the family.

[26] D.L.M.'s education is as a graphic artist and she began working in that field, though as the evidence showed, she was not able to maintain employment in that

field or develop her expertise or income at a later point in the relationship as a result of the various relocations and the family's commitment to have her look after the children.

[27] D.L.M.'s evidence, which I accept, is that after commencing their relationship in 1989, the parties lived in Banff, Calgary and Jasper until they returned to Nova Scotia in 1995. After returning here she was employed as a graphic artist at St. Francis Xavier University in Antigonish and D.L.M. was employed in Calgary. In 1997 D.L.M. and D.R.W. agreed that the family would relocate to Truro where she worked as a print shop artist, while D.R.W. attended school in Calgary to upgrade his training.

[28] After M.B.W. was born 1998 the parties agreed that D.L.M. would stay at home with both of the children while D.R.W. continued to work as a pipefitter and gasfitter on the Sable Island project in Nova Scotia.

[29] In 2000 the parties purchased a property in Boylston, which I have referred to as the family home. From 2000 to 2004 D.R.W. worked in Bermuda and Northern Alberta to support the family while D.L.M. remained at home with the children.

[30] In 2004 the parties relocated to Jasper, Alberta, when D.R.W. accepted a job with Parks Canada. At that time D.L.M. returned to work and was employed as a production manager for a publication company earning an annual income of $50,000.

[31] In 2007, however, the parties agreed to relocate back to Nova Scotia. As a result, D.L.M. lost her income at the publishing company and was unable to obtain comparable employment in Nova Scotia. After the relocation, D.R.W. resumed working in northern Alberta. As I understand the evidence, after the move to Nova Scotia D.L.M. remained at home with the children until 2009 when she began working at her uncle's convenience store. She continues to work there to this day.

[32] The evidence is that D.R.W. returned to Nova Scotia to work at the Irving Shipyard in Halifax. This was by mutual agreement between the parties and after working there some time, he began a supervisor's position in 2012. This work at the shipyards required him to be away in Halifax during the week. He was home every second weekend on average and remained in Halifax during the week and for the second weekend as well. He shared living accommodations with a friend. D.R.W. says that he worked every second weekend at the Halifax Shipyards to pay family expenses and to pay his share of the costs of living in Halifax.

[33] It is important to note that there is no dispute in the evidence that the parties agreed mutually to move to Boylston, a rural area of Nova Scotia. D.L.M. maintains it was with a view to D.R.W. fixing up the family home they had purchased and to make it ready for their retirement. D.R.W. says that they decided to return to Nova Scotia from Jasper because he found it difficult to maintain the costs of two homes and residences. He says he took a one year leave of absence from Parks Canada and the plan was to fix the Boylston property and then to decide whether to sell the home and return to Jasper or stay in Boylston. He agreed, however, it was a mutual decision to return to Nova Scotia and to stay in Boylston.

[34] I also find that the evidence is clear that the relocations throughout the years were primarily focused on supporting and advancing the career of D.R.W. with a view to improving the prospects of the family in the long term. The evidence is also clear that D.R.W. was able to maintain his career trajectory while D.L.M. was not. She left both a substantial employment income behind in Alberta when the parties relocated to Nova Scotia and also interrupted her employment to stay at home and raise the children for many years. I find that this was a mutual decision they arrived at together for the benefit of the family.

[35] The evidence also confirms that D.R.W. had a reduction in income when he stopped working out west and took up his employment with the Irving Shipyards in Halifax, never fully recovering his income to the level the family had enjoyed prior. That, too, was a mutual decision of the parties and as a result, it appears that

D.R.W. has always had a higher level of income than D.L.M.. That circumstance remains true today.

[36] The parties separated in 2013. I discussed the different views about when it may have occurred but there is agreement that I will use September of 2013 as the effective date. D.L.M. says she left home because D.R.W. told her that if she was going to stay in the home she needed to start paying him for some of the expenses. Since she could not afford to do so, she moved out of that home and into a basement apartment owned by her uncle underneath a convenience store.

[37] D.R.W. says that he did not ask or direct D.L.M. to leave the home but rather told her that if she was to stay in the home she would have start paying part of the utilities and that she chose to leave of her own accord.

[38] Whatever the circumstances of that departure, since leaving the home, D.L.M. and M.B.W. had been residing in a basement apartment owned by her uncle. She assumed responsibility for the convenience store owned by her uncle, increased her hours of work and began working seven days a week. Her uncle agreed to pay her $500 net per week and provide accommodation in the form of the apartment and utilities.

[39] She maintains that a fair representation of her income is $33,000 per year including the net income of $500 per week and the other benefits she received.

[40] Though the parties disagree with respect to the state of repair and circumstance of that apartment, the evidence is clear to me that it was in very bad shape when first occupied. D.L.M. says that she did a great deal to clean it up including painting it and replacing flooring, doors and windows. Where the windows came from and how they came to be in someone's possession is less important, in this court's mind, than the fact that this was a substantially substandard living accommodation when compared to what she and the child, M.B.W., had enjoyed in Boylston.

[41] It is apparent on the evidence, for example, that the bedrooms would likely not meet building code and it is fairly described as a very modest accommodation. The backyard is described as a parking lot and this is in contrast with the home that they lived in a Boylston which is clearly much larger, more pleasant and had a great deal of property surrounding it. That is the circumstance that she found her and her daughter in at the time.

[42] Since separation, D.R.W. has largely lived in Halifax in his current arrangement and has had effective possession of the home in Boylston. His evidence is that he has paid all of the expenses respecting the Boylston property since the parties separated and still had to pay his ongoing expenses for his accommodation and life in Halifax. He calculates that the expenses he incurred in the last 30 months after separation total $30,450 and include the cost of the mortgage, property insurance, electricity payments and the parties joint line of credit payments. He says that these payments were made for the joint benefit of the parties in maintaining that asset, being the family home, and that he should be credited with one half of this amount, or $15,225, as an offset against any retroactive spousal maintenance award he might be obligated to pay.

[43] As to income, the parties have already agreed that D.L.M.'s income should be imputed at just over $33,000 and D.R.W.'s at $85,332 for the purpose of child maintenance. I can see no reason to dispute that or to change it with respect to the analysis on spousal maintenance.

[44] In considering the statements of expenses, I note that these are always difficult documents to work with as they are often based on estimates only, though there are some specific costs that can be included and often show deficits which may or may not be an accurate or real representation of the financial circumstances of the parties. They are, however, helpful in assessing a spousal maintenance claim, particularly on a non-compensatory or needs basis.

[45] D.R.W. challenges some of the expenses claimed by D.L.M., maintaining that the $200 per month for some home repairs is excessive given that she occupies a rental unit. The $50 per month claim for glasses is invalid because she is covered

by a health plan and that $300 per month in allowance to M.B.W. is not a valid expense and is simply a transfer to the child which is money that is used to cover normal living expenses.

[46] In assessing all of the evidence, I conclude that on either version of the evidence D.L.M. is entitled to both compensatory and non-compensatory spousal maintenance. A compensatory claim is made out on the evidence that the parties moved around Canada several times largely to advance the career opportunities of D.R.W. to benefit the family. In doing so, I find that D.L.M. has compromised her own earning potential. She is by training a graphic artist and cannot work in that field today. It has been sometime since she has been able to do so. When moving from Alberta to Nova Scotia she gave up an income of $50,000 per year and has taken a drastic reduction. She has, for many years, sacrificed her earning potential and career by staying at home to raise and care for the children and to support the family in that role. She has thereby lost any opportunity to develop her career as a graphic artist, or any other related career, and now finds herself after 25 years in a common-law relationship working at a convenience store and living in a basement apartment with her daughter. I find that her career prospects are modest at best and there is likely little opportunity for her to increase her income substantially in the near or long-term. I find that all of the decisions which affected the parties were mutual, made for a variety of reasons, but in the end the result is that D.R.W. is far better off in terms of his career circumstances and prospects and D.L.M. has been left in a very vulnerable financial position which will be recognized in a compensatory spousal maintenance claim.

[47] With respect to a non-compensatory claim, it is clear on the evidence that D.L.M. has a financial need which is likely to be ongoing for some substantial period of time. She is living in a substandard basement apartment with her child and working long hours in a convenience store for modest income. After 25 years in this relationship, it is appropriate that she be provided with spousal maintenance on a non-compensatory basis. Even if I remove from her statement of expenses those which D.R.W. challenges, the difference in their standard of living is quite significant and I find that D.L.M. has a need from D.R.W. for significant spousal maintenance in order to allow her to bring her and the child into reasonable

accommodation and standard of living with some level of financial security on a non-compensatory basis.

[48] I have been presented by counsel with the *Spousal Support Advisory Guidelines* as a basis for an analysis with the appropriate calculations. The parties have agreed to apply these guidelines though they differ in how they should be applied. I note that the *Spousal Support Advisory Guidelines* are not mandatory for courts to apply. That said, in this circumstance, I do find that the *Spousal Support Advisory Guidelines* are a fit and proper guideline to assist the court. On the reading of the *Spousal Support Advisory Guidelines*, I do not find that any of the exceptions noted would bring any award outside of the *Spousal Support Advisory Guidelines*. The "with child" calculation has been presented and I find that it is a reasonable range for the court to consider.

[49] With respect to quantum of maintenance, the range recommended under the calculation, based on the respective incomes of the parties, would be $591 per month at the low end to $1,196 per month at the high end. I have already determined that there is both a compensatory and non-compensatory basis for maintenance and I further find that an appropriate award of spousal maintenance will be $1,000 per month payable by D.R.W. to D.L.M.. I find that this fairly reflects both the means and needs of both parties and the compensatory claim of D.L.M..

[50] With respect to duration of spousal maintenance, I find this is an appropriate circumstance for an indefinite award of spousal maintenance subject to review. The review will be permitted upon a material change in circumstance, which will include but not be limited to, whether M.B.W. does attend university and if she does, when she finishes her post-secondary education.

[51] A related issue is that of retroactivity. D.L.M. seeks to have the spousal maintenance made retroactive to the date of separation being September 2013. D.R.W. says that he has paid all of the expenses for the family home and should receive a credit for one half of those expenses, given that he maintained the

property to the benefit mutually of the parties, as evidenced by the payout that was ultimately agreed to by D.R.W. to D.L.M. on settlement.

[52] In determining whether to apply a retroactive spousal maintenance award, I have reviewed the decision of *Kerr v. Baranow*, 2011 SCC 10, of the Supreme Court of Canada. Quite often counsel and courts review *Kerr v Baranow* with respect to the property and debt division issues that arise out of common-law relationships, but the court made extensive comments with respect to retroactive spousal maintenance in that decision and I wish to review those here. In *Kerr v. Baranow*, beginning at paragraph 206 and 207, the court referred to another decision called *D.B.S. v. S.R.C.* 2006 SCC 37. In *D.B.S.* the Supreme Court of Canada dealt with the issue of retroactive child maintenance and set out the principles to be applied in deciding whether to award it and how much to award. So in reference to that decision the court held:

> **207** While *D.B.S.* was concerned with child as opposed to spousal support, I agree with the Court of Appeal that similar considerations to those set out in the context of child support are also relevant to deciding the suitability of a "retroactive" award of spousal support. Specifically, these factors are the needs of the recipient, the conduct of the payor, the reason for the delay in seeking support and any hardship the retroactive award may occasion on the payor spouse. However, in spousal support cases, these factors must be considered and weighed in light of the different legal principles and objectives that underpin spousal as compared with child support.

[53] I note that the court then goes on to set out the basis for child maintenance which is based on a fiduciary obligation, an obligation that would be known to a parent who is a potential payor from the moment of separation. It would be relatively certain in law because we have the applicable *Child Maintenance Guidelines*. So, the court draws that distinction between child maintenance and spousal maintenance.

[54] But the court goes on to say we are faced with the payor's complaint that maintenance could have been sought earlier but was not. There are two underlying interests at stake. The first relates to the certainty of the payor's legal obligations; that is, the possibility of an order that reaches back into the

past, making it more difficult to plan one's affairs if a sizeable retroactive award for which the payor did not plan is made, and may impose financial hardship. The second interest concerns placing proper incentives on the applicant to proceed with his or her claim promptly. The decision goes on to provide an analysis of the various factors in that particular circumstance.

[55] I note that the date of the application before the court for spousal maintenance by D.L.M. is July of 2016 and in *Kerr v. Baranow* it specifically refers to the application date as being the default option. Specifically, in *D.B.S.*, Bastarache J. referred to the date of effective notice as the general rule and default option for the choice of effective date of the order. The date of the initiation of proceedings for spousal maintenance has been described by the Ontario Court of Appeal as the usual commencement date, absent a reason not to make the order effective as of that date. The Supreme Court of Canada found that to be a reasonable starting point, but it did permit in *Kerr v. Baranow* to look at retroactive maintenance that precede the date of filing of the application for spousal maintenance.

[56] In deciding whether to award any retroactive amount of spousal maintenance and in particular whether to award it retroactive to a date prior to the filing of the application by D.L.M., I take into account the burden that would result on D.R.W.. It is true that he has good income, but it is not extremely high. He has an obligation to support a child which he will have to maintain. He has his own living expenses and he has expenses for his accommodation in Halifax of course and, at least for some time, the home in Boylston.

[57] I take into account the fact that D.R.W. was aware of the living circumstances of D.L.M. in what I have described as a substandard basement apartment since separation and would likewise be aware of her very modest financial circumstances. I also take into account the fact that D.L.M. did not apply for maintenance for approximately two years after separation which is a very substantial delay, and which creates a potentially severe burden on D.R.W. despite her entitlement.

[58] I find that there is a need for an award of retroactive spousal maintenance predating these proceedings. I find it should go beyond the date of filing of the application, but I am not satisfied that it should be made retroactive to the agreed date of separation, September, 2013. I find that a fair and reasonable retroactive spousal maintenance award, taking into account all of the circumstances of the parties, is $12,000.

[59] To the issue of payments made by D.R.W. to maintain the matrimonial home since separation, I note that the property settlement agreement had as its date of calculation for division the date of separation, not the current date. D.R.W. will have the benefit of that property under the agreement and any commensurate reduction in the balance on the mortgage over that period of time. D.L.M. did not have the benefit of occupying the home during separation. I find that D.R.W.'s position was that if she were to do so, she would have to pay significant expenses on the home which would be unreasonable given her very modest income at date of separation and today. In other words, D.R.W. put D.L.M. in a circumstance where she could not occupy the family home based on his requirements for financial contribution from the date of separation. To now expect her to contribute by way of set off to those expenses given his position, her modest means and the property settlement agreement arrived at would, in my view, be unreasonable. Therefore, the retroactive amount shall be fully $12,000.

[60] This payment of retroactive spousal maintenance in the amount of $12,000, is not a lump-sum award. It is a retroactive award of a monthly amount totalling $12,000 which will mean that D.R.W. will have full tax deductibility for that amount and that D.L.M. will have to anticipate paying tax on that amount as D.R.W. is entitled to his deduction for that sum.

Section 7 Expenses

[61] D.L.M. has made a claim for special and extraordinary expenses. In support of the claim she attaches to her affidavit, sworn January 19, 2016, copies of receipts for medication for the child M.B.W. totaling $210.28 incurred between September 29, 2014 and November 6, 2015. She submits that these expenses

should be paid entirely by D.R.W. because he had control of the medical insurance that would have covered the bulk of those costs without notice to her. D.R.W.'s testimony was that there were gaps in coverage as a result of changes in employment and union coverage. His evidence was that he thought that coverage was provided through his shipyard employer and that there was a gap, but not due to any intent on his part. He has since reinstated the coverage and I find this to be a reasonable explanation of the circumstances.

[62] As a result, I do find that the medical expenses are proper section 7 expenses, but do note that section 7 expenses of this sort must take into account that the first $100 is to be incurred by the custodial parent. In other words, they are only to be shared beyond the first $100. Thus, I find the properly shared amount would be the difference between the total of $210.28 and $100 being $110.28. The ratio based on the incomes of the parties would be 73 percent to D.R.W. and 27 percent to D.L.M.. Thus, D.R.W. will pay to D.L.M. the sum of $80.50.

Summary

[63] In summary, there will be an order of joint custody for the child M.B.W., with primary residence with D.L.M. and D.L.R. will have reasonable access at reasonable times upon reasonable notice.

[64] I order that D.R.W. shall pay child maintenance to D.L.M. in the amount of $721 per month, based on an imputed income of $85,332 per annum, effective March 1, 2016 and continue to be payable on the first of each month thereafter, unless the parties agree to another payment arrangement such as semi-monthly or bi-weekly, in which case in may be incorporated into the order. Either party can have payments made through the Maintenance Enforcement Program.

[65] D.R.W., by agreement, will owe a retroactive child maintenance in the amount of $6,812 payable to D.L.M..

[66] D.R.W. will pay to D.L.M. spousal maintenance in the amount of $1,000 per month commencing the 1st day of March, 2016, and continuing on the 1st day of

each month thereafter, unless the parties otherwise agree as to how to pay it, semi-monthly or bi-weekly. This, as noted earlier, will be an award that is subject to review on a change in circumstance which may include the child M.B.W. failing to attend at university, or when she finishes attending for post-secondary education or university.

[67] With respect to the issue of payment of the retroactive maintenance amounts and costs, I will accept written submissions from counsel within seven days.

[68] D.R.W. will pay to D.L.M. the sum of $80.50 for medical expenses.

[69] At the request of D.L.M. and with the consent of D.R.W., I confirm the date of separation for purposes of Canada Revenue Agency is July, 2013.

[70] There will be an order of joint custody for the child M.B.W., with primary residence with D.L.M. and D.L.R. will have reasonable access at reasonable times upon reasonable notice

Timothy G. Daley, JFC