IN THE FAMILY COURT
FOR THE PROVINCE OF NOVA SCOTIA
Cite as: Abudulai v. Abudulai, 2003 NSFC 13

Date: June 23, 2003
Docket: FKMCA-016775
Registry: Kentville

BETWEEN:

EVELYN ABUDULAI

APPLICANT

- and -

MUHAMMED ABUDULAI

RESPONDENT

D E C I S I O N

Editorial Notice

Names of the children have been initialized in this electronic version of the judgment.

HEARD BEFORE:	Judge Corrine E. Sparks
PLACE HEARD:	Kentville, Nova Scotia
HEARING DATES:	March 21 and May 9, 2003
DECISION:	June 23, 2003
COUNSEL:	Heidi Foshay Kimball, for Applicant Kate Seaman, for Respondent

SPARKS, CORRINE E., J.F.C.

This is an application to vary child support for three children: N. L.; S. H. and Na. S. who are 23, 22, and 8 years of age respectively. The eldest two adult children attend university and the youngest child is in the custody of the applicant mother, Evelyn Abudulai. The applicant mother applies, primarily, to proportionately share current and retroactive university expenses for N. and S.. By cross application, the respondent father, Muhammed Abudulai, applies for child support for the youngest child, Na., to be set pursuant to the **Nova Scotia Child Support Guidelines** (**"Guidelines"**) and a determination of proportionate sharing of university expenses, with the possibility of direct payments to the two eldest children. As the family circumstances are rather complex, they shall be set out in detail below.

FAMILIAL BACKGROUND AND CIRCUMSTANCES:

These parties appeared in Kentville Family Court in 1998 at which time His Honour Judge Levy issued a Consent Order. Under the terms of the Consent Order, the respondent father, Muhammed Abudulai, was directed to pay the sum of $2,219.12 per month as child maintenance. As a "global" order, it did not specify the amount of maintenance for each child which creates difficulties on an application to vary such as this. In fact, at the time of the order, all three children were living at home and the parents

continued, as they do now, to live in the same matrimonial residence. A recital of two relevant paragraphs in the 1998 Consent Order reveal:

> "... the parties in this matter have determined that they wish to remain together and the respondent, Muhammed Abudulai, agrees that it would be in the best interest of the children of the marriage that the applicant, Evelyn Abudulai, have control of that portion of the family budget which is for food, shelter and other necessities.
>
> ... It is to be understood that these funds are to be child maintenance payments in the best interests of the children of the marriage and shall be utilized for the household living expenses of the family unit."

Thus, it is apparent from the 1998 Consent Order the parties anticipated they would remain together, at least under the same roof, and the applicant mother would control the family budget from the $2,219.12 per month designated as child maintenance payments. There is no mention of the gross annual income of the respondent father although the **Guidelines** were proclaimed later in the same year. Also, notably absent from the Order is any recognition of plans for the two eldest children to eventually leave home to attend university. The Order was subject to review by either party at any time.

Both parties are from Ghana in West Africa. The respondent father is employed with the Canadian Food Inspection Agency as a veterinarian. At first the respondent lived and worked in Ontario for a period of time before sending for his family. Once the applicant

mother arrived in Ontario, however, she faced employment barriers and consequently she only secured menial or marginal employment which she described as “demoralizing”. After performing these marginal jobs for some time, the applicant mother decided to study nursing as McMaster University in Guelph, Ontario. It was during this time, according to the applicant mother, when the respondent father started his opposition to the mother pursuing her academic studies and, on occasion, he would not even pay household expenses without the threat of separation.

In any event, when the respondent father, in 1996, was offered a new and better job opportunity in Nova Scotia, the family decided to relocate. Shortly after the move, however, the applicant mother returned to McMaster University to complete her studies. She described this as “a great sacrifice, but I knew it would benefit the family eventually”. Despite her efforts, her academic studies suffered as she soon became depressed and was forced to take a leave of absence from her university pursuits. She did eventually complete her nursing degree and is presently enrolled in a graduate nursing program at Dalhousie University.

While the applicant mother was attending McMaster University, the parties had two households. With the assistance of student loans and other financial assistance plus minimal contributions from the respondent father, accommodations were maintained in

Guelph for the mother. But, here in Nova Scotia, the children, while living with their father, were suffering as apartment rent was unpaid, eviction notices were issued, car insurance was unpaid, etc. The children's basic needs were not being met; however, a local pastor intervened and, on more than one occasion, financially assisted the family through fund raising events and church donations. According to the applicant mother, the respondent father was then, and now, exceedingly irresponsible with finances. And due to his gambling problem, has compromised not only his own financial security, but the financial security of his entire family as well.

Commenting on the family dynamics as well as the gambling predilection of the respondent father in the somewhat unusual terms of the 1998 Consent Order, Mrs Abudulai states the following in her affidavit:

> "The reason for the rather unusual Court Order of February 3rd, 1998, was a result of Muhammad's gambling problem. He was spending all of his money and not saving enough to contribute to the family's expenses although he was still living at home. He ruined my credit and because of this, I had to take out a loan with Trans Canada Credit (T.C.C.) in 2000 with a very high interest rate in order to pay for N.'s tuition at Queen's University."

CIRCUMSTANCES OF ABUDULAI FAMILY MEMBERS SINCE 1998:

N.

N., 23 years of age, attends Queen's University in Ontario where she is enrolled in

a Bachelor of Science programme. From 1998-2000, her first two years of study, N. financed her education by Canada Student Loans, scholarships, and bursaries. However, at the end of the 1999-2000 academic year, N. had an outstanding university tuition debt of $6,000.00.

In the academic year 2000-2001, her financial difficulties escalated and her tuition in the amount of $6,000.00 remained unpaid. Thus, she could not be registered for the 2000-2001 academic year. In the fall of 2000, she moved back home and resided with her parents working part-time at a retail outlet as well as helping to care for her younger brother, Na.. According to her mother, N.'s spirit became "demoralized" in large measure because of the tension at home and her low paying employment. Consequently, the applicant mother purchased an airline ticket, in April 2001, for her daughter to visit paternal relatives in Great Britain where N. planned to secure employment. This did not proceed as planned as it is alleged the respondent father interfered to the extent that N. eventually had to resort to living in a youth hostel while employed at a retail outlet until her return home in May 2002. Determined, N. recommenced her university studies in September 2002.

In the academic year 2002-2003, N. received a Canada Student Loan, bursaries and another award. Due to her financial constraints, she was unable to travel home for

Christmas in 2003. The applicant mother states that N.'s expenses had to be paid from a Trans Canada Credit loan ($14,489.00) which she secured, in part, for the outstanding tuition fee of $662.00 for her daughter. I shall comment further on N.'s university expenses later in this decision. N. plans to work this summer and save money for her return to university in the fall of 2003.

S.

S., 22 years of age, began her post-secondary education in 1999 at Dalhousie University in Halifax where she is presently enrolled in an arts and science programme. She received a Canada Student Loan as well as funds from the Black Education Incentive Programme for African Nova Scotians, Black Educators and other funds. Her expenses appear to have been covered for the 1999-2000 university year as she received $10,043.00 as financial assistance.

In 2000-2001, S. again received financial assistance from a Canada Student Loan (after an appeal) and an Education Programme for African Nova Scotians. In total, from all sources, she received $9,728.00 as financial assistance.

Regretfully, S.'s financial troubles started in the 2001-2002 academic year when she only received $4,500.00 from scholarships and bursaries. According to the applicant

mother, she contributed with $3,000.00 over the academic year; however, over $6,855.00 remained outstanding to Dalhousie University. And once again the applicant mother obtained the funds from a high interest loan with Trans Canada Credit ($14,489.00) to ensure S. could enroll in the 2002-2003 academic year. Additionally, the applicant mother sent $300.00 per month directly to S. for her general expenses.

For the 2002-2003 academic year, S.'s financial woes have not abated, but rather have worsened despite her efforts as well as the arduous efforts of her mother. She was denied a Canada Student Loan because of the combined income for her parents; however, she did receive modest financial assistance in the amount of $2,100.11 and earnings from her part-time job at Dalhousie Law School and, of course, $300.00 per month from her mother. She lived in residence while at Dalhousie University. Presently, although S. has completed all of her course requirements, she cannot graduate from Dalhousie as her tuition and other expenses remain unpaid. Consequently, she cannot receive her degree. She plans to study law in the future.

The applicant mother seeks reimbursement for funds which she has already advanced to S.. The respondent father submits that S. could have studied at Acadia University which is closer to her home and thus reduced her university expenses. As well, the respondent father testified that he has sporadically sent funds to S. and N. over the

past academic year.

Na.

The youngest child, Na., is 8 years of age and he resides in the matrimonial residence with his parents. As the applicant mother works twelve-hour shifts as a nurse, child care arrangements are necessary for him from time to time. Occasionally, the respondent father does care for the child while the mother works although this is a source of conflict between the parties. The applicant mother states that the respondent father is reluctant to provide for the child in her absence thus she cannot rely upon him when she must report to work. During the summer months, he attends summer school at Acadia University at a cost of $140.00. He also participates in karate and soccer during the summer school break, and he has expressed an interest in hockey and skating during the school year. The parties agree to the **Guidelines** amount of child support for Na.. However, the applicant mother submits the gross annual income of the father should be higher as he is eligible for overtime work which would increase his income as in 2002. This will be addressed later in this decision.

POSITION OF THE APPLICANT MOTHER:

Having used borrowed funds to assist both daughters through university, the applicant mother is requesting that she be reimbursed by the father for these expenses

which she secured by way of high interest loans. Her calculations indicate the loan should be prorated for the portion of the loan which was used for university payments. She claims principal plus interest at paragraph 31 of her affidavit. Furthermore, the applicant mother testified that the respondent father has a serious gambling addiction which has, over the years and now, impeded his ability to financially provide for his family. Since the 1998 Order, he has remained in the family home and has not incurred any major living expenses for himself. In fact, he continues to eat the food she prepares and avails himself of other amenities in the home. She believes the respondent father has recently won a large sum of money based upon in his reports to his son which she overheard in the family home. She knows he continues to gamble and has provided receipts to the Court. She explained that over the years her husband has had to declare bankruptcy and has ruined her credit rating as well as his own.

The applicant mother appears to be a hard working and articulate woman with considerable determination and motivation to advance herself and her daughters. Presently, she works part-time earning $37,500.00 per year. She has embarked upon graduate studies, as she explained, in order to secure her own financial independence as well as alleviating the necessity of working twelve-hour shifts as a nurse. Her graduate studies will be completed in two years and once her studies are completed she will be better able to meet her needs as well as the child care needs of Na.. Overall, she submits

her educational efforts will benefit the family even though the respondent father has never supported her educational goals.

The applicant mother supports her daughters in study away from home as she does not believe it would be less costly to stay at home and, furthermore, because of the family tension between the parents, she understood why both daughters wanted to study away from home. As a loving mother, she stated that it was her responsibility to support her daughters in this regard.

She seeks retroactive child support beyond the date of her application.

POSITION OF THE RESPONDENT FATHER:

The respondent father denies having a gambling addiction. However, he acknowledges playing the VLT machines and Proline tickets, and spending $100.00 per month on his habit. But he testified to only spending twenty dollars every few days and if he does not win then he stops gambling. He denies any recent large winnings from his gambling.

He questions the necessity of his daughters studying away from the valley area where the family resides. He submits it would have been more economical for each of his daughters to study at Acadia University thereby reducing their living expenses.

Furthermore, he submitted receipts to the Court to verify he has, albeit sporadically, sent funds to his daughters from time to time for their living expenses, approximately $100.00 per month to each daughter.

He has declared personal bankruptcy in the past; however, he has been discharged completely and presently he no outstanding bankruptcy fees. He pays cash for all of his business transactions due to his ruined credit rating. He blames the family's financial difficulties on the applicant mother particularly since her return to university.

Concerning the applicant mother's Trans Canada Loan, in his affidavit, he states that he did know his wife planned to incur these debts, and furthermore, he was already paying support which amounted to 66% of his net income. He submits the monies spent by the applicant mother have been more for her educational goals than financial support for their daughters. He states the mother could be working full-time and contributing on an equal basis to the education of their two daughters.

He seeks the **Guidelines** amount of child support for Na. and he proposes to pay 64% of the university expenses for N. over and above any expenses not covered by bursaries and loans.

His gross annual income is presently $67,218.00 without any overtime. In 2002, however, he earned $103,292.43 which he attributes to extraordinary overtime earnings due to two employees being ill. He says he will not likely have an opportunity this year to generate additional income as both employees have been replaced; therefore, there will be limited overtime work available to him. Regarding his income of $103,292.43 in 2002, he states that he has paid over $2,500.00 in legal fees, repaid debts to his siblings, purchased a used motor vehicle (1993 Taurus) which required major repairs plus he had outstanding bankruptcy fees of $1,000.00.

Finally, by his regular monthly payments, he maintains he has already contributed to the post-secondary education of his daughters and no extra support payments should be ordered by the Court. As well, he states that it would be unfair to order retroactive support beyond the application date.

FINDINGS, THE LAW AND CONCLUSIONS:

Under Section 9 of the **Maintenance and Custody Act**, a parent is required to pay maintenance for a "dependent child" which is defined in Section 2(c) as:

> "... a child who is under the age of majority, or although over the age of majority, unable, by reason of illness, disability or other cause, to withdraw from the charge of the parents or provide himself with reasonable needs **but does not include a child who is twenty-four years of age or older who is**

> **attending a post-secondary educational institution.** [emphasis added]

The **Guidelines**, Section 3(1) and (2) direct that the Court may, as it deems appropriate, apply the **Guidelines** amount for children over the age of majority or if the guideline amount is inappropriate it may award an amount “having regard to the condition, means, needs and other circumstances of the child and the financial ability of each parent to contribute to the maintenance of the child”.

Although the legislative wording is different under the provincial **Maintenance and Custody Act** (**MCA**), Section 2(c), and the federal **Divorce Act**, Section 2(1)(b), the legal principles used to interpret these sections have been used interchangeably. Also, the **Guidelines** pursuant to both the **MCA** and the **Divorce Act** use the same terminology for determination of the quantum of maintenance for children over the age of majority. Thus, in this regard, the Court has reviewed a number of decisions including: **Martell v Height** (1994) 130 N.S.R. (2d) N.S.C.A.,**Yaschuk v. Logan** (1992) 110 N.S.R. (2d) 278 N.S.C.A., **Anderson v. Anderson** (1983) 36 R.F.L. (2d) 34 N.S.S.C., **Cook v. Cook** (1992) 42 R.F.L. (3d) 297 N.S.S.C., **Macdonald v Macdonald** (2001)198 N.S. R. 216 N.S.S.C., **Perfanick v. Panciera** (2001) 22 R.F.L. 178 Man C.A., **MacLennan v. MacLennan** (2003) 212 N.S.R. 116 N.S.C.A. and **Corsano v. Simms** (2002) 209 N.S.R. (2d) 242 N.S.C.A.

I find the applicant mother has been a source of support and encouragement for the education of her two daughters. She has provided funds even when it was necessary to incur loans at an exceptionally high interest rate. She has assisted with Canada Student Loan appeals and, at times, she has been successful. She is a bright, articulate and assertive woman who obviously believes in her own education as well as the education of her daughters. It is difficult to conceive of circumstances where a mother could be more supportive to her daughters. However, her financial expectations of the respondent father appear to be overstated and unrealistic especially concerning his after tax income.

Although the respondent father has submitted that both daughters should have remained at home and studied at Acadia University, on balance, I cannot find this to be a viable option for either N. or S.. Indeed, the same courses may have been available to them; however, in order to significantly reduce their university expenses it would have been necessary to reside at home. And given the discord and tension in the Abudulai home, it is impossible to determine if it would have been better for N. and S. to remain home. In the present circumstances, on the balance of probabilities, their decision to study away from home may have been the best decision for each of them and only marginally more expensive. As noted by Freeman, J. in **Martell v. Height**, *supra*, at page 320:

> "As 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

> filed. In making this determination the trial judge cannot be blind to prevailing social and economic conditions: a bachelor's degree no longer assures self-sufficiency."

In circumstances of this case, the Court finds both daughters to be dependent, in accordance with Section 2(c) of the **MCA** as they are financially reliant upon their parents since they are unable to provide the necessities for themselves in order to obtain post-secondary education. Commendably, both have worked part-time to contribute toward their university expenses, but are unable to pay all of the outstanding fees themselves. Despite the financial obstacles faced by both N. and S., they have demonstrated amazing determination in pursuing post-secondary education. It seems to me they both deserve moral and financial support from their parents in order to become equipped to meet employment demands which they must eventually face as they enter adulthood.

At the same time, however, it must be remembered in cases such as these adult children are expected to contribute toward their own education to the fullest extent possible through bursaries, scholarships, loans, part-time employment and summer employment. In this case, it has not been proven that either daughter would compromise their academic studies by working part-time. It is not unreasonable for either of them to share some responsibility for their university education. See **Perfanick v. Panciera**, *supra*, at page 189. This is especially so given that their youngest sibling remains at home and is totally dependent upon his parents, who both earn comfortable but modest incomes after taxes.

Furthermore, under the **MCA**, Section 37, the Court finds there have been material changes since the 1998 Consent Order which justify a variation of the original Order. Section 14 of the **Guidelines** stipulates a change in the circumstances of the parents or the children after proclamation of the **Guidelines** constitutes a change in circumstances under Section 37 of the **MCA**. The eldest two daughters are now attending university and no longer reside at the family residence on a full-time basis. As well, the respondent father has had salary increases since 1998. And the marital discord between the parties has escalated as they no longer wish to remain a family unit as indicated in the 1998.

However, the 1998 Order is problematic as it does not specify the amount of support for each child. And furthermore, the order is ambiguous as it refers to the monthly payments as child maintenance on one hand, and on the other hand, it refers to these same funds being utilized for "household living expenses of the family unit" for "mutual family goals". It seems reasonably clear that the parties intended to remain married and share accommodations at the time of 1998 Order. Furthermore, I accept the reality of the respondent father's gambling problem faced by the family at the time of the1998 Order.

The respondent father submits that he has not only paid his regular support by way of the 1998 Order, but, additionally, he has regularly sent funds to each of his daughters.

Although he submitted three receipts for money transfers to his daughters, the Court is not convinced these transfers were done consistently by the respondent father. Even though the father has sent funds to his daughters from time to time, it must be kept in mind that the applicant mother has also sent funds to each of her daughters. Regretfully, I cannot conclude the respondent father has made any significant financial contributions toward the university expenses of N. and S. except by way of his regular monthly support payments.

Furthermore, the respondent father testified that he does not have a gambling problem. I find, despite his assertions, that he has compromised his own financial security as well as the financial well being of his family especially N. and S. who are both struggling to complete their university studies. In 2002, when he earned in excess of $103,000.00, there were no meaningful financial contributions to the education expenses of his daughters. The Court is left with the unfavourable impression that the respondent father cannot fully account for the extra salary earned in 2002. Plus, his statement of income and expenses was shown to be inaccurate and contained misleading expenses. For example, he claimed a bankruptcy fee of $1,000.00 when the fee has been paid in full. He no longer owes any debts, but he has no credit rating and must transact all of his business by cash. Although the respondent father has a good and comfortable income, the Court concludes he is a poor money manager with a gambling predilection which has had, and continues to have, a deleterious impact upon his financial security.

RETROACTIVE CHILD SUPPORT:

Generally speaking, there is a presumption against retroactive child support awards for a variety of policy considerations although under section 37 of the **MCA** the Court does have jurisdiction to retroactively vary support payments. Policy considerations for and against retroactive child support payments have been outlined by several Courts. Specifically see: **S.(L.) V. P.(E.)** (1999) 50 R.F.L. (4th) 302 B.C.C.A. and **Conrad v. Rafuse** (2002) NSCA 60 N.S.C.A. To grant retroactive child support beyond the date of an application to vary involves the exercise of judicial discretion.

In the unique circumstances of this case, an Order was granted in 1998 which put in place a global amount for child support payments for three children. Although the order purports to be for child support , it has peculiarities which have already been identified above.

Furthermore, it seems the respondent father later questioned the quantum of the original Order and at one point tried to obtain a review of the maintenance award so that it would be more in keeping with the **Guidelines** amount. No evidence was led to establish the gross annual income of the respondent father in 1998, but even if his income was fixed in the amount of his current income of $67,218.00 he would have been required to pay child support, for three children, under the **Guidelines** in the amount of $1,155.00 per

month. It seems to me, it must be acknowledged that the respondent father was paying an exceptionally high amount of child support. Even if his income was lower in 1998, he was nonetheless paying a high percentage of his gross annual income and, consequently, his child support payments would have been less than $1,155.00 per month. Further, a regular portion of those payments should have been forwarded to N. and S.. It would be reasonable to expect at least one third the regular monthly payment of $2,219.12, or $739.00, to be provided to N. and S. monthly while attending university.

Nevertheless, it is important to keep in mind that the 1998 Order was an anomaly; that is, in terms of the unique circumstances of the parties. And furthermore, that the respondent father was exceeding the amount payable under the **Guidelines** although he was, in fact, receiving benefits from the payments made directly to the wife. Likewise, the Court must be mindful of the debt incurred by the applicant mother to support N. and S. as well as the troublesome behaviour of the respondent father as represented by his persistent gambling problem.

I am mindful of the seemingly excessive child support payments pursuant to the 1998 Order as well as the respondent father's precarious financial circumstances which will require not only an outlay of funds for the acquisition of his own accommodations, but also his ongoing responsibility to provide financial support for Na.. To award retroactive child

support at this juncture would create a financial hardship, in my opinion, even in the face of the respondent father's ongoing gambling problem. Having regard to all of the factors enumerated in **Conrad v. Rafuse,** *supra*, in exercising my discretion, I would not vary the order retroactively in favour of the applicant mother.

FINDINGS REGARDING Na. S. ABUDULAI:

The parties agree that the **Guidelines** amount of child support should be payable for Na.. Although the Court has been requested to impute a higher income to the respondent father, I decline to do so as there is no evidence to suggest he will have access to overtime earnings this year as in 2002. Thus, with a gross annual income of $67,218.00 per year, the respondent father is ordered to pay $546.00 per month under the **Guidelines** for Na.. Regarding Section 7 expenses under the **Guidelines**, I find it is necessary for the applicant mother to work twelve-hour shifts as she is studying toward her Master's degree in nursing. Her plan to upgrade her education so as to be able to secure better employment without the requirement of shift work is sound and will eventually serve Na.'s overall best interest. As well, I have considered and find there is reluctance on the part of the respondent father in providing reliable child care for Na. when the mother is required to work. Therefore, in keeping with Section 7(1)(a) of the **Guidelines,** I hereby order the respondent father to pay his proportionate share of the child care expenses for Na.. No fixed amount has been submitted to the court in this regard however. Finally, the

extracurricular activities for the Na. shall be shared proportionately by the parents.

If the annual income for the respondent father should increase, monthly child support payment will increase accordingly. Therefore, the respondent father is required to file a copy of his income tax return with the applicant mother on or before June 30th of each year.

FINDINGS REGARDING N. L. ABUDULAI:

I have carefully reviewed the budget submitted to the court for N. for the academic year 2002-2003 when she received a Canada Student loan and bursaries. Her fees are current and paid up to date. Certain expenses claimed on her budget are either inflated or non-essential such as a cell phone, clothing, groceries, meal purchases and so on. After examining her income (from loans, bursaries, part -time employment income) and university expenses, I find, on the balance of probabilities, she is in a break-even position after her 2002-2003 academic term.

In 2001- 2002, I find her mother paid $600.00 toward N.'s tuition. However, this must be balanced with the support payments from the father directly to the mother during this period of time as well as N.'s ability to nominally contribute toward her university expenses. It seems to me, in 2002, the respondent father earned over $103,000.00 per

year and was paying $2,219.00 as monthly child support. If a reasonable amount due and owing, as suggested under the **Guidelines**, for the youngest boy is $795.00 and is subtracted from $2,219.00 this leaves the sum of $1,424.00 for the benefit of the daughters; $712.00 for each daughter ($8,544.00 per year). Recognizing that there must be some accounting for the extra expenses for the respondent father while living in the family home, there was, nonetheless, considerable access to funds available as child support for both N. and S..

In short, for N.'s academic years of 2001-2002 and 2002 -2003, I find the respondent father has contributed toward the university expenses by way of his monthly child support payments. I find no payments are, therefore, due and owing for these academic terms. However, in the upcoming academic year for 2003-2004, N. should undoubtedly access student loans, bursaries and continue to work part-time. Her father, can modestly assist with her reasonable university expenses. Thus he is ordered pay 60% of those reasonable expenses not covered from her external finances. I decline to order any apportionment of those expenses by the applicant mother as she has already contributed toward the university expenses of N. and, moreover, her income is modest and she will need to draw on her limited income as primary caregiver for Na..

FINDINGS REGARDING S. H. ABUDULAI:

S.'s circumstances, however, differ from those circumstances of her sister, N.. I am persuaded on the balance of probabilities that her financial needs are greater and more acute than those of her sister. While she did not attend university in the 2001-2002 academic year, she has incurred significant expenses for the academic year 2002-2003. Unlike N., she has been unable to secure a Canada Student Loan, but has worked at a part-time job in order to defray her living costs. Her mother has had to borrow money to assist her financially. Although the father has contributed indirectly by his monthly child support payments, this has been insufficient to meet S.'s university expenses. S. was deprived of the benefit of a Canada Student Loan because of the combined income of her parents. Thus, it seems to me both parents must assist according to their relative abilities. In past years, she has been diligent in accessing funds, both governmental and non-governmental.

The unique circumstances of S. dictate a special response by her parents. She is now in the unfortunate circumstance of being unable to graduate due to her outstanding debt to Dalhousie University. S. can work part-time or even full-time to help retire this debt. By borrowing funds to assist S., it seems the mother has done her part in contributing toward S.'s university expenses. Therefore, I decline to order any additional payments by the applicant mother. In my opinion, the father can assist with reducing this debt especially as he has had reduced living expenses since 1998 and will, as a result of this variation

application, have reduced monthly child support payments. Accordingly, in the present circumstances, I hereby order the father to pay toward the outstanding debt to Dalhousie University ($12,800.00), a sum of $6,400.00 plus interest which shall be paid in a timely fashion. S. shall be responsible for the balance owing to Dalhousie University.

FINAL ORDER:

The parties agreed that all family members shall be maintained on the respondent father's dental and medical plan and that the respondent farther shall maintain his life insurance in the amount of $100,000.00 with his children as beneficiaries.

In summary, the following is hereby ordered:

1. The respondent father's gross annual income is hereby fixed in the amount of $67,218.00.

2. Monthly child support for Na. is hereby set in the amount of $546.00, commencing with the next regular child support payment. Both parents shall share proportionately the child care and extra-curricular expenses for him.

3. Annually, the respondent father shall provide a copy of his income tax return to the applicant mother by June 30th.

4. Medical and dental coverage shall be maintained by the respondent father through his employer for the applicant mother and all of his dependent children. Life

Insurance shall be maintained by the respondent father with his children as beneficiaries.

5. In the upcoming academic year, 2003-2004, the respondent father is hereby ordered to contribute 60% of the reasonable expenses of N. which are not covered by her external funding such as Canada Student Loan, bursaries, part-time earning and scholarships. Payments are to be made directly to N..

6. Outstanding fees to Dalhousie University for S. shall be partially paid by the respondent father in the amount of $6,400.00 plus interest with reasonable arrangements to be made directly with S. or with the Maintenance Enforcement Program.

7. The application for retroactive child support is hereby dismissed.

My thanks is extended to counsel for their thoughtful and helpful submissions on this case. Counsel for the applicant mother is kindly requested to prepare an appropriate court order.

Order accordingly.

Corrine E. Sparks, J.F.C.