

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Colter v. Colter*, 2015 NSSC 2

Date: 2015-01-08

Docket: 1201-066830 (SFHD-85004)

Registry: Halifax

Between:

Kathleen Colter

Petitioner

v.

Keith Colter

Respondent

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Judge: The Honourable Justice Leslie J. Dellapinna

Subject: Calculation of child and spousal support; effect of interim order.

Summary: The parties were married for approximately 15 years, separating in December in 2012. They had two children aged 16 and 13. In 2013 the parties agreed on the terms of a Consent Order after attending a Settlement Conference. The parties agreed that the terms of that order would be incorporated into and form part of their Corollary Relief Order once they had been separated for one year and obtained a Divorce Judgement.

The circumstances of the parties changed between the date of the Consent Order and the date of the divorce hearing. The Petitioner/wife obtained employment and began cohabiting with her new partner. The Respondent/husband was terminated from his former employment and then went on to develop his own business.

In 2014 the husband received a “severance package” which

he submitted was actually a reimbursement of expenses owed to him by his former employer and argued that those monies should not be included in his income for support purposes.

Issues:

- (1) Should income be imputed to the Petitioner/wife?
- (2) Should the Respondent/husband's "severance package" be included in his income in the year 2014 for spousal and child support purposes?
- (3) Should spousal and/or child support be varied from the amounts stated in the parties' Consent Order and if so how?

Result:

No additional income was imputed to the Petitioner/wife. After a lengthy traditional marriage she was taking reasonable steps to find and did find employment albeit on a part-time basis but at an hourly rate greater than minimum wage. Her position was secure and there was a reasonable prospect that she would be promoted to the manager's position within approximately a year and would thus obtain more hours and a higher hourly rate of income.

The parties agreed on the set-off approach for child support (they shared the care of the children on a week on week off basis). Child support as agreed in the Consent Order was varied for the year 2014 on a retroactive basis to take into account their incomes earned during the year 2014 and prospectively to take into account their incomes projected for 2015.

Spousal support was reduced due to the Petitioner's/wife's reduced need for such support.

The Court's calculation of child and spousal support took into account the Respondent/husband's severance allowance. While the Respondent/husband may have viewed the "severance package" from his former employer as a reimbursement of his expenses, his former employer

specifically negotiated with the Respondent/husband to include a severance package in the settlement so as to avoid further claims by the Respondent/husband in the future. The severance monies formed part of the Respondent/husband's income for child and spousal support purposes.

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