

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Bisbee v. Bisbee 2011 NSSC 470

Date: 20111228
Docket: 1201-060118
Registry: Halifax

Between:

Ronald Stanton Bisbee

Applicant

v.

Brenda Darlene Bisbee

Respondent

LIBRARY HEADING

- Judge:** The Honourable Justice Moira C. Legere Sers
- Heard:** July 29, 2011 and December 1, 2011 in Halifax, Nova Scotia
- Subject:** Confirmation Hearing
- Issue:** Whether to confirm or vary provisional retroactive variation and termination of child support due to serious illness of payor.
- Summary:** Retroactive variation application by payor commenced in November 2009. Matter appeared four times before the Ontario court to obtain a provisional order retroactively varying the child support to January 2007 forward and terminating future support due to payor's serious illness.
- Confirming court referred the matter back for more evidence. Payor 's death occurred before Confirmation Hearing completed.
- Result:** The provisional order modified. Retroactive reduction disallowed. Arrears set at nil. A retroactive analysis of child support must consider the factors set out in *DBS v SRG; TAR v. LJW; Henry v. Henry; Hiemstra v. Hiemstra* 2006 SCC37. This includes hardship to the custodial parent if a retroactive award resulted in overpayment. In this situation, there were numerous uncertainties and breaches of original order. The payor had made no provision for the child's future. It would be unjust to retroactively vary the order such that an overpayment might result in hardship to payee.

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