

**SUPREME COURT OF NOVA SCOTIA  
FAMILY DIVISION**

**Citation: *M.S. v. E.O.*, 2017 NSSC 370  
ENDORSEMENT**

**December 18, 2017 (Written decision: May 23, 2018)**

M.S. v. E.O.

SFH-004765

Appearances: **Simplified docket appearance:** On January 11, 2017, an interim without prejudice Order was granted based on an interim finding that M.S.Jr's income for child support purposes was \$17,176.20, the without prejudice finding was based on M.S.Jr's Statement of Income filed in September 2016. Enforcement of arrears for both children C.O. and M.O. were suspended, and interim child support for M.O. was set at \$100.00. The matter was adjourned to a pre-trial conference. E.O. sought additional disclosure regarding "settlement for injury or loss of employment and / or pension money" M.S.Jr. may have received;

**Pre-trial conference:** On April 11, 2017, trial dates were set, and directions were provided for further disclosure;

**Trial:** On August 4, 2017, the trial commenced but was adjourned to allow M.S.Jr. to file additional financial information to confirm his total income from all sources since 2012 and E.O. to file any information related to any claim for special or extraordinary expenses for M.O.;

**Trial continuation:** On November 14, 2017, the continuation of the trial was adjourned once again to allow M.S.Jr. to file and disclose additional financial information to confirm his total income from all sources since 2012. M.S.Jr and E.O., were directed to be prepared to provide the court with their calculations and arguments at the next adjourned date;

**Trial continuation:** On December 18, 2017 the trial concluded. Neither party provided the court with any calculations as requested by the court in November 2017.

The court provided some indication to the parties of how it must determine the final calculations for M.S.Jr's total "gross" income from all sources for child maintenance purposes between 2012 and 2017 based on available evidence. The court explained that after calculating a retroactive reduction to arrears based on the parties agreement that C.O. ceased to be a dependent child as of September 14, 2012, that the court would then have to consider E.O.'s arguments about M.S.Jr., paying too little child maintenance for M.O., and her argument that during the period of

retroactivity M.S.Jr. had access to other funds either by way of settlement for injury, loss of job, or pension money. In other words, the court would have to consider whether it would be fair to grant a retroactive increase or decrease in child maintenance for M.O. back to when the changes were made for C.O., despite the delay, M.S.Jr., failure to disclose, and considering the financial positions of the parties and of M.O.

M. S. Jr. unrepresented at all appearances

E. O. unrepresented at all appearances

## **Decision:**

### **Number of dependent children**

1. The parties agreed C.O. ceased to be a dependent child as of September 14, 2012. I have determined that M.S.Jr's last child maintenance payment for C.O. shall be for the month of September 2012. In other words, M.S.Jr. is not responsible for any child maintenance payments to E.O. for the benefit of C.O. from October 1, 2012 onward.
2. M.O. continues to be a dependent child while enrolled in a post secondary program at Saint Mary's University. As of December 2017, both parties agreed that M.O., continued to be a dependent child.

### **Determination of M.S.Jr's income for child maintenance since the application was filed by M.S.Jr. in September 2016**

3. M.S.Jr's income for 2017 and for 2016, has been established as follows considering s. 16-20 of the *Nova Scotia Child Maintenance Guidelines*:
  - a. 2017, \$31,086.50 @ \$267.00 x 12 (January 2017-December 2017) in child maintenance per month for one child, M.O., and for every month thereafter until agreement of the parties or a further court order.
  - b. 2016, \$30,634.31 @ \$257.00 x 4 (September 2016 – December 2016) in child maintenance per month for one child, M.O.

### **Prospective child maintenance for M.O.**

4. On a prospective basis, from January 1, 2018 onward M.S.Jr., must pay \$267.00 in child maintenance per month for one child, M.O.
5. Prospective special or extraordinary expenses for M.O.:

- a. E.O. failed to file an application or any supporting information to support an application for special or extraordinary expenses for M.O. This court was not provided any information about M.O.'s financial circumstances. E.O. was not seeking M.S.Jr. pay any special or extraordinary expenses.

#### **Adjustment to child maintenance since September 2016**

6. Child maintenance owing for M.O., since M.S.Jr., filed his Notice of Variation Application in September 2016:
  - a. 2017, \$31,086.50 @ \$267.00 in child maintenance per month for one child, M.O. x 12 months, January – December 2017, M.S.Jr. owes E.O. \$3,204.00 for M.O. between January and December 2017. According to the Maintenance Enforcement Program of Nova Scotia Record of Payments submitted by M.S.Jr., he paid \$100 per month for M.O between January 2017 – November 2017 per the Interim without prejudice Order granted in January 2017, and based on his record of payments he likely paid \$100.00 in December 2017 as well, for a total of \$1,200.00 paid for that period. **M.S.Jr. owes E.O. \$2004.00 for the care of M.O. between January 2017 and December 2017;**
  - b. 2016, \$30,634.31 @ \$257.00 in child maintenance per month for one child, M.O., x 4 months, September 2016 (date of application) – December 2016, M.S.Jr. owes E.O. \$1028.00 for M.O., in 2016. **M.S.Jr. paid \$600.00, he owes E.O. \$428.00 for the care of M.O., between January 2017 and December 2017;**

#### **Retroactive reduction of arrears for C.O**

7. **November 2006 – September 2012.** Due to the difficulty in establishing M.S.Jr's income and other circumstances, including: the lack of evidence regarding when M.S.Jr's other dependent children referred to in his 2006 application were no longer dependent, the lack of medical information about M.S.Jr's inability to work after 2006, concerns I have about M.S.Jr's financial ability to pay for any retroactive increase in child maintenance for C.O., and the concerns I have for E.O.'s financial ability to refund any retroactive decrease in child maintenance for C.O. and in addition, given the delay attributable to both parties, the lack of financial disclosure from M.S.Jr. between November 2006 and 2011, and the lack of information about C.O.'s circumstances, I have determined there will be no retroactive increase or decrease in the child maintenance due for C.O., for the period between November 21, 2006 and September 2012, and any arrears will need to be

paid to E.O. The parties agreed to a change of circumstances for C.O. from September 14, 2012 onward and not before.

8. Between **October 2012 and December 2016**, fifty-one (51) months M.S.Jr. was court ordered to pay to E.O. \$125.00 per month in child maintenance and \$12.50 per month in special expenses for C.O., for a total of \$7,012.50 in notional child maintenance to E.O. for the benefit of C.O. By agreement of the parties M.S.Jr., is no longer obligated to pay any amount to E.O for C.O. for the period between October 2012 and December 2016.

#### **Retroactive reduction of arrears or retroactive increase for M.O.**

9. **November 2006 – September 2012.** Due to the difficulty in establishing M.S.Jr's income and other circumstances, including: the lack of evidence regarding when M.S.Jr's other dependent children referred to in his 2006 application were no longer dependent, the lack of medical information about M.S.Jr's inability to work after 2006, concerns I have about M.S.Jr's financial ability to pay for any retroactive increase in child maintenance for M.O., and the concerns I have for E.O.'s financial ability to refund any retroactive decrease in child maintenance for M.O. and given the delay attributable to both parties, the lack of financial disclosure from M.S.Jr between November 2006 and 2011, and the lack of information provided by E.O. about M.O.'s circumstances, I have determined there will be no retroactive increase or decrease in the child maintenance due for M.O., for the period between November 21, 2006 and August 2016. There was no request to vary the child maintenance owed for M.O. during the above noted period, I decline to vary child maintenance due for M.O during that period.

#### **Arrears for C.O. and M.O. for the period up to September 2012**

10. M.S.Jr. owes E.O. **\$1,763.05** in arrears for C.O and M.O., for the period between **November 21, 2006 and the end of September, 2012**, based on the Maintenance Enforcement Program of Nova Scotia Record of Payments for the Period November 18, 1998 and November 22, 2017:

#### **Overpayment for M.O. between October 2012 – August 2016**

11. In reviewing M.S.Jr's income disclosure, and the entirety of the evidence for the period between October 2012 and August 2016 there is insufficient evidence to support a finding M.S.Jr. was not able to pay the \$125.00 per month in child maintenance and the \$12.50 in special expenses owed for M.O.

12. Between **October 2012 and August 2016**, forty-seven (47) months, M.S.Jr. was court ordered to pay to E.O. \$125.00 total per month in child maintenance and \$12.50 in special expenses for M.O., for a total of \$6,462.50 to E.O. for the benefit of M.O.
13. Between **October 2012 and August 2016** M.S.Jr., paid \$7,837.59 (\$6462.50) in total for both C.O. (he now owes \$0 for C.O for that period) and M.O. (\$6,462.50) for an **overpayment in child maintenance and special expenses of -\$1,375.09** during that period.

**Total child maintenance payment due for the period between November 2006 and December 2017**

14. Total amount owing by M.S.Jr. to E.O is **\$2,819.96** up to the end of December 2017, and can be calculated as follows:
  - a. **\$1,763.05 in arrears** for C.O. and M.O. accumulated before October 1, 2012 (to the end of September 2012);
  - b. Followed by a deduction of the **overpayment of \$1,375.09** paid by M.S.Jr. for M.O. for the period between October 1, 2012 and August 2016;
  - c. Adding the amount owing starting as of the date of application:
    - i. for the period between September 2016 and December 2016 when the table amount of child maintenance payable by M.S.Jr. to E.O for M.O. was adjusted to account for a change to M.S.Jr's income, with an assessed **underpayment of \$428.00** as determined by a review of the Maintenance Enforcement Program of Nova Scotia Record of Payments referencing that period;
    - ii. Adding the amount owing for the period between January 2017 and December, 2017 when the table amount of child maintenance payable by M.S.Jr. to E.O for M.O. was adjusted to account for a change to M.S.Jr's, income, with an assessed underpayment of **\$2004.00** as determined by a review of the Maintenance Enforcement Program Of Nova Scotia Record of Payments between January 2017 and November 2017, and assuming M.S.Jr. paid \$100.00 in child maintenance in December 2017.

15. The **\$2,819.96** owed by M.S.Jr. to E.O. up until December 2017 can be paid in **installments of \$100.00 starting June 1<sup>st</sup>, 2018**, and shall be paid through the Maintenance Enforcement program every month thereafter until the \$2,819.96 is fully paid.
16. Any amount owed by M.S.Jr. to E.O for the period January 2018 through May 2018 must be paid forthwith.

**Reasons:**

**Circumstances at the time of the 2006 Consent Order (which varied the Order granted in 2000)**

17. An Order was granted in 1998 whereby M.S.Jr. was found to have an annual income of \$38,800.00 and was ordered to pay E.O. child maintenance for C.O. and M.O. of \$500.00 per month.
18. In 2000 M.S.Jr. applied to vary the 1998 Order. E.O was named as a respondent as were five other respondents SFHF004765. The five other respondents also appear to have their own separate files with M.S.Jr. The other respondents included: D.L.S (SFHF 004763), W.B (SFHF 004766), V.C (SFHF 004769), L.M.R (SFHF 004770), and S.R.B (SFHF 005197).
19. A total of eight children were subjects in the proceeding (SFHF 004765) heard in 2000, including C.O. and M.O., who are the only subjects in this proceeding.
20. In 2000, M.S.Jr. was successful in proving undue hardship and his child maintenance payments to E.O, for C.O. and M.O. were reduced to \$250.00 per month in total and any arrears arising from the Order granted in 1998 were cancelled.

**Order granted in 2000 was varied with a Consent Order granted in 2006**

21. In 2006, M.S.Jr., filed another application to vary child maintenance, this time requesting the court vary the order granted in 2000. E.O. was the only respondent named and the only subjects identified were C.O and M.O.
22. In his Affidavit filed with the court in 2006 in support of his undue hardship application, M.S.Jr. claimed he was still obligated to support six dependent children and stated that he was living with his mother. There was little to no information filed in relation to the previous respondents and the dependent

children: D.L.S (SFHF 004763), W.B (SFHF 004766), V.C (SFHF 004769), L.M.R (SFHF 004770), and S.R.B (SFHF 005197).

23. E.O. filed an Affidavit on May 29, 2006 indicating she was working 37.5 hours per week at \$10.00 per hour, with occasional overtime.
24. A Consent Order was granted on November 21, 2006 (issued December 2006), both parties were represented by legal counsel at the time. The terms included but were not limited to the following:
  - a. The parties agreed M.S.Jr., would continue to pay child maintenance to E.O for the parties' two sons: C.O., and M.O., of \$125.00 per month, per child.
  - b. In addition, the parties agreed and M.S.Jr, would pay \$12.50 per month, per child pursuant to section 7 of the *Nova Scotia Child Maintenance Guidelines*, NS Reg 53/98, for a total of \$275.00 per month or \$137.50 per child, per month.
25. The following term was included in the 2006 Consent Order:

...

There shall be no downward variation in regards to the said amount in the event that M.S.Jr is required by order or agreement to pay any sums whatsoever for the support of children other than those set forth in this Order

...
26. Further conditions of the Consent Order granted in 2006 included:

...

  - a. The arrears of maintenance owed by M.S.Jr to E.O for the support of the two children, being C.O, and M.O, is hereby reduced to the sum of Nil (0) Dollars as of October 31, 2006.
  - ...
  - b. Any and all sums extracted from M.S.Jr by the Maintenance Enforcement Program prior to November 21, 2006, pertaining to any sums owed by M.S.Jr to E.O by prior order of this court shall be the sole property of E.O and shall be paid over to E.O.
  - c. Pursuant to Section 6 of the *Nova Scotia Child Maintenance Guidelines*, M.S.Jr shall maintain a policy of medical, drug, and dental insurance

coverage for the two said children, with such policy of insurance available through his employer, and such policy of insurance shall be put in place by M.S.Jr forthwith.

**Change of circumstances since the Consent Order was granted on November 21, 2006.**

27. In September 2016, M.S.Jr., filed a Notice of Variation Application. He requested a change in the table amount of child maintenance following a change in the number of dependent children dating back to September 14, 2012 when C.O. turned 19. As part of his variation application, he requested an order addressing arrears of child maintenance. He also indicated his “income status had changed”, and his total annual income for table amount in 2016 was expected to be \$17,176.20. M.S.Jr., did not provide any information about the other dependent children who he had referred to in 2006.
28. For the purposes of a s.37 variation under the *Maintenance and Custody Act* (now *Parenting Support Act*), pursuant to s. 14 of the *Nova Scotia Child Maintenance Guidelines* “any change in circumstances that would result in a different child maintenance order or any provision thereof”, is sufficient.
29. E.O. participated in the proceeding asking the court to review M.S.Jr’s income for table amount of child maintenance. E.O. asked the court to direct M.S.Jr to provide financial disclosure in relation to any settlement funds received for work injury, loss of employment, or any investment income from pension funds. M.S.Jr. advised the court he had previously filed all relevant financial information. Additional information was requested from M.S.Jr. in April 2017, August 2017 and November 2017. M.S.Jr. was asked to provide evidence with respect to any settlement money received by him or investment income received by him since the last Consent Order.
30. I reviewed the court file in its entirety. In 2006, when the Consent Order was negotiated and then granted, information regarding ongoing claims M.S.Jr. had with Great West Life and the Sun Life Assurance Company of Canada existed.
31. For example, the following documents were found in the court file:
  - a. A Claimant’s Explanation of Benefits form dated June 10, 2005, “Your short term disability benefit for the period September 28, 2002 – July 11,



2003 is: \$7,209.40 weekly for 41 weeks” (\$295,585.40). There is a further note indicating “Benefits for this claim have now been paid for 82 weeks.”

- b. A document from Sun Life Assurance Company of Canada indicating M.S.Jr’s disability date is September 26, 2002, and for the payment period July 10, 2003 and September 30, 2003 he received \$5,577.64 gross.
32. It is unclear when the above noted documents were filed with the court, in 2006 or later? There was a subsequent variation application filed by M.S.Jr. in 2014 but it was never perfected. In 2014, M.S.Jr., failed to file supporting financial documents and the application was discontinued.

### **Change in number of dependent children**

33. On August 4, 2017, the parties confirmed their agreement there had been a change of circumstances since the last Consent Order which was granted on November 21, 2006, and specifically they agreed C.O. ceased to be a dependent child after September 14, 2012.

### **One dependent child remains**

34. The parties also agreed M.O. continued to be a dependent child while in a post-secondary program at St. Mary’s University. E.O., was given an opportunity to file financial information to support a claim for special or extraordinary expenses in relation to M.O, but requested only the table amount of child maintenance based on M.S.Jr. income from all sources.

### **Adjustments to child maintenance between October 2012 and August 2016**

35. E.O. argued that if M.S.Jr., was not required to pay child maintenance for C.O. from October 2012 onward, that the amount of child maintenance being paid for M.O., for that same period, and on a prospective basis, should be reconsidered based on any changes in M.S.Jr’s income from all sources for table amount of child maintenance.
36. E.O. argued it was not fair for the court to cancel M.S.Jr’s arrears once again (as noted above, arrears were cancelled in previous applications to the court in 2000, and in 2006), and she requested child maintenance for M.O. be adjusted according to M.S.Jr’s income from October 2012 onward. E.O., specifically referenced M.S.Jr’s income tax return from 2012 which indicates a line 150 income of \$212,049.00.

## **Request for Retroactive increase in child maintenance for M.O. back to October 2012**

37. The circumstances which existed when the Consent Order was granted in 2006 have changed. M.S.Jr., testified that he is only responsible for one dependent child, M.O. M.S.Jr. presented as reluctant to provide detailed information with respect to the children he had claimed were financially dependent on him in 2006, stating it was no longer relevant.
38. I find that based on the totality of the evidence presented in this proceeding, M.S.Jr. is responsible for only one dependent child, M.O. as of October 1, 2012. M.S.Jr., did not provide any evidence to support a finding he was responsible for any other dependent child after November 21, 2006. This is a change of circumstances.
39. Financial records disclosed in September 2016 indicate M.S.Jr's income has changed since 2012. changed before then but there is insufficient information to establish his income between November 2006 and 2011. M.S.Jr. did not disclose his income tax information to E.O. or to the court for the period between 2007-2011, or for 2016 or for 2017.

### **M.S.Jr's history of employment**

40. M.S.Jr., filed an Affidavit (February 27, 2006) and a Statement of Undue Hardship circumstances in 2006, M.S.Jr., indicated he began work with Via Rail in 1981 and he sustained a workplace injury in October 1996. (paragraphs 4 and 5).
41. In 1998 M.S.Jr., was found by this court to be earning \$38,800.00, and in 2000 he was found to be earning \$39,700.00.
42. M.S.Jr. swore to the following in part:
  - a. He stopped work in September 2002 due to complications from an injury, he indicated he had chronic pain in both shoulders. (paragraph 6)
  - b. That from approximately September 2002 to September 2003, he received social assistance for 15 weeks (in New Brunswick), while his claims for the work place injury were being processed. He had applied for short term disability benefits through Great West Life. He stopped receiving Social Assistance when his first insurance cheque came, and he needed to repay \$6000.00 of the social assistance money he had received.

- c. He stated that \$10,600.00 of the money he received in June 2005 from his insurance claim (\$17,809.40), with Great-West Life, was garnished by Maintenance Enforcement for default in payments between 2002 and 2005.
  - d. He acknowledged receiving various forms of financial assistance, including CPP of \$159.00 per month after July 2005 (Affidavit September 10, 2006 paragraph 4), and that at the time of his application to the court in February 2006 it was not anticipated he would return to work until “some time in 2006”. (paragraph 20)
43. When cross examined by E.O. in this proceeding, M.S.Jr., testified about receiving “assistance” but also “having cleaning jobs until everything worked out”.
44. I do not accept M.S.Jr’s statements made in his Affidavit sworn September 15, 2006, specifically paragraph 3, wherein he indicates that September 21, 2002 was the last day he worked. It may have been the last day M.S.Jr. worked for Via Rail, but I find M.S.Jr. was able to work, and that he did work in some capacity, after 2002, and specifically I find he was able to work after 2006.
45. M.S.Jr., provides evidence in his Affidavit about what Dr. Theresa Dykeman has stated, including indicating he was unable to work for a period. However, there is no medical report on file, and M.S.Jr. himself indicated in his Affidavit filed in 2006 that he was expected to return to work sometime in 2006.
46. M.S.Jr’s most recent Affidavit sworn November 10, 2016, indicates he is “unemployed” but makes no reference to any disability. M.S.Jr. provided evidence establishing he had been offered and had accepted a part-time casual position as of late 2017. I find M.S.Jr., is able to work.

**Pension funds accounted for**

47. In September 2012 Meritage Portfolios (Montreal QC) received a cheque for \$212,406.12 from the VIA Pension Fund, Bank of Montreal, in trust for M.S.Jr.
- a. A copy of the VIA Pension Fund record of earnings and deductions was provided to the court. It indicates a cheque from VIA Rail, dated September 28, 2012 in the amount of two hundred twelve thousand four

hand six dollars and 12 cents (\$212,406.12), in trust for M.S.Jr. was sent to Meritage Portfolios account # 525-063LI", in Montreal QC.

- b. On October 2, 2012 the \$212,406.12 from the Meritage Portfolios account # 525-063LI", in Montreal QC, was transferred to NBC 7512 Meritage Moderate Investment Portfolio – Plan Type LIRA - account # 00012108983, managed by Daniel MacQuarrie, Equity Associates Inc.
  - c. On February 12, 2015, \$257,215.82, was transferred out of the NBC 7512 Meritage Moderate Investment Portfolio – Plan Type LIRA - account # 00012108983, into NBC 7512 Meritage Moderate Investment Portfolio, account # 00039105721.
    - i. As of February 17, 2015 M.S.Jr., began receiving monthly payments of \$1,519.91 (11 payments between February 17, 2015 – December 4, 2015).
    - ii. As of January 5, 2016 M.S.Jr., began receiving monthly payments of \$1,284.92 (12 payments between January 5, 2016 and December 5, 2016).
    - iii. As of January 5, 2017 M.S.Jr., began receiving monthly payments of \$1,224.22 (8 payments up to August 4, 2017, the documents were filed with the court on August 8, 2017).
  - d. On December 15, 2015 \$15,424.55, and on January 6, 2016 \$30,099.73 was switched out of **NBC 7512** Meritage Moderate Investment Portfolio, account # 00039105721, into **NBC7412** Meritage Moderate Investment Portfolio, account # 00039105721.
48. On December 1, 2017 M.S.Jr., filed the following documents: a letter from Daniel MacQuarrie, financial advisor, dated November 14, 2017, a letter from Connie Moore Admin Assistant Long Term Benefits for the Worker's Compensation Board of Nova Scotia, dated November 16, 2017, and a copy of the Maintenance Enforcement Program of Nova Scotia Record of Payments between November 18, 1998 and November 22, 2017.
49. Mr. MacQuarrie stated in his letter:

- a. For the year 2017, M.S.Jr. has been receiving a monthly gross amount of \$1,224.22. After withholding taxes, this amounts to a monthly net amount of \$1,030.85. On May 29, 2017, M.S.Jr. used the "Temporary Income Provision" based on the Nova Scotia pension legislation to redeem a gross lump sum amount of \$11,941.38. After withholding taxes, this amounts to a net lump sum amount of \$9,553.10.
  - b. For 2017, based on the monthly amounts and the lump sum payment in May, he will have received a total gross amount of \$26,632.02 and total net amount of \$21,923.30 after taxes.
50. Ms. Moore stated, in part, in her letter:
  - a. This letter is in reply to a request for a breakdown of your monthly benefit. Your monthly benefit is in the amount of \$147.34 and is payable for your lifetime. There is no breakdown for taxes as this is a non-taxable benefit
51. M.S.Jr., also provided this court with a letter from the NSCC Akerley Campus. It indicates he is being offered casual employment as Student Facilities Support with Nova Scotia Community College, Akerley Campus, starting November 27, 2017 and ending March 30, 2018, subject to operational requirements. The rate is listed as \$12.00 per hour on an "as needed basis". M.S.Jr., signed the form indicating he would accept the terms of employment offered from the Nova Scotia Community College.
52. Based on the client transaction summary received from Mr. MacQuarrie on August 8, 2017 and his letter filed with the court December 1, 2017 and dated November 14, 2017, I find as follows:
  - a. On May 29, 2017 M.S.Jr. used the Temporary Income Provision based on the Nova Scotia pension legislation to redeem a gross lump sum of \$11,941.38, for a total gross amount of income received from his investments of \$26,632.02 for 2017.
  - b. On September 2, 2016 M.S.Jr. used the Temporary Income Provision based on the Nova Scotia pension legislation to redeem a gross lump sum of \$10,715.76, and he received \$15,419.04 as monthly payments for a total of \$26,134.80 from investments for 2016.

53. On September 30, 2016 M.S.Jr., filed a Statement of Income indicating he had earned \$1431.35, per month (investment income of \$1284.92 per month plus worker's compensation of \$146.43 per month, (WCB not grossed up), for a total yearly income for child support of \$17,176.20.
54. The income received from the Temporary Income Provision was not disclosed in his Statement of Income for 2016. M.S.Jr., did not file his 2016 Tax return as requested by the court in April 2017. I find the income received as "temporary income", should be accounted for in determining M.S.Jr's income for table amount of child support and I impute this income to him. In the alternative, I find M.S.Jr., was able to work and I impute the same amount of income to him for that period and on a go forward basis.
55. M.S.Jr., testified that the "investment income" of \$1,284.92 noted under "gross monthly income" in his Statement of Income filed in 2016 was from pension income he received from his previous employer, VIA Rail in 2005 and later invested in a LIF account. The evidence suggests M.S.Jr., received settlement money related to his injury and / or dismissal from VIA RAIL around 2005 and thereafter, and that at least a portion of his pension money as referenced above, was only made available to him in September 2012.
56. Attached to M.S.Jr's Statement of Income for 2016 were the following documents:
  - a. 2015 Income Tax Return showing a line 150 total income of **\$21,916.00** (taxable dividends of \$71.00, taxable capital gains of \$3,373.00, other income of \$16,719.00 and WCB benefits \$1,753.00). Line 131 refers to the disposition of shares worth \$37,635.00 and capital gains or losses of \$5,517.00 are reflected at line 132.
  - b. 2014 Income Tax Return showing a line 150 total income of **\$7,262.00** (total earnings \$2,261.00, taxable dividends of \$246.00, taxable capital gains of \$3,017.00, and WCB benefits of \$1,738.00). Line 131 refers to the disposition of shares worth \$52,940.00 and capital gains or losses of \$5,974.00.
  - c. 2013 Income Tax Return showing a line 150 income of **\$19,050.00** (total earnings of \$12,268.00, EI benefits of \$4,770.00, taxable dividends of \$282.00, taxable capital gains of \$2.00, and WCB benefits of \$1,728.00).

- d. 2012 Income Tax Return showing line 101 total earnings of **\$7,116.00**, (\$266.00 in taxable dividends, at line 130 other income \$199,744.00, WCB at \$1,711.00, for a total reported line 150 income of \$208,839.00), line 145 indicates Mr. States Jr., received social assistance payments of \$3,212.00 for a total line 150 processed income of \$212,149.00.
57. M.S.Jr.'s., Income Tax Return Information for 2012 indicates he earned \$208,839.00 without including social assistance payments and WCB payments.
58. M.S.Jr., testified he received income from the VIA Rail pension fund, and that he did receive some of the income in hand (he claims he received it because of undue hardship), and he gave \$5000.00 to Ms. O..
59. As noted above, in cross examination, when asked about money he had received, M.S.Jr., stated "I was able to get some back because of undue hardship basically, so I drew out a certain amount of money and I gave her five grand because I lived there and I didn't want to be living there for nothing"  
...
60. I find the \$5000.00 paid by M.S.Jr., to E.O. was a payment by M.S.Jr., for his own living expenses while M.S.Jr., lived with Ms. O. and was more likely than not paid out of money received from his settlement for his injury or job loss than from his pension income, which was received in 2012. Neither party provided reliable evidence with respect to when they resided together. Little information was available with respect to what if any settlement money was received after 2006.

### **Trial concluded in December 2017**

61. Upon questioning by the Court in December 2017, M.S.Jr., declined the opportunity to explain the various transactions outlined in the client transactions documents he had filed with the court. The documents were prepared and provided by Daniel MacQuarrie, financial advisor, and attached to letters from Mr. MacQuarrie dated August 8, 2017, and or November 14, 2017.
62. When testifying M.S.Jr., at times presented as argumentative, claiming the documents he had filed with the court were self-explanatory and he should not and did not wish to answer questions. He indicated he was not an accountant and could not answer some of the questions asked.

63. M.S.Jr., stated that the Court should ask Mr. MacQuarrie to explain the documents he had filed from Mr. MacQuarrie. M.S.Jr., did not call Mr. MacQuarrie as a witness.
64. When being questioned and when making his representations M.S.Jr. presented as extremely frustrated with the court process.
65. M.S.Jr. sometimes interrupted the court process with threats to complain to various persons with authority about the proceeding.
66. Neither party provided any calculations based on the evidence submitted. The court attempted to assist both M.S.Jr. and E.O to understand what evidence the court would look at and what calculations the court would need to complete to determine M.S.Jr. gross income from all sources. The court did indicate that M.S.Jr's gross income from all sources would be used to determine prospective child support, any retroactive increase or decrease in child maintenance, and to assess any arrears, all on a year by year basis.
67. M.S.Jr. became frustrated and argumentative when the court attempted to explain how the court must "gross up" M.S.Jr's income to determine his gross income from all sources for all years in question. M.S.Jr. expressed concern that the court was focussing on E.O. and not providing him with calculations with respect to his request for an adjustment to arrears.
68. E.O. presented as visibly upset by M.S.Jr's demeanor in the courtroom.
69. After the trial was adjourned to allow the court to verify and finalize further calculations, and to prepare an order to be sent to the Maintenance Enforcement Office, further correspondence was received from Mr. MacQuarrie, M.S.Jr's financial advisor, there was no indication that the correspondence had been sent to E.O. The letter was forwarded by the Court to Ms. O., the parties were advised by letter that the court could not rely on information filed after the trial was adjourned to finalize a decision.

### **Establishing income for table amount of child maintenance**

70. For the year 2017, M.S.Jr's income is found to be  $\$1030.85 \times 12 =$   
**\$12,370.20** investment income +  $\$147.34 \times 12 =$  **\$1,768.08** WCB + **\$9,553.10**  
lump sum = **\$23,691.38** net grossed up per s. 19 (marginal tax rate of



23.79%, 76.21% / \$23,691.38 = \$31,086.50 in 2017 @ \$267.00 per month for M.O., January – December 2017 = \$3,204.00 owed for M.O., for 2017.

- a. Monthly gross amount of \$1,224.22 (between \$1,095.31 and \$1,001.23 net, once per month, January – December 2017) as income from investments;
  - b. On May 29, 2017, he received a gross lump sum of \$11,941.38 (net \$9,553.10) as income;
  - c. A letter from M.S.Jr's accountant indicated that based on the monthly amount and the lump sum payment he received in May 2017, he would receive a gross amount of \$26,632.02 and total net amount of \$21,923.30 after taxes from investments;
  - d. Information received from the Worker's Compensation Board indicated he received \$147.34 monthly which is payable for his lifetime. There is no breakdown for taxes as this is a non-taxable benefit, and his monthly payment needs to be "grossed up" per s. 19 of the *Nova Scotia Child Maintenance Guidelines*.
  - e. Based on his disclosure, M.S.Jr., was also offered and accepted casual employment as Student Facilities Support with Nova Scotia Community College, Akerley Campus, starting November 27, 2017 and ending March 30, 2018, subject to operational requirements. The rate was listed as \$12.00 per hour on an "as needed basis". Any amount received in December 2017 was not factored into M.S.Jr's income for 2017. However, I do find M.S.Jr., is able to work.
- 71.** For the year 2016, M.S.Jr's income is found to be approximately \$1083.81 net x 12 = **\$13,005.72** investment income + \$147.34 x 12 = **\$1,768.08** WCB + **\$8572.61** lump sum = \$23,346.41, net, grossed up per s. 19 (marginal tax rate of 23.79%, 76.21% / \$23,346.41 = **\$30,634.31** in 2016 @ **\$257.00** per month for M.O., x 4 = **\$1028.00** for M.O., **September 2016 (date of application) – December 2016 = owed for M.O., for 2016.**
- a. In 2016 Mr. States Jr., received
    - i. Monthly payments of \$1,284.93 gross (between \$1045.64 and \$1,147.74 per month net between January and December 2016);

- ii. a payment of \$8,572.61 as a temporary income provision for a total of \$23,342.37 net;
  - iii. income from Worker's Compensation of \$147 x 12 = \$1764.00, and
  - iv. his income needs to be grossed up for taxes, and his income for 2016 was **\$30,634.31**.
72. 2015 Income Tax Return showing a line 150 total income of **\$21,916.00**. He was ordered to pay \$275.00 per month for both C.O., and M.O., C.O. was found not to be a dependent child at that time. Child support for one child would be \$161.00 based on his reported income at that time, he was court ordered to pay \$137.50 per child, (\$125.00 s. 3 and \$12.50 s. 7 per child):
- i. taxable dividends of **\$71.00**,
  - ii. taxable capital gains of **\$3,373.00**,
  - iii. other income of **\$16,719.00** (\$1,519.91 per month February 2015 – December 2015), and
  - iv. WCB benefits **\$1,753.00**.
- In addition:
- v. Line 131 refers to the disposition of shares worth \$37,635.00 and capital gains or losses of \$5,517.00 are reflected at line 132.
  - vi. M.S.Jr., was receiving
73. 2014 Income Tax Return showing a line 150 total income of **\$7,262.00**. M.S.Jr., was court ordered to pay \$275.00 per month for both C.O., and M.O., C.O. was found not to be a dependent child at that time. I find that on a balance of probabilities M.S.Jr., had access to funds from insurance settlements for injury, loss of job, or investment income from pension which would allow him to pay at a minimum the \$125.00 in child support and the \$12.50.00 in special expenses as ordered for M.O. during that period, and if not, there is no information filed by M.S.Jr., which would lead me to find he could not have worked during that period. I would also note that M.S.Jr., started a court application that year and failed to provide full financial disclosure resulting in his application being discontinued:
- i. total earnings **\$2,261.00**,
  - ii. taxable dividends of **\$246.00**,
  - iii. taxable capital gains of **\$3,017.00**, and

- iv. WCB benefits of **\$1,738.00**,  
In addition:
  - v. Line 131 refers to the disposition of shares worth \$52,940.00 and capital gains or losses of \$5,974.00.
74. 2013 Income Tax Return showing a line 150 income of \$19,050.00 (\$126.00 table amount for one child). M.S.Jr. was court ordered to pay \$275.00 per month for both C.O., and M.O., C.O. was found not to be a dependent child at that time. I find that on a balance of probabilities M.S.Jr., had access to funds from all income, which may include insurance settlements from injury, loss of job, or investment income from pension which would allow him to pay at a minimum the \$125.00 in child support and the \$13.50 in special expenses as ordered for M.O., during that period, and if not, there is no information filed by M.S.Jr., which would lead me to find he could not have worked during that period:
- i. total earnings of **\$12,268.00**,
  - ii. EI benefits of **\$4,770.00**,
  - iii. WCB benefits of **\$1,728.00**,
  - iv. taxable dividends of **\$282.00**,
  - v. taxable capital gains of **\$2.00**,
75. 2012 Income Tax Return showing line 150 income of **\$208,839.00**, for a total line 150 processed income of **\$212,149.00**. He was court ordered to pay \$275.00 per month for both C.O., and M.O., C.O. was found not to be a dependent child at that time. I find that on a balance of probabilities M.S.Jr., had access to funds for insurance settlements for injury, loss of job, or pension which would allow him to pay at a minimum the \$125.00 in child support and \$12.50 in section 7 expenses, for a total of \$137.50 as ordered for M.O. during that period, and if not, there is no information filed by M.S.Jr., which would lead me to find he could not have worked during that period:
- i. 101 total earnings of **\$7,116.00**,
  - ii. **\$266.00** in taxable dividends,
  - iii. at line 130 other income **\$199,744.00**,
  - iv. WCB at **\$1,711.00**,
  - v. line 145 indicates Mr. States Jr., received social assistance payments of **\$3,212.00**.
- Note: there appears to be \$100 not accounted for in the above noted figures.

76. In fact, for the period between October 2012 and August 2016, M.S.Jr. overpaid the child maintenance amount owing for M.O.
77. An Order has been prepared and will be forward to the Maintenance Enforcement Office.
78. Given the divided success, M.S.Jr. was successful in having child maintenance terminated for one child retroactive to October 2012, and E.O. was successful at having the table amount of child maintenance increased for M.O., as of the month M.S.Jr., filed his application, I will not order costs.

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**Cindy G. Cormier, J.S.C.(F.D.)**