1998 **SH No. 1204-002188**

IN THE SUPREME COURT OF NOVA SCOTIA
Cite as: Dorey v. Dorey, 1998 NSSC 80

BETWEEN:

JUNE ROSELEE DOREY

PETITIONER

- and -

KEVIN BRIAN DOREY

RESPONDENT

DECISION

HEARD: **at Kentville, Nova Scotia before The Honourable Justice Walter R.E. Goodfellow on November 17, 1998**

DECISION: **December 3, 1998**

COUNSEL: **Richard W. Johnson**
Solicitor for the Petitioner

Anthony J. Morley, Q.C.
Solicitor for the Respondent

GOODFELLOW, J.

1. BACKGROUND

June Roselee Dorey, now 39 and Kevin Brian Dorey, now 34 were married September 5, 1987 and separated in October 1995.

They have one child, a daughter Holly Ann Dorey, born December 12, 1991. Mr. Dorey has supported Mrs. Dorey for over three years now, since their separation and the present level of support was set in a Family Court Order, May 6, 1996, which provided $500.00 per month child support, payable on the last day of each month commencing May 31, 1996 and $700.00 per month spousal, payable on the 15th day of each month commencing the 15th of May, 1996. The major area of disagreement is with respect to the question of whether or not spousal support should be terminated.

2. DIVORCE

I concluded at the end of the hearing that all jurisdictional requirements had been met and that there had been a permanent breakdown of this marriage, by reason of the parties having lived separate and apart for a period in excess of one year, and a Divorce Judgment was granted effective the 17th of November, 1998.

3. THE DIVORCE ACT

Child Support Order

15.1 (1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to pay for the support of any or all children of the marriage.

Guidelines Apply

15.1 (3) A court making an order under subsection (1) or an interim order under subsection (2) shall do so in accordance with the applicable guidelines.

Spousal Support Order

15.2 (1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse.

Terms and Conditions

15.2 (3) The court may make an order under subsection (1) or an interim order under subsection (2) for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order as it thinks fit and just.

Factors

15.2 (4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including:

(a) the length of time the spouses cohabited;

(b) the functions performed by each spouse during cohabitation; and

(c) any order, agreement or arrangement relating to support of either spouse.

Spousal Misconduct

15.2 (5) In making an order under subsection (1) or an interim order under subsection (2), the court shall not take into consideration any misconduct of a spouse in relation to the marriage.

Objectives of Spousal Support Order

15.2 (6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should:

(a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;

(b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;

(c) relieve any economic hardship of the spouses arising from the breakdown of the marriage;

(d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

Limitation

17 (10) Notwithstanding subsection (1), where a spousal support order provides for support for a definite period or until a specified event occurs, a court may not, on an application instituted after the expiration of that period or the occurrence of the event, make a variation order for the purpose of resuming that support unless the court is satisfied that:

(a) a variation order is necessary to relieve economic hardship arising from a change described in subsection (4.1) that is related to the marriage; and

(b) the changed circumstances, had they existed at the time of the making of the spousal support order or the last variation order made in respect of that order, as the case may be, would likely have resulted in a different order.

4. CHILD SUPPORT

The parties have agreed that June Roselee Dorey shall have the custody and control of their daughter Holly Ann Dorey, born December 12, 1991 and Kevin Brian Dorey shall have reasonable access. The parties further agree that Mr. Dorey's income is $73,200.00 and that he shall pay child support in accordance with the Child Support Guidelines, in the amount of $589.00 per month, payable on the last of each and every month, commencing the 31st of January, 1999. The present order shall remain in effect for the balance of the calendar year 1998.

No issue of undue hardship has been raised. Their daughter Holly is a status Indian and by virtue of her status, her mother is entitled to occupation of a relatively new, three bedroom bungalow, the rental of which is related to Mrs. Dorey's income and is therefore relatively low. At the present time, it is $248.00 per month.

Mr. Dorey has provided assistance for Holly above, what has been ordered and he willingly accepts the costs for transportation associated with the exercise of Holly's entitlement of access to her father.

The Corollary Relief Judgment will have the usual provision, requiring the parties to exchange annually, their Income Tax Returns and Notices of Assessment from Revenue Canada on or before the 15th of May in each year for the preceding year.

5. ISSUES

(1) Should Spousal Support be terminated? If so, on what terms?

(2) Quantum of Spousal Support

6. ISSUE (1)

Should spousal support be terminated? If so, on what terms?

Analysis of the Divorce Act

Section 15.2(1) provides for payment of spousal support to be "as the court thinks reasonable for the support of the other spouse".

Section 15.2(3) "In doing so, the court may make a spousal support order for a definite or indefinite period or until a specified event occurs and may impose terms, conditions, or restrictions in connection with the order as it thinks fit and just."

Section 15(4) of the Divorce Act sets out the factors to be taken into account "in making an order under subsection (1)" This seems to me to be a direction following the determination it is reasonable to do so, that is, after making the decision of entitlement. Once the court determines it's reasonable to make a spousal support order, it is mandatory "shall" take into account the condition, means, needs and other circumstances of each spouse including:

a. the length of time the spouses co-habited;

b. the functions performed by each spouse during co-habitation; and

c. any order, agreement or arrangement relating to support of either spouse.

While the factors by statute deal with the making of an order and not the

determination of whether or not an order should be made in the first instance, nevertheless, they are most often, factors that the court would take into account in determining whether it thinks it's reasonable S.15(2), to make such a spousal support order.

The court having determined it's reasonable to make a spousal support order, makes the order, taking into account the factors including the specific direction but not excluding other factual considerations and is statutorily mandated not to take into account spousal misconduct S.15(5). It is statutory mandated to strive for certain objectives. The objectives set out in S.15(6) are what the court should achieve or strive for in the makeup, contents, quantum, directions, terms and conditions of the order itself.

In the event I am in error with respect to my analysis of the Divorce Act, I mention that I would have reached the same result as if the provisions of 15.2(3) and 15.2(4) were considerations in the determination whether or not to make a spousal maintenance order with a time limitation.

Where a spousal support order provides for support for a definite period, some limitations apply to considering any variation for the purpose of resuming the support order after the expiration of the period by which spousal support is limited s.17(10).

Cases

> **[30]** In interpreting the *Divorce Act*, we have the clear guidance of Justice McLachlin **Moge v. Moge, [1992] 3 S.C.R. 813; 145 N.R. 1; 81 Man.R.(2d)**

> **161; 30 W.A.C. 161; [1993] 1 W.W.R. 481; 99 D.L.R.(4th) 456; 43 R.F.L.(3d) 345, 15 p. 396 [R.F.L.]**: "It seems to me important to emphasize that this is, first and last, a case of statutory interpretation. It is interesting and useful to consider how different theories of support yield different answers to the question of how support should be determined. However, in the end the judge must return to what Parliament has said on the subject."

Justice L'Heureux-Dube in **Moge v. Moge at 43 R.F.L. (3d) at p.376**:

> All four of the objectives defined in the Act must be taken into account when spousal support is claimed or an order for spousal support is sought to be varied. No single objective is paramount.

Matheson v. Matheson, [1997] 166 N.S.R.(2d) 113

Mrs. Matheson and her former husband, now 59, were married July 30, 1960 and separated 21 years later in August 1981. In 1997, this application to terminate spousal support was taken and the original decision in 1983 described the marriage as a traditional one where Mrs. Matheson remained in the home, had not done any work outside the home since her first pregnancy and raised five children. Over the past 16 years, her health had deteriorated considerably and the court concluded that:

> "It would appear that in addition to all of the other practical difficulties with respect to her ever having any meaningful employment, her health probably precludes employment."

Termination order denied, spousal support varied on recognition that there is insufficient capacity to provide adequately for either parties reasonable needs, and that such was an unfortunate consequence of the breakdown of the marriage.

Stefanyk v. Stefanyk, [1996] 156 N.S.R.(2d) 161

Second Marriage for both parties. Mr. Stefanyk 44, Mrs. Stefanyk 46. Separated 5 ½ years later and it had two children in the custody of their mother. On entry into the marriage, each owned a home and were busy professionals. Mr. Stefanyk, an Officer in

an Alberta Fire Department, was at that time the youngest Captain in the department, with an income of $52,000.00 per annum, which employment he continued until Mrs. Stefanyk was transferred by CBC, to Halifax, Nova Scotia with CBC News World. Mr. Stefanyk had difficulty, not through lack of effort, in obtaining employment in Nova Scotia and only obtained minimal part-time employment. Mrs. Stefanyk, on entry into the marriage, earned $84,000.00 per annum and at the time of the hearing, was earning $102,000.00. Mr. Stefanyk withdrew his entire pension contributions, $25,554.65 and the net achieved from the sale of his home, in the range of $20,000.00, all of which went into the wedding, honeymoon and their home in Nova Scotia. Mr. Stefanyk did have some debts, but overall, he made a substantial financial, career contribution and sacrifice to the marriage.

> **p.179**
> **[83]** Mrs. Clancy seeks an order denying this entitlement or alternatively placing a time limitation on her obligation for the payment of spousal support. Only time and circumstances will determine whether or not spousal support should, at some time in the future, be terminated. Mr. Stefanyk gave and contributed substantial retirement security to this marriage. He will secure a sharing of the pension due Mrs. Clancy for a period of approximately six years, and similarly a net division of Canada Pension Plan credits for this time period; however, neither will make up for the economic disadvantage that accrued to him by his contribution to the marriage, which disadvantage falls to him on the breakdown of the marriage. Security is a component of spousal support, the addressing of which sometimes has to be postponed, **Crook v. Crook [1992], 115 N.S.R.(2d) 258; 314 A.P.R. 258; 42 R.F.L.(3d) 297 (T.D.).**

In the circumstances, the order denying entitlement to maintenance or placing a time limitation was denied.

Colling v. Colling [1992], 1201-45577, (not reported)

Parties co-habited approximately four (4) years. Both previously married. Mr. Colling has two children, Mrs. Colling, none. Mrs. Colling employed at the time of entering the marriage and earned approximately $15,000.00 and secured new employment during the marriage, giving her an income of $18,358.85:

Spousal Maintenance

This marriage is categorized as a modern marriage. Even a modern marriage may justify a spousal support order, particularly for a limited time in appropriate circumstances. Such a situation has arisen when bridge maintenance is required by virtue of a spouse relocating for the purposes of the marriage, often with the requirement of giving up that spouse's employment entirely, or through transfer, losing career and promotion opportunities, etc. Quite often, a spouse will put aside training or education for the benefit of the marriage and when the marriage comes to an end it can be one of the priorities of spousal maintenance to provide for loss of or delayed opportunity. There is no evidence of any of these features before me in this application.

A marriage certificate is not a guarantee of spousal support.

There is nothing before me to indicate a condition of economic dependancy by Mrs. Colling on Mr. Colling. Mr. Colling had a home and utilized most of the proceeds of the sale of that home to furnish a new home for this family unit. His children are growing and his capacity to meet his obligations to the remaining family unit is strained.

Mrs. Colling has returned to reside with her parents and she has the capacity to attend to her own needs. Spousal maintenance at the termination of a modern marriage should be directed towards the re-establishment of both parties to positions of reasonable economic self sufficiency and I find from the facts before me that such has actually taken place. Mrs. Colling has not met the onus of establishing any entitlement to maintenance.

Crook v. Crook [1993], 115 N.S.R.(2d) 258

Parties married when the husband was 20, wife 17 and co-habited for approximately 25 years. Three children.

[28] 3. My assessment of the factual information available is that the Court is dealing with a traditional marriage plus. By that I mean that the parties have been married for over twenty-five years and that they entered the marriage with a view to the traditional mold of the wife remaining at home as the mother, wife and homemaker while the husband is the wage earner and provider of bread. Some time after the children arrived, it became clear for

> economic reasons that additional income was necessary for the family, and Mrs. Crook, in addition to filling in full measure the roles of a traditional wife, took on outside employment for economic reasons which added to her contribution to the marriage and did not materially diminish her fundamental traditional role. Mrs. Crook is clearly entitled to maintenance. Before addressing the difficult, if not impossible, task of providing a reasonable level of maintenance, it is appropriate to comment that in situations such as this where one is dealing with a long-term marriage of great commitment, it is not too early on an interim application to recognize that an economic disadvantage has occurred to Mrs. Crook arising from the breakdown of the marriage. Similarly, it is not likely practicable at present to provide a formula to permit at an early date economic self-sufficiency. If economic self-sufficiency is to have any relevance to the security, standard and quality of life Mrs. Crook would otherwise have enjoyed had the marriage continued. Maintenance will likely continue until the security element of spousal maintenance has been addressed and has been in place long enough to ensure that along with her best efforts long-term self-sufficiency will probably be achieved.

HEINEMANN v. HEINEMANN [1989], 20 R.F.L.(3d) 236

Seventeen (17) year marriage. Wife worked as R.N. for eight (8) years and part-time four (4) years and on transfer to Nova Scotia for the purposes of her husband's employment, obtained employment as a Secretary, earning $21,500.00 per annum, approximately $10,000.00 less than if she were to re-train and return to nursing. One child. The Court of Appeal in part, by evoking limitations on Appellate Review, did not require the wife to return to her former occupation and approved the trial Judge topping up her income by $1,500.00 per month, without any termination date. Husband's income $100,000.00 Court expressed the view that she was unlikely to achieve reasonable self-sufficiency.

Justice Hart J.A. in **Heinemann v. Heinemann at 20 R.F.L. (3d) at p.273**:

> If the wife is able to earn some income but as a result of a lengthy marriage is unable to earn enough to meet her needs for a reasonable standard of living then, in my opinion, the husband is responsible to supplement her income to the extent necessary to meet that standard.

The court of appeal acknowledged that another Judge may have differed and placed a time limit on the maintenance supplement but concluded that the trial Judge was

following **Messier v. Delage [1983], 2 S.C.R. 401**.

Bedgood v. Bedgood [1982], 52 N.S.R.(2d) 42

Wife age 57, grade 9 education, no job skills, devoted herself to raising five (5) children. Trial Judge awarded unequal division, permitting wife to retain large matrimonial home in need of repairs, valued at $95,000.00. Court of Appeal ordered sale of the home with reduced unequal division, namely $65,000.00 of sale proceeds to Mrs. Bedgood. Court of Appeal, in setting reduced maintenance stated at page 50:

> "Mrs. Bedgood will receive her own income provided the capital sum of $65,000.00 is properly invested."

At page 48 & 49:

> "She is entitled to be maintained at a reasonable standard having regard to his means and circumstances. In view of her age and background it is unlikely that she can be expected to earn her own living. The home while desirable is not essential to her maintenance and in fact is an undue burden on both parties".

Sproule v. Sproule [1986], 62 N.S.R.(2d) 131

Marriage of 23 years. Husband earned in excess of $100,000.00 per annum. Three children. Wife assisted her husband in his business interests and had only grade 7 education. Trial Judge awarded maintenance for $1,800.00 per month, limited to four years. Matthews, J.A. at 136:

> **[24]** With respect, I cannot agree. The wife here, now approximately 40 years of age, with a Grade VII education, not having been employed in the work-force for over 20 years cannot be compared with the much more fortunate circumstances of the wife in **Messier**. However, in **Messier** the majority of the Supreme Court of Canada upheld the court of appeal of Quebec which placed no termination date on the spousal maintenance. Here, it cannot be said with any degree of certainty, as suggested by the trial judge, that "with some appropriate training, the petitioner could, in all probability, rejoin the work-force and become virtually independent." That is,

to use the words of Mr. Justice Chouinard in **Messier** at p. 353 R.F.L. "hypothesizing as to the unknown and then unforeseeable future".

[25] As Chouinard, J., said in **Messier** at p. 350:

> "The conclusion that emerges from the decision in **Marcus v. Marcus** and the many cases cited by the parties is that each case is sui generis and should be decided in accordance with the factors mentioned."

[26] Or, as Turgeon, J.A., said in the Court of Appeal in **Messier** as quoted by Lamer, J., at p. 355 R.F.L.:

> "With respect, I cannot accept the principles stated by the trial judge, because I find they are too categorical. In this kind of situation, each case must be decided on its merits. Each divorce case is sui generis, and account must be taken of the circumstances peculiar to each case. Categorical rules should not be laid down, as the trial judge did."

[27] It is my opinion that the appropriate award here for periodic maintenance is the sum of $1,800.00 per month beginning on the 1st day of May, 1985, with no set termination date. However, as Chouinard, J., stated in Messier at p. 353 R.F.L.:

> "That does not mean that the obligation of support between ex-spouses should continue indefinitely when the marriage bond is dissolved, or that one spouse can continue to be a drag on the other indefinitely or acquire a lifetime pension as a result of the marriage, or to luxuriate in idleness at the expense of the other, to use the expression one finds in some discussions of the subject. It also does not mean that a divorced person cannot remarry, or that his new obligations or new advantage as the case may be will not be taken into consideration."

[28] Should the circumstances of the wife change, then the husband may apply for variation

Cameron v. Cameron [1995], 144 N.S.R.(2d) 124

Mrs. Cameron 44, with grade 10 education followed by two years high school in the commercial field and she held a Registered Dental Assistant designation until the year of

separation. She worked as a Registered Dental Assistant in a dentist's office two years prior to the marriage, followed by employment as her husband's receptionist and subsequently, added the duties of a Dental Assistant. Mrs. Cameron had no input into Dr. Cameron's dental education or the establishment of his dental practice. They co-habited for approximately nineteen and one half years. She worked full or part time in her husbands dental practice from 1974 to 1986 and then operated her own business, which led to employment as a marketing manager for a company. When her children entered Kings Edgehill, she started up her business again for approximately eighteen months and then became Director of Admissions for the school in 1992. Mrs. Cameron unilaterally decided not to continue her school employment because her salary was being reduced by approximately $8,000.00 to around $24,000.00 per annum. She entered a relationship with an R.C.M.P. officer with obligations of support to his own family. However, at the time of the hearing of the divorce, they had not cohabited for the prerequisite one year period that gives rise to obligations for support under the Family Maintenance Act.

The court stated p.137:

> **[78]** Mrs. Cameron must look to her own capacity, not only due to the priority of the children over the next years, but also Dr. Cameron has severe arthritis in his right hand. He has on two occasions broken bones in his right hand and he has been required to take medication for pain for some time. He has also developed tendinitis in his right elbow and his days of practicing dentistry are limited.
>
> **[79]** Mrs. Cameron should recognize her own capacities and abilities. She was only 42 at the time of separation and employed. She cannot look to Dr. Cameron for life long support.
>
> **[80]** It is going to be extremely difficult financially until the house is sold when each party should receive about $75,000 plus or minus representing their share of the equity. Mrs. Cameron will have to utilize this for income production for her needs and at some point in time her maintenance should be eliminated, perhaps as early as two years from now if she has secured employed [sic] or fails to make reasonable effort to achieve self-sufficiency. There may be other changes that warrant a variation sooner or later.

The appeal in **Cameron** was dismissed **[1996], 150 N.S.R.(2d) 156.**

Roberts v. Shotton [1997], 156 N.S.R.(2d) 47

Mrs. Roberts, 40 year old waitress, married 46 year old Mr. Shotton, Ph.D in Oceanography, who had accepted a position in Rome with the United Nations for three years. After twelve months cohabitation, marriage at an end. Mr. Shotton provided voluntary payment of $10,000.00 prior to return to Canada, plus an additional $1,850.00 assistance and she returned to her employment as a waitress. Mrs. Roberts received an interim maintenance Order of $330.00 per month for six months and Mr. Shotton complied with the order and paid for two additional months. Mr. Shotton brought all the assets into the marriage and the Trial Judge gave Mrs. Roberts one-third of the matrimonial assets, $100,000.00 plus $2,000.00 of his business assets, plus spousal support retroactive to the date of separation, of $900.00 per month for five years. Court of Appeal in granting the appeal reduced her MPA entitlement to $24,200.00, struck the spousal support order and stated out of an abundance of caution, gave her a final lump sum maintenance payment of $5,000.00.

Stated at p.63

> **[49]** In short, taking into account the duration of the marriage Mrs. Roberts' was not entitled to periodic support in the amount nor for the duration ordered by the trial judge.

Evidence

Mrs. Dorey indicated that they commenced dating in July 1981. She had finished grade 10 and Mr. Dorey had just graduated from high school. He was 17 and she was 22. She was then babysitting full time and Mr. Dorey went to university. Mrs. Dorey was living at his parents and they maintained separate rooms until they were engaged in 1983, when they shared a room openly. They remained in his parents home until December of 1987. They were married September 5, 1987 and separated in October 1995. Mrs. Dorey paid board as and when she could, to his parents and worked at the local golf club as a waitress

in the summer and at Kentucky Fried Chicken in the winter. Mr. Dorey worked during his summers, while at university and Mrs. Dorey never did make sufficient income to make any contribution whatsoever to Mr. Dorey's educational cost. At the time of separation, Mr. Dorey quite rightly assumed the balance outstanding on his student loans of approximately $19,000.00. They moved to Amherst. Mrs. Dorey became pregnant but unfortunately miscarried and after being there about three months, she returned to work at Kentucky Fried Chicken, did some babysitting and worked at a restaurant until she became pregnant again, but unfortunately had another miscarriage at about five months, after which she returned to the A.A. Restaurant as a cook/waitress, and remained basically employed until they adopted their daughter Holly, January 24, 1992. Mrs. Dorey stayed at home to take care of their daughter. However, when Holly was one year old, she was bored and apparently worked part time at the A.A. Restaurant in the evenings when Mr. Dorey took care of the child. He was permanently employed on a full time basis with the Department of Indian Affairs.

Mrs. Dorey acknowledged that she had an affair with a neighbor and subsequently, declined consideration of reconciliation. Mr. Dorey struggled with what he considered a fundamental breach of marital trust. If this evidence is advanced as misconduct or for whatever reason, it is given no weight. The court is statutorily directed to that result by virtue of s.15(5) of the *Divorce Act.*

After separation, she stayed with her sister for a period of time, then with her husbands' mother and finally moved to Greenwich. Mrs. Dorey worked for Hostess Foods, and the golf course in the summer of 1996 and in the fall, did upgrading so that in June of 1997, she attained grade 12. In the summer of 1997, she applied for work at the golf course, but was not successful and entered Kings Community College to take a business course in September of 1997, but only stayed until November. She has loans outstanding for this business course. It is conceivable they may be extinguished, should she enter bankruptcy, as she has no capacity to repay the student loans for her aborted attempt at business courses. In November 1997, she applied at Hostess, but did not have any

success. She had an interest in a care worker program with the VON and in September 1998, took the interview, but did not make the final cut and has since remained on the list for a home care worker program. She has made no effort for any employment.

Mrs. Dorey indicates that the care worker program will be available in September 1999 for fifteen weeks, and while I do not have precise particulars or absolute confirmation of her acceptance, it is clear that her target is to enter this field and it is reasonable for her to attempt to do so. She acknowledges that she did not assist her husband in acquiring his education. The Kings Tech Program that she attended for two months, appears to have cost about $5,000.00 and she indicated that she has not received any refund. She acknowledges that their daughter Holly is older and has adjusted. She acknowledges that her mother-in-law is apparently ready, willing and able to look after Holly and that quite probably, there would be no day care expenses, should she have employment or attend school.

She acknowledges that there has been no interference with her career pattern and that she did not give up any career or job opportunity, in order to enter into this marriage.

She acknowledges that she has no outstanding applications for work and that she did verbally agree that she would become self-supporting, essentially by the end of December 1998. She acknowledges that Mr. Dorey had summer employment throughout his university years with the Canada Employment Centre.

I conclude the verbal agreement was more a statement of hope and expectation, rather than intended as a binding contract.

Mr. Dorey confirmed that his starting salary, when they moved to Amherst, was $33,000.00 per annum and that when they separated, it was approximately $56,000.00 and he resides with a Mrs. Gay. My assessment of Mrs. Gay's position is that her income, at best, looks after her own needs, a reasonable contribution to their household and the

costs of her children. Mr. Dorey paid volunteer maintenance payments to Mrs. Dorey for herself and the child until the court order. He confirmed that his mother was willing to assist by providing essentially day care for Holly, as and when required. In addition to the child support, he gives Holly an allowance of $10.00 per week and maintains a separate set of clothing at his home for the child because of some dispute with respect to Mrs. Dorey providing adequate clothes for when the child visits with her father. I would suggest some care should be given to avoiding any major differential between the quality of clothes available to her during access and at home, and it would be a good idea to let her take some of whatever clothes she has in her fathers' residence home with her for her continued use.

We are dealing with a relationship of a short marriage of approximately eight years. While they had a personal relationship prior to marriage, I would not elevate it in these circumstances to cohabitation that should be considered in the determination of spousal support.

In any event, they fit the general designation of two young people who cohabit for less than ten years. Very clearly she acknowledges that she has not had any interference in her career path, arising from entering into this marriage. In fact, she has improved herself by going from grade 10 to grade 12 and she did enter into the aborted business course.

Mr. Dorey has supported her for over three years already, during which initially, their daughter was in pre-school; however, she has been in full time attendance at school for some time.

Mrs. Dorey can return to employment at the nature to which she had at the time of entering this marriage and to some extent, she ought to have done so by now. I note that she will, subject to possible bankruptcy, be responsible for the business course indebtedness. In any event, Mr. Dorey has no responsibility for it. Mr. Dorey has

medical/dental coverage available for his daughter through his employment. However, the court has been advised that it is not necessary. Such coverage, including optical is available to Holly due to her status. There appears to be no benefits that flow from Mr. Dorey being a non-status Indian.

It is unfortunate that the next available course will not be until September 1999. It will last fifteen weeks, taking it to the end of 1999. Presumably, Mrs. Dorey wishes to take the course in anticipation that it will provide her with more rewarding and probably remunative employment, then that which she had at the time of entering the marriage. Bearing in mind that Mr. Dorey has no responsibility for the business course, and although it seems stretching it a bit, I conclude it is reasonable in all the circumstance, for Mrs. Dorey to have the opportunity at the Home/care Giver's Course, after which spousal support should terminate.

At this juncture, I am strongly of the opinion, the limit of reasonable spousal support is reached by the directions given for spousal support. The spousal support provided by Mr. Dorey to date, plus the time limited spousal support and assistance directed, fully addresses the hardship and what minimal economic disadvantage Mrs. Dorey may have suffered. The time frame has permitted their daughter to reach full time school attendance and overall, I repeat Mrs. Dorey ought to have obtained employment by now and should do so while awaiting and determining whether to register, enter and complete the care worker program. Should she not do so, she has the clear capacity to return to her employment pre the entry into this marriage.

A marriage certificate is not a guarantee of spousal support.

A marriage certificate is not license to receive spousal support for life.

7. ISSUE (2)

Quantum of Spousal Support?

Spousal support will continue.

Mrs. Dorey has filed a statement of financial information, indicating that her needs amount to $1,478.00 per month; however, included in those needs, is payment of her own bank loans, post separation at the rate of $180.00 per month. She projects with the debt payments, a deficit of $176.00 per month, so that essentially, the household budget for herself and their daughter is balanced absent Mr. Dorey's responsibility for this indebtedness. An order at the rate of $650.00 per month, with the change in the tax treatment for child support, will result in very little income tax payable and should produce to the household a combined amount slightly higher than is now being received and will slightly exceed what she has advanced as the total needs of the household. This is without reflection on her budgetary items, which overall, are reasonable. Spousal support will be tax deductible to Mr. Dorey and shall be at the rate of $650.00 per month, commencing the 15th of January, 1998 and continuing the 15th day of each and every month thereafter, to and inclusive the 15th of December, 1999, when spousal support shall terminate. This is in addition to the $589.00 non taxable child support payments, which are payable on the last day of each month. In addition, on proof of her acceptance and registration in the Care Worker Course, commencing September 1999, Mr. Dorey shall, in accordance with the prerequisite scheduled payments, make a lump sum payment to cover the registration, tuition and pre-requisite incidentals, as and when required by the program. In the event that Mrs. Dorey does not get around to or fails to register or fails to complete the course, Mr. Dorey's obligation is only to provide this opportunity and it extends to the cost completion or to any point where the course is not pursued by Mrs. Dorey. In the event that she enters the course and fails to complete it, resulting in a refund or rebate, then such shall be returned to Mr. Dorey.

Mr. Dorey will have paid support for over four years, plus the lump sum opportunity for Mrs. Dorey and I conclude that such is a very reasonable level of spousal support in all the circumstances. If he had responsibility for the earlier business course, then quite

probably, the spousal support would have terminated at or about the conclusion of that course. I have resisted reducing spousal support for the period leading up to the commencement of this course, even though Mrs. Dorey ought to have by now, and should obtain some degree of remunerative employment. I have dealt with the reality that exists, including Mr. Dorey's increased income, bearing in mind that he has taken on some degree of additional responsibility.

9. Costs

Counsel are entitled to be heard on the issue of costs; however, there appears to me to have been a high degree of mixed success and my preliminary view is that each party should bear their own costs.

J.