

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: Gail Elizabeth Robertson

AND:

Gordon Bruce Woolley

BEFORE: WOOLLCOMBE J.

COUNSEL: S. Philbert, for the Applicant

N. Hussain, for the Respondent

HEARD: December 15, 2015

ENDORSEMENT

[1] On July 24, 2015, the parties were before me on a motion for interim spousal support. I made an order that Mr. Woolley pay spousal support of \$350.00 a month beginning August 1, 2015. This was to be mid-range support, based on respective incomes for him of \$73,904.00 and for her of \$30,000.00

[2] More than four months after my order was made, Mr. Woolley comes before me asking me to correct what he says was a calculation error in the amount of spousal support payable. I am advised that he did not make the spousal support payments as ordered in a timely manner and only made payments in compliance with my ruling shortly before this motion.

[3] My understanding of Mr. Woolley's argument is that I did not use the correct Divorce-Mate calculation. He says that had I done a proper calculation, I

would have concluded that spousal support ought to be \$49.00 a month. I understand his position to be that I could not have included in my calculation the s. 7 expenses that he has been paying, and that this resulted in me improperly reaching what he says is an inflated amount for spousal support.

[4] Ms. Robertson makes a number of submissions in response. First, she says that I made no error in my July endorsement and that it is clear that I found that she was entitled to spousal support. She says that given the divergent numbers and calculations that were before me, and the huge ranges, it is clear that I exercised my discretion to award an appropriate amount. Second, she says that Mr. Woolley did not make payments in accordance with my order and that he should be precluded from arguing his motion. Third, she says that I do not have jurisdiction to correct an error as this is not a typographical or mathematical error. Fourth, she says that when the s. 7 expenses are so high, they should not be included in the calculation of spousal support so as to reduce the spousal support to which Ms. Robertson is entitled.

[5] Ms. Robertson says that if I am inclined to accede to Mr. Woolley's request and to use his calculation, there are errors in it. First, she says that his sources of income are not properly broken down. Second, she says that in his calculation, he has her claiming the dependent credit. In fact, she says, he has agreed in his admissions that he claimed the dependent credit for 2014. However, he told me that he is in discussions with the Canada Revenue Agency and that their plan is for them to share the dependent credit going forward and to file amended 2014 tax returns.

[6] It was my conclusion in July 2015 that on an interim basis, Ms. Robertson was entitled to spousal support. I made this order knowing that Mr. Woolley was continuing to pay the very high hockey expenses for their two sons. I understand

that these amount to \$5,478.00 a year, and that these are agreed, at least on an interim basis, to be proper s. 7 expenses. It is appropriate for a spousal support calculation to reflect that Mr. Woolley is making s. 7 payments.

[7] In reaching the spousal support amount that that I did, I relied on the various Divorce-Mate calculations that were put before me. There were a number of them and they resulted in spousal support ranging from \$0 to \$731.00 a month.

[8] In light of Mr. Woolley's motion, I have reviewed and re-calculated the appropriate level of spousal support, bearing in mind all of the factors that I believe to be relevant. I am aware that what is before me is not an appeal of my initial order or a motion to vary. Rather, it is a request for a corrected calculation. It seems to be agreed by the parties that I have the jurisdiction to correct a calculation error if one has been made. The real issue is whether or not I made such an error.

[9] It became clear to me during the oral submissions that the parties continue to differ as to how to calculate the appropriate amount of spousal support and that by using different input numbers, they reach different results. I have done a further Divorce-Mate calculation with the information set out below. I have done this in order to reflect both my intention in July 2015 and what I understand now to be the correct figures:

- Mr. Woolley's income for 2014 was \$73,904.00
- Ms. Robertson's income for 2014 was \$30,000.00 (\$13,000.00 from self-employment and \$17,000.00 imputed).
- Mr. Woolley claimed the children's fitness credit of \$1,000.00 for Owen and \$725.00 for Brendan)
- Each parent claimed one child

- The dependant credit is to be shared between the parents and not claimed entirely by Mr. Woolley. Mr. Woolley appears to have agreed in his response to a request to admit that he did claim the credit in 2014. However, I have calculated it on a shared basis as I understand that this will be done on a corrected tax filing for 2014 and going forward.
- Child support is \$652.00 a month and is paid by Mr. Woolley
- Section 7 expenses are \$456.00 a month and are paid by Mr. Woolley

[10] This calculation results in a mid range spousal support of \$414.00 a month. I am sending to the parties a copy of this calculation with this endorsement.

[11] The parties indicated at the oral hearing that they wished to make comments on my Divorce Mate calculation. Although I indicated at the time that I was inclined to permit this, I have reflected on the wisdom of this decision and concluded that I am not disposed to engage with the parties in further discussions of the appropriate figure for interim spousal support. I find that it makes the most sense to just include my calculation with this endorsement when it is provided to the parties.

[12] As a result, I am not going to vary the order that I made in July 2015. The amount of spousal support that I ordered is only slightly lower than the calculation I would have reached had I had all of the information now provided to me.

[13] As this was an interim order, it should remain in effect as the parties try to negotiate the outstanding issues. Mr. Woolley's motion is dismissed.

[14] Should the parties be unable to resolve the issue of costs on this motion between them, Ms. Robertson may make submissions in writing of not more than two pages within two weeks of the release of this endorsement. Mr. Woolley may

respond with written submissions or not more than 2 pages one week later.
There will be no reply.



WOOLLCOMBE J.

Date: December 23, 2015

Calculation Input Annual \$

Gordon <i>Male, 51, Resident of ON</i>	
Income	
Employment income	73,904
Special Expenses (s.7)	
Extraordinary extracurricular expenses (Owen)	4,753
Extraordinary extracurricular expenses (Brendan)	725
Tax Credits	
Children's fitness amount (Owen)	1,000
Children's fitness amount (Brendan)	725

Gail *Female, 51, Resident of ON*

Income	
Self-employment income (net)	13,000
Adjustments to Income (CSG); s.19	
Income imputed for failure to provide info	17,000

Children	Age	Lives with	Table Amt	Claimed by
Brendan	16	Shared	Yes	Gail
Owen	12	Shared	Yes	Gordon

Youngest child finishes high school 9 years from the date of separation.

Dependant credit claimed by both parents.

Cautions/Overrides

▲ Children's fitness amount - The amount claimed exceeds the allowable credit based on the children specified in this calculation

Child Support Guidelines (CSG) Monthly \$

	Gordon	Gail
Annual Guidelines Income	73,904	30,000
CSG Table Amount	1,090	438
Child Support (Table)	652	0
Special Expenses (s.7)	456	0
Child Support (s.7 Payment)	<i>See Support Scenarios</i>	

Spousal Support Advisory Guidelines (SSAG) Monthly \$





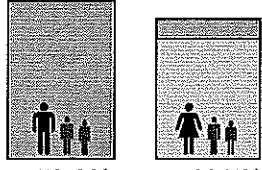
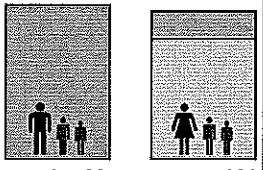
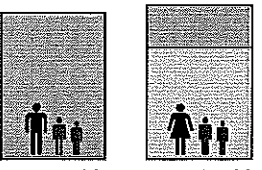
Length of marriage/cohabitation: 14 years
Recipient's age at separation: 47 years

"With Child Support" Formula

Low	Mid	High
93	414	732

The formula results in a range for spousal support of \$93 to \$732 per month for an indefinite (unspecified) duration, subject to variation and possibly review, with a minimum duration of 7 years and a maximum duration of 14 years from the date of separation.

SSAG Considerations: The results of the SSAG formula must be interpreted with regard to: Entitlement; Location within the Ranges; Restructuring; Ceilings and Floors; and Exceptions.

Support Scenarios	Monthly \$	A. SSAG Low		B. SSAG Mid		C. SSAG High	
		Gordon	Gail	Gordon	Gail	Gordon	Gail
Gross Income		6,219	2,560	6,219	2,560	6,219	2,560
Taxes and Deductions		(1,402)	(196)	(1,289)	(274)	(1,190)	(366)
Benefits and Credits		76	368	82	299	89	233
Special Expenses (s.7)		(456)	0	(456)	0	(456)	0
Spousal Support		(93)	93	(414)	414	(732)	732
Child Support (Table)		(652)	652	(652)	652	(652)	652
Child Support (s.7 Payment)		131	(131)	147	(147)	163	(163)
Net Disposable Income (NDI)		3,823	3,346	3,637	3,504	3,441	3,648
 adult in household  child in household  shared/summer child in household  Payor's NDI/Contribution							
Percent of NDI		53.3%	46.7%	50.9%	49.1%	48.5%	51.5%
CSG Special Expenses Apportioning %		69.8%	30.2%	66.1%	33.9%	62.5%	37.5%

COURT FILE NO.: FS-15-82955-00
DATE: 2015 12 23

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Gail Elizabeth Robertson

Applicant

- and -

Gordon Bruce Woolley

Respondent

COUNSEL:

S. Philbert, for the Applicant

N. Hussain, for the Respondent

ENDORSEMENT

WOOLLCOMBE J.

Released: December 23, 2015