

The Case of Disputed Child Support

Mock Family Law Scenario: Thomas v. Andrews

Teacher Resource

Curriculum Links: Understanding Canadian Law (CLU3E), Grade 11, Workplace Preparation

Legal Focus: Family Law

Estimated Time: 1 period

Overall Expectations:

- Describe how the law applies to family matters.
- Communicate legal knowledge effectively.

Specific Expectations:

- Explain the key areas of family law (e.g., property division upon separation or death, rights of common-law spouses, same-sex spousal rights, children's rights, custody and support, wills and estates).
- Communicate legal knowledge effectively.

Description of the Scenario

Christopher Andrews and Stella Thomas were married for 5 years. They had a daughter together named Sylvia. Their marriage ended in divorce when Sylvia was 4 years old.

As soon as his divorce from Stella was finalized, Christopher remarried a woman named Maureen. They have been married for 14 years and have two children together, Ben who is 14 and Sam who is 12. Christopher is a teacher who works in Toronto and earns \$55,000 per year. Maureen works at a grocery store as a cashier and earns \$32,000 per year.

Sylvia, Christopher's daughter from his first marriage, is 18 years old now and about to start university in September. She is enrolled as a full time student in the film studies program at Ryerson University.

When Christopher and his first wife, Stella, broke up, Sylvia was 4 years old. At first, Christopher would see Sylvia once in a while. It was always difficult for the two of them to talk, however, and Sylvia would often say that she didn't want to see him. In fact, when she turned 8, she refused to

have anything more to do with her dad. She sent him a letter, telling him that she never wanted to see or hear from him again.

Christopher and Stella had an oral agreement that he would pay child support of \$100 per month for Sylvia. He was upset about paying child support to a child who did not love him and did not want to see him. After Sylvia wrote him the letter, Christopher was very hurt and decided not to have anything more to do with his daughter and stopped calling her.

After the marriage ended, Stella worked but it was difficult to earn enough money to support Sylvia and herself. She suffered from depression which made it difficult to keep a job for a long time. Today, she is earning \$38,000 as a teacher's assistant.

Stella is bringing a formal application for child support. She wants Christopher to continue to pay child support while Sylvia is in university. Christopher thinks that now that Sylvia is 18, he should not have to pay any more child support. Also, Christopher believes that Sylvia ended their relationship when she was 8 years old (as indicated in the letter she wrote to him at that time), and she can no longer be considered a "child of the marriage".

The Final Judgment

This is a mock scenario. Students will use the information provided to determine a fair judgment.

Teaching & Learning Strategies

1. Begin with a discussion of the effects of divorce on children, and parents' responsibility towards children. Ask students to read *The Big Question* and answer it in the space provided. Discuss as a class.
2. Using a teacher- or student-centred reading strategy, read *The Facts of the Scenario*. Clarify any points and check for understanding.
3. Discuss the two questions set out in *The Issues*, as well as the following questions: Does it matter that Sylvia was only 8 years old when she wrote the letter? Does the letter free Christopher from responsibility? Is Christopher still responsible for Sylvia if she is 18 and leaving home to go to school?
4. Review the *The Relevant Law* and point out the areas that specifically apply to this case.
5. Ask students to read *Each Person's Perspective* to understand the situation of each of the parties involved. Discuss if students' opinions about *The Issues* changed as a result of hearing additional information about each party.
6. Read *Taking a Closer Look* so students can get a better understanding of how child custody is worked out by the courts. Be sure to address how and when the Child Support Guidelines are applied.

7. Ask students to answer the questions in *You Be the Judge*. Discuss as a class.
8. In groups of four, have students take on the role of legal counsel and brainstorm the arguments they would make on behalf of each side. If you would prefer to do a full-length family law mock trial at this point in the course, please refer to the OJEN website (www.ojen.ca) for full mock trial packages and the teacher resource, *Making the Case: Mock Hearing Toolkit*.

Assessment & Evaluation

- Class discussions
- *You Be the Judge* worksheet
- Mini mock trial

Resources

Ontario Justice Education Network
www.ojen.ca

- Family Law Mock Trial Case Scenarios
- Family Law Mock Trial Role Preparation Package
- Family Law Mock Trial Justice Sector Volunteer Package
- *Making the Case: Mock Hearing Toolkit*

E-Laws (Family Law Act)

www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90f03_e.htm

Department of Justice (Child Support Guidelines)

www.justice.gc.ca/eng/pi/sup-pen/index.html

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Student Handout

The Big Question

When parents divorce, they continue to have an obligation towards any children from the marriage. For how long, or under what circumstances, should a parent be obliged to continue to pay child support?

The Facts of the Scenario

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As soon as his divorce from Stella was finalized, Christopher remarried a woman named Maureen. They have been married for 14 years and have two children together, Ben who is 14 and Sam who is 12. Christopher is a teacher who works in Toronto and earns \$55,000 per year. Maureen works at a grocery store as a cashier and earns \$32,000 per year.

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them to talk, however, and Sylvia would often say that she didn't want to see him. In fact, when she turned 8, she refused to have anything more to do with her dad. She sent him a letter, telling him that she never wanted to see or hear from him again.

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The Issues

- Is Christopher obligated to continue to pay child support for Sylvia while she attends university?
- Should Sylvia's letter to her dad, written when she was 8 years old, have any effect on their legal parent-child relationship?

The Relevant Law

Family Law Act

31(1) Every parent has an obligation to provide support for his or her unmarried child who is a minor or is enrolled in a full time program of education, to the extent that the parent is capable of doing so.

(2) The obligation under subsection (1) does not extend to a child who is sixteen years of age or older and has withdrawn from parental control.

Child Support Guidelines

Amount of Child Support

3(1) Unless otherwise provided under these Guidelines, the amount of a child support order for children under the age of majority is

- (a) the amount set out in the applicable table, according to the number of children under the age of majority to whom the order relates and the income of the spouse against whom the order is sought; and
- (b) the amount, if any, determined under section 7.

Child the age of majority or over

3(2) Unless otherwise provided under these Guidelines, where a child to whom a child support order relates is the age of majority or over, the amount of the child support order is

- (a) the amount determined by applying these Guidelines as if the child were under the age of majority; or
- (b) if the court considers that approach to be inappropriate, the amount that it considers appropriate, having regard to the condition, means, needs and other circumstances of the child and the financial ability of each spouse to contribute to the support of the child.

Special and Extraordinary Expenses

7(1) In a child support order the court may, on either spouse's request, provide for an amount to cover all or any portion of the following expenses, which expenses may be estimated, taking into account the necessity of the expense in relation to the child's best interests and the reasonableness of the expense in relation to the means of the spouses and those of the child and to the family's spending pattern prior to the separation:

[...]

- (e) expenses for post-secondary education;

Each Person's Perspective

Before any decisions are made, the situation of all people involved has to be considered. In this case, the people involved are:

- the custodial parent - the mother (Stella)
- the non-custodial parent - the father (Christopher)
- the child of marriage - their daughter (Sylvia)

What follows is a brief summary of the feelings and financial situation of each of these people.

Stella Thomas, Applicant

- Stella is 42 years old. She is the custodial parent.
- Sylvia is her daughter from her first marriage to Christopher. She never remarried and Sylvia is her only child.
- The marriage ended in divorce 14 years ago because her husband was not happy. She still loved him.
- She has struggled to raise her daughter and provide for her. At times she would get very depressed and feel alone. She tried to hide these feelings from her daughter.
- She has not been able to have another relationship since her marriage ended in 1994.
- She is very proud of her daughter and her accomplishments and is excited to see her going to university to study film. It is something that her daughter has always loved and she is very supportive of her.
- She is bringing an application for child support because she feels her daughter needs financial support in order to finish her schooling and she cannot provide it on her own.
- For the last 14 years she has received \$100 a month in child support, an amount they had both agreed upon at the time of the divorce. If she had insisted that they go through the courts, she would have been entitled to more money according to the Child Support Guidelines set out by the government.

Christopher Andrews, Respondent

- Christopher is 44 years old. He is the non-custodial parent.
- Sylvia is his daughter from his first marriage to Stella.
- The marriage ended in divorce 14 years ago.
- There was an oral agreement with Stella to pay \$100 a month for Sylvia's child support, which he has paid for the past 14 years.
- He has two children from his second marriage and doesn't want to pay support for a child that ended their relationship when she was 8 years old.
- He opposes Stella's application for continued child support while Sylvia is in university. He believes that Sylvia stopped being a "child of marriage" for child support purposes when she turned 8 and wrote that letter ending their relationship. He also thinks that it is ridiculous to go to university for a degree

in film studies. Sylvia will not be able to support herself or get a job with this kind of degree.

- He knows little about Sylvia or her life or her financial needs. He heard that Sylvia won some kind of scholarship and that she works as a waitress. He is not convinced that she needs his money.
- He wouldn't mind getting to know his daughter but feels that it has to be on his terms. She needs to accept him for who he is and accept that he has moved on with his life.

Sylvia Andrews, Daughter

- Sylvia is 18 years old and lives in Toronto with her mom, Stella.
- She is still angry at her father and feels abandoned by him. She doesn't think he made a lot of effort to be her father. For example, she would phone him and he would not return her calls and he would cancel visits that they had planned together.
- She has strong memories of her parents' divorce even though she was only 4 years old when it happened. She remembers hearing her mom crying herself to sleep at night. This went on for years. Her mom has never been the same since the divorce and she blames her dad for this.
- She has never lived on her own. When she goes to Ryerson, she will be living in residence. This will be her first time on her own.
- Despite everything, she has done very well in school. She graduated at the top of her class and won a scholarship for \$2,000 toward her tuition fees.
- She works as a waitress at a restaurant. Her wages are not good but she makes a lot of money in tips. She has been working for a year. Last year, her income was \$10,000, including tips.
- Her tuition at Ryerson University is \$5,278. Textbooks and supplies will cost between \$1000.00 and \$1500.00. She wants to live in residence with her best friend, Maria, who will also be studying film. Residence will cost \$3,986 per year. The mandatory meal plan is \$2,500 per year. She estimates her personal expenses to be \$2,200 per year. She also has to join the medical plan at Ryerson which will cost \$190 for the year.
- Her total estimated expenses for the school year are about \$15,654.

Taking a Closer Look

Child support can be agreed upon between the divorcing parents or set by the courts. If parents go to court to get a child support order, the court must use the Guidelines to set the amount (in almost all cases). Parents who reach an out-of-court agreement about support do not have to apply the guidelines if they do not want to. Although parents can make their own agreements without applying the Child Support Guidelines, if the court is later asked to consider the amount of support, the judge can change the amount to reflect the chart Guidelines.

The amounts set out in the chart on the following page apply to a child under the age of 18. If support is to be paid for a child who is *18 years of age or older*, the judge has a choice: depending on the circumstances of the case, he or she can order a parent to pay the amount indicated by the chart or choose another amount which is more suitable. If the judge decides to choose an amount different from that indicated on the chart, he or she must consider factors like:

- the financial ability of each parent;
- the income of the parent receiving support;
- the needs and any financial resources of the child.

While the amount indicated on the chart is usually a starting point from which special expenses (like the cost of post secondary education) are then added, the court will also make exceptions, and reduce payments, if it determines that it would cause excessive hardship to a parent.

The chart lists the monthly payments set out by the federal government for the province of Ontario in 2009. To view the most current version of the chart (or to check out the charts for each of the different provinces and territories in Canada), go to the Department of Justice website: <http://www.justice.gc.ca/eng/pi/sup-pen/grl/pdftab.html>

Child Support Guidelines

Annual Income	One Child
\$10,000	\$28
\$20,000	\$172
\$30,000	\$270
\$40,000	\$367
\$50,000	\$462
\$60,000	\$557
\$70,000	\$647
\$80,000	\$719
\$90,000	\$798
\$100,000	\$877

You Be the Judge

1. Do you think that the letter written by Sylvia when she was 8 years old ended her relationship with her father? Explain in detail.

2. Now that Sylvia will be leaving home and living in residence, should her parents still be responsible for her expenses? Couldn't she still live at home and take public transit? What do you think?

3. Do you think Christopher should pay all or part of Sylvia's university expenses?

4. Christopher does not approve of the film studies program that Sylvia is enrolled in. If he is going to be paying child support, should he have a say in the courses his daughter takes? Why or why not?

5. Should Christopher continue to pay child support for his daughter? Why or why not?

6. According to the chart, what is the statutory amount that Christopher should pay each month? _____ per month
7. If Christopher were to continue paying, how much would be a fair payment in your mind? _____ per month

8. What factors did you consider in coming up with that amount?
