

**The Superior Court Expands Who is Considered a Child of the Marriage Under the
Divorce Act With Respect to Child Support**

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Whether an adult child who has completed a post-secondary degree and contemplating a second post-secondary degree will be considered a child of the marriage under the *Divorce Act* and eligible for child support is one of the most highly contested issues with respect to child support in family law.

This issue essentially dictates when a parent's obligation to pay child support ends.

Traditionally, the case law has dictated that a payor parent's obligation ends when an adult child completes their first post-secondary degree.

Traditionally, the case law has dictated that a payor spouse is able to avoid the obligation to pay for an adult child's support where the payor and the child do not have a relationship or the adult child has abandoned parental control. It is important to note that this is not usually the case where the parent is responsible for the strained relationship.

Similarly, a payor spouse has been able to avoid payment of support for adult children where the adult child has under-performed with respect to their academics.

These principles have recently been called into question by the endorsement of Madam Justice Goodman on August 7, 2009, in the *Madison v. Madison* case.

Madison v. Madison concerned an application by the wife for further child support for her adult daughter who had completed her Bachelor of Arts degree at the University of Toronto and sought further support to pursue a legal education at a University of Ottawa J.D. program costing \$46,526US.

The respondent, Dr. Kenneth Madison, was a wealthy dentist. He owned two dental practices. He had taken a second wife and adopted her two children from a previous relationship. He had failed to provide adequate financial disclosure for several years prior to the motion.

Justice Goodman considered that the adult child could not get a loan to pay for tuition herself and that she needed a guarantor and that the applicant would not qualify to be a guarantor.

Justice Goodman found that the adult child was a child of the marriage as defined by the *Divorce Act*, with respect to child support and ordered that if the adult child was prepared to fund one third of the program, the father should pay for the remaining two thirds. Justice Goodman specified that this order was based on the requirement for the respondent to pay for the section 7 extra-ordinary expenses with respect to the support of the child. She indicated that she would also consider further submissions and make an order with respect to the respondent providing payments with respect to the table amount of support. The respondent was ordered to transfer \$49,526US to the applicant and to act as the guarantor on the adult child's application for a bank loan of \$10,000 per year.

This decision is important because it provides that child support will continue for adult children who seek more than one post-secondary degree even where the child is estranged from the payor spouse. This decision is also significant as it suggests that it is possible for an adult child of the marriage to receive section 7 expenses and the table amount.