# NOVA SCOTIA COURT OF APPEAL
## Citation: *Dillon v. Dillon*, 2005 NSCA 166

**Date:** 20051222
**Docket:** CA 247105
**Registry:** Halifax

**Between:**

David Edmond Dillon

Appellant

v.

Kelly Anne Elizabeth Dillon

Respondent

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**Judge:**                 The Honourable Justice Nancy Bateman

**Appeal Heard:**          November 22, 2005

**Subject:**    **Child support - shared custody, retroactive child support, spousal support.**

**Summary:**    Father appealed orders for spousal and child support on divorce.

**Issue:**      Did the judge err in including RRSP withdrawals as income; in ordering retroactive child support; in using a set-off to calculate child support where custody shared?

**Result:**     Appeal allowed in part.

The propriety of including RRSP withdrawals as a part of income for support is fact dependent.  Here, the father was not drawing from accumulated RRSPs but deregistered his contributions as made.  In that event, to include, as income, both the contributions and the withdrawal is a double counting and is not a fair representation of income.

The father's 2003 income required recalculation to remove the amount

of the RRSP withdrawal and, for 2004, to give effect to his evidence about his income. In the face of that evidence it was not appropriate to simply impute the 2003 income to the 2004 year.

Although the father had paid amounts directly to the son for his necessities, he kept poor records of those amounts and paid no monies directly to the mother who was providing a home for the child. The mother had made a timely application for child support, which, through circumstances beyond her control, was not heard before trial. The judge did not err in ordering support retroactive to the date of the application.

In ordering ongoing child support in the set-off of Table amounts the judge did not ignore the other factors in s. 9 of the Guidelines (**Contino v. Leonelli-Contino** [2005] S.C.J. No. 65 (Q.L.)(S.C.C.))

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