

NOVA SCOTIA COURT OF APPEAL

Citation: *Boudreau v. Marchand*, 2012 NSCA 79

Date: 20120724

Docket: CA 353848

Registry: Halifax

Between:

Adrian Boudreau

Appellant

v.

Betty-Anne Marchand

Respondent

Judge: The Honourable Justice M. Jill Hamilton

Appeal Heard: June 6, 2012

Subject: Amount of child support payable by spouse with access in excess of 40 percent of the time; s. 9 of the Child Maintenance Guidelines implemented pursuant to the **Maintenance and Custody Act**, R.S.N.S. 1989, c. 160 (“**Act**”).

Summary: The parties have one child. The judge made an order containing a detailed and complex schedule for the father to have access with his daughter. This was necessary because of the parents’ work schedules. The result of the order is that the child is with her father in excess of 40 percent of the time. Nowhere in her reasons did the judge indicate that the result of her decision was that the father would have his daughter with him more than 40 percent of the time. Nor did she mention the factors set out in s. 9 of the Guidelines dealing with the situation where a parent has a child with him 40 percent of the time. She ordered him to pay the full table amount of monthly child support.

Issue: Did the judge make a reversible error when she failed to consider the factors set out in s. 9 of the Child Maintenance Guidelines?

Result:

Appeal allowed. The judge made an error of law when she failed to consider the factors set out in s. 9 of the **Act** in setting the ongoing monthly child support. The wording of s. 9 makes it mandatory that these factors be considered; **Contino v. Leonelli-Contino**, 2005 SCC 63. The issue of child support was referred back to the trial judge.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 5 pages.