

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *MacKenzie v. MacKenzie*, 2003 NSCA120

**Date:** 20031114

**Docket:** CA 192521

**Registry:** Halifax

**Between:**

Aaron Keith MacKenzie

Appellant

v.

Janice Leigh MacKenzie

Respondent

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**Judge:** Hamilton, J.A.

**Appeal Heard:** October 7, 2003

**Subject:** *Family law, Failure to produce financial information, Deemed income, Retroactive child support*

**Summary:** The material forwarded by the mother with her application for an uncontested divorce included a separation agreement negotiated with the help of counsel and some dated financial information concerning herself and the father. The court indicated additional financial information concerning the father was required to proceed with the divorce on an uncontested basis since child support was involved. The father failed to provide the additional financial information. The mother's evidence at trial was that the father's income was higher than that shown in the financial information that had been filed. The trial judge deemed the father to have an income higher than that shown in his filed financial information and higher than that set out in the separation agreement. Accordingly he ordered a higher amount of child support retroactively.

**Issue:** Did the trial judge err in deeming the father to have an income higher

than that stated in the separation agreement and higher than that shown in his filed financial information? Did the trial judge err in ordering payment of increased child support retroactively?

**Result:** The trial judge did not err in deeming the father to have an income higher than that stated in the separation agreement and shown on his filed financial information and increasing the amount of child support accordingly. Considering the principles set out in *Conrad v. Rafuse*, the trial judge did err in making the increased child support retroactive to a time that preceded the separation agreement and the court raising the need for additional financial information from him and ordering that he produce it.

**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 6 pages.**