

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Stone v. Crossman*, 2015 NSSC 132

Date: 2015-04-28

Docket: *SFSNMCA* No. 078358

Registry: Sydney

Between:

Tracey Stone

Applicant

v.

Kenneth Crossman

Respondent

Judge: The Honourable Justice Lee Anne MacLeod-Archer

Heard: March 30 and 31, 2015, in Sydney, Nova Scotia

Written Release: April 28, 2015

Counsel: Jessie Denny for the Applicant
Theresa O'Leary for the Respondent

By the Court:

FACTS

- [1] The parties were involved in a common law relationship for 8 years, and have one dependent child, Emily Stone born March *, 2006. Emily is now 9 years of age and attends school in Sydney. She is in grade three.
- [2] The parties separated in October, 2011. For several months thereafter, Emily lived with her mother and exercised limited access with her father. When Mr. Crossman secured new accommodations, he says he started taking Emily for access more often.
- [3] Ms. Stone filed an Application for Custody and child support on December 1, 2011. The parties reached an agreement at conciliation in April, 2012 and a Consent Order was issued which provides that they will share joint custody of Emily, with primary care and residence at her mother's home. Mr. Crossman is entitled to reasonable access at reasonable times on reasonable notice, including overnights. The Interim Order allows Ms. Stone to make final decisions on major decisions affecting Emily, if the parties are unable to agree.
- [4] The Order also includes a requirement for Mr. Crossman to pay child support, as well as a vehicle loan and a furniture loan. He has made all of those payments as required.
- [5] On July 25, 2013 Ms. Stone filed a Variation Application seeking specified access, child support (adjusted retroactive and prospective) and section 7 expenses. Mr. Crossman filed a Response on November 7, 2013 which he amended on November 21, 2014 to include a claim for shared custody, with final decision making authority.
- [6] The parties agree there is a change of circumstances sufficient to justify a variation of the 2012 Order.

ISSUES

- [7] The issues in this matter are:
- shared v. primary care

- access
- final decision making authority
- child support:
 - (a) prospective
 - (b) section 7 expenses

SHARED V. JOINT PARENTING

[8] The parties agree on joint custody, but disagree whether Emily should remain in her mother's primary care, or whether she should be in their shared care. If shared care is not ordered, the issue then is what access is appropriate.

The Legislation:

[9] The *Maintenance and Custody Act* R.S.N.S. 1989, c. 160 applies in this case. The *Act* directs that in any decision effecting custody or access of a child, the primary consideration is the best interests of the child. Section 18(6) of the *Act* sets out specific factors to consider when determining the best interests of the child. In reviewing that list, I note the following:

- (a) Emily was diagnosed with Celiac Disease shortly after the parties separated. Her mother also suffers from celiac disease and is familiar with her dietary restrictions. Since learning of her diagnosis, Mr. Crossman has made himself aware of Emily's dietary restrictions. Though Mr. Crossman acknowledges in the past he allowed Emily a fast food treat which contained gluten and made her sick, he is now committed to a 100% gluten free diet. I find both are able to meet her needs in this respect.
- (b) Emily was seen by her school guidance counsellor for behavioural issues in 2014. Mr. Crossman initiated those sessions. Ms. Stone says she tried to arrange counseling for Emily through Victim Services in 2012, but Mr. Crossman would not agree. However, she had primary care of Emily after April 2012 and final decision making authority. I reject her assertion that Emily wasn't seen in private counselling due to Mr. Crossman's refusal to sign a consent. Instead, her evidence suggests she did not see a need for such counselling.

- (c) There is no evidence to suggest that Emily has any social or educational needs different from any other child her age.
- (d) Both parties say they support Emily's relationship with the other parent. However, the access Ms. Stone proposes is actually less than what Mr. Crossman currently exercises. Ms. Stone acknowledged that she feels time spent in dance class is more beneficial for Emily than time spent with her father. She has enrolled Emily in dance classes two evenings per week and on Saturdays, swimming one evening per week, and an after school program which runs until 5:30 pm. In the summer, she enrolled Emily in the YMCA day camp and demanded that Mr. Crossman drop Emily there every morning, even if he wasn't working that day.
- (e) Mr. Crossman supports Emily being involved in extra-curricular activities. However, he says her current schedule undermines his time with his daughter, and shows an unwillingness to support Emily's relationship with him. To some extent, this is true.
- (f) Ms. Stone says she was Emily's primary caregiver during the relationship. Mr. Crossman says they shared parenting responsibilities. Both parties worked outside the home. Ms. Stone testified that she worked on Mr. Crossman's days off. He cared for Emily while she was working and *vice versa*.
- (g) Both acknowledge that they each continue to take Emily to medical appointments - Ms. Stone takes Emily to doctor's appointments, both take her to the dentist and Mr. Crossman takes her to the eye doctor. I find they have both been involved in Emily's day to day care, and both are capable of providing for Emily's needs in future.
- (h) In terms of future planning, Ms. Stone proposes that Emily reside in her primary care, with specified access with Mr. Crossman. Mr. Crossman proposes a shared parenting arrangement. They both acknowledge the need for more stability in Emily's schedule, her need for a specialized diet, and the benefit to Emily of extra-curricular activities. However, Mr. Crossman does not support Emily being involved in activities to the exclusion of his access.
- (i) There was no evidence on the child's cultural linguistic, religious and spiritual upbringing so this is a neutral factor.

- (j) There was no admissible evidence about the child's views and preferences.
- (k) The evidence clearly shows that Emily has a close relationship with both parents, and enjoys spending time with them. She gets along well with Mr. Crossman's new partner and her son. She is very close to her mother and her maternal grandfather.
- (l) Both parties acknowledged that communication is a major problem for them. At one point Mr. Crossman described there being no communication, yet he also said they have "heated" exchanges. The evidence also shows they have been able to arrange for Emily's care when school was cancelled. Ms. Stone acknowledged that they communicate as needed, but testified that Mr. Crossman is verbally abusive on the phone at times. They each described the other's approach as "my way or the highway", meaning they each feel the other isn't reasonable or flexible.
- (m) The tone of the email exchange on Emily's enrollment in the YMCA day camp program highlights the difficulties in their communication. Text messages introduced in evidence show the parties were able to make arrangements for Emily to go to her father's on a storm day when Ms. Stone had to work, but this level of cooperation is not the norm.
- (n) There has been some confusion between the parties on what constitutes reasonable notice for access. Ms. Stone says she only learns of Mr. Crossman's plan to take Emily on a daily basis. She also says that on many occasions, Mr. Crossman has been late picking up Emily, and this has impacts her own plans. Mr. Crossman says Ms. Stone is fully aware of his schedule and his days off, though he acknowledges he has not taken Emily every day he is off work. He also confirmed that he calls Ms. Stone during the day to confirm a time he'll retrieve Emily, rather than establish a set time in advance.
- (o) Both parties acknowledge their communications have been "heated" at times, and it is clear that Emily has been exposed to these conversations. There is need for more certainty, so that both parents can plan their lives, avoid confrontation and more importantly, keep Emily out of the fray.
- (p) Ms. Stone claims the separation was preceded by verbal and physical abuse on the part of Mr. Crossman, which he denies. He says the violence in their relationship was perpetrated by Ms. Stone. Charges were laid against both at various times. A peace bond was issued prohibiting contact between the parties.

- (q) Ms. Stone says that she is intimidated by Mr. Crossman and is reluctant to confront him on issues. This is not borne out by the evidence. The YMCA e-mail shows she is capable of presenting a position and not backing down if Mr. Crossman disagrees. There are other instances where Ms. Stone was unable to resolve access matters with Mr. Crossman to her satisfaction, so she called the police. I am satisfied she is not afraid to confront Mr. Crossman, nor express her views.
- (r) In considering the appropriateness of an arrangement that requires cooperation, I note the parties have demonstrated limited cooperation to date. They are effectively sharing Emily's care at present, and they have made alternate arrangements for her care when necessary. Despite this, Ms. Stone feels any order requiring them to cooperate in future is doomed to fail. She says she has tried to discuss matters with Mr. Crossman, but he responds in a hostile manner. While Mr. Crossman agrees there has been discord, he expresses hope the parties can communicate better in future. This seems unlikely.

[10] Section 18(8) of the *Maintenance and Custody Act* provides:

In making an order concerning care and custody or access and visiting privileges in relation to a child, the court shall give effect to the principle that a child should have as much contact with each parent as is consistent with the best interests of the child, the determination of which, for greater certainty, includes a consideration of the impact of any family violence, abuse or intimidation as set out in clause (6)(j).

Position of the Parties:

[11] Mr. Crossman says under the current arrangement, the parties are sharing Emily's care equally. He wishes to continue that arrangement under an order that provides a specific shared parenting schedule. He also wishes to be responsible for final decision making in the event of disagreement on major issues affecting the child.

[12] Ms. Stone says the order allowing reasonable access at reasonable times, on reasonable notice has not worked. She seeks joint custody with primary care and a specified access schedule, as well as final decision making authority. The access she proposes is every second weekend and one evening through the week.

[13] Ms. Stone argues that the best interests of the child take priority over the maximum contact principal. She says it is not in Emily's best interest to have maximum contact with her father by way of shared parenting, where the residences are 25 minutes apart and there is ongoing conflict between the parents. She says she has made decisions exercising final authority only after consultation with Mr. Crossman in the past, and will continue to do so.

[14] Mr. Crossman says his proposed parenting schedule fulfils the maximum contact principal and is in the best interests of Emily. He says Emily is familiar with the schedule and is comfortable with it. He says less transfers back and forth between homes is best for Emily.

[15] The evidence of both parties about the extent of their parental roles after separation, the nature of the conflict between them, and their inability to cooperate and communicate was consistent in many ways. Both parties are consistent in saying that communication is difficult. Neither indicated they have a plan for how to improve communications.

[16] Mr. Crossman says that access has not been irregular or uncertain. He has a set schedule, working the same seven days out of every two weeks, and that the only uncertainty is the time he finishes work on a daily basis. He says that Ms. Stone knows his schedule, which has not changed since separation. He presented a calendar which he says demonstrates that he has had care of Emily for close to 50% of the time since he started keeping track in December, 2014.

[17] Contrary to this, Ms. Stone testified that Mr. Crossman does not follow a set schedule. She says he provides notice on a day to day basis of whether and when he plans to pick up Emily. She also says that he has been late on occasion, leaving her to scramble to arrange child care or change her plans to accommodate him.

[18] On cross-examination, Ms. Stone acknowledged in recent months, Mr. Crossman has consistently taken Emily for access on his days off. She also acknowledged that Mr. Crossman follows a set schedule, working the same 7 of every 14 days. She conceded that now the only real uncertainty is with respect to the time he will pick up Emily on his days off.

[19] Mr. Crossman testified that he is in control of his own schedule, and can arrange to be home at a particular time after work. He says it is a matter of leaving earlier in the day to start his deliveries. He made no changes to his

schedule to provide more certainty before this matter came for trial, which is unfortunate. This uncertainty has caused major conflict between the parties.

The Caselaw:

- [20] In arguing against shared custody, Ms. Stone relies upon the decision of Justice B.A. MacDonald in *MAB v. LAB* 2013 NSSC 89 and Justice D.W. Wilson in *Wolodka v. Wolodka* (2013) NSSC 207. In the latter case, the mother sought primary care and residence of the children, with access to the father. The father sought a cooperative co-parenting arrangement with a week about arrangement. The father also opposed the mother having final decision making authority, because he said in the past she had made decisions without consulting him that were not in the best interests of the children. Justice Wilson concluded that it was in the children's best interest for the parents to have joint custody with primary care to the mother, not shared parenting as requested by the father. In coming to that conclusion, Wilson, J. considered the age of the children, their need for emotional and physical stability, the high level of conflict between the parents, the distance between their homes and the mother's willingness to place the children's needs ahead of her own. Justice Wilson was satisfied the mother would inform, consult and discuss child related issues with the father despite allegations that the father intimidated her.
- [21] While the conflict in that case was more extreme than the conflict described here, this case involves significant conflict to which Emily has been exposed. The police have been called on a number of occasions to enforce the order, in circumstances which were not urgent. On one such occasion, the police were called and returned Emily to Ms. Stone's home at 11 p.m. at night. There have been criminal charges involving both parties, and there was a Peace Bond in effect at one time. The parties have poor communication and some of their telephone discussions have been described as heated. Emily has been in the home within hearing when some of those exchanges occurred.

Findings:

[22] The problems encountered since the 2012 order are not one-sided or insignificant. Both parties have created friction, largely because they interpreted the order to suit their own interests.

[23] I find Ms. Stone's use of final decision making authority has been unilateral, and without meaningful consultation. She has limited Mr. Crossman's access at times, in particular on Christmas Day when she took Emily to an aunt's home for dinner, rather than send her for access with her father. She refused to let him take Emily to Moncton on another occasion. She candidly admits she feels Emily's interests are better served in dance class than spending time with her father.

[24] Likewise, Mr. Crossman could have organized his schedule to provide more certainty with access, and did not. He delayed picking Emily up on Christmas day after being notified he could do so, at the same time complaining she arrived too late to open gifts with his family, who had already left. He does not stay on top of Emily's homework and projects. He agreed to care for Emily while Ms. Stone travelled to the U.K., but changed his mind two days before she left, requiring her to make last minute arrangements. His attitude fed fuel to the fire of Ms. Stone's resistance to him playing a shared role in Emily's life.

Decision:

[25] Courts have indicated reluctance to place a child in the middle of such conflict through shared parenting (see *Wolodka* (supra), *Hammond v. Nelson* 2012 NSSC 27 and *Bryden v. Bryden* 2005 NSSF 9). I am also reluctant to do so, even though the parents have effectively shared Emily's care since December, 2014. It is clear they both love Emily and want what is best for her. Unfortunately, their conflict and inability to communicate has made shared parenting extremely difficult.

[26] I have considered the evidence, the legislation, case law, and counsel's submissions. I order joint custody of the child Emily, with primary care and residence being with Ms. Stone. I conclude this is in Emily's best interests, because of the poor communication and the level of conflict between the parties. Ms. Stone may see this as an endorsement of her interpretation of the

2012 Order. It is not. Changes and specific terms are necessary to reduce the conflict.

[27] For purposes of access, Mr. Crossman's schedule is defined as a long week in which he works Monday, Tuesday, Friday and Saturday, followed by a short week when he works Sunday, Wednesday and Thursday. Week one shall be his long week, followed by week two, being his short week. The parenting time Mr. Crossman shall enjoy with Emily will be as follows:

- (a) In week one he shall have care of Emily from Tuesday after school until Thursday at 7:00 p.m. In week two, he will have Emily in his care from Thursday after school until Sunday at 5:00 p.m.
- (b) Mr. Crossman will be entitled to block access during the summer. The summer holidays are defined as the months of July and August. Mr. Crossman will have Emily in his care on his short weeks starting the first short week after grading day and continuing every second week until the end of August. The regular schedule will resume the last Sunday in August. For purposes of block summer access, short weeks will run from noon on Sunday until 7:00 p.m. on Saturday.
- (c) In addition to the regular access schedule, Mr. Crossman will have access on special occasions to include Father's Day from noon until 5:00 p.m.; three hours on Emily's birthday and his birthday from 3:00 p.m. until 6:00 p.m.; Easter Sunday from 2:00 p.m. to 7:00 p.m.; Thanksgiving Sunday from noon until 4:00 p.m.; Halloween from 5:00 p.m. until 6:00 p.m.; and grading day from noon until 4:00 p.m.
- (d) Ms. Stone shall have care of Emily on Mother's Day from noon until 5:00 p.m. and on Ms. Stone's birthday from 3:00 p.m. until 6:00 p.m. irrespective of the regular schedule. In the event Ms. Stone is not scheduled to have the child in her care on Emily's birthday, Ms. Stone shall have Emily in her care that day for three hours from 3:00 p.m. until 6:00 p.m..
- (e) The parent having care of the child overnight on a weekday shall be responsible to deliver Emily to school the next morning and shall ensure the child's homework is completed. The parent having care of Emily on days when her dance classes are scheduled shall ensure she attends and shall be responsible to take her there.

- (f) Mr. Crossman shall be responsible to retrieve and drop off Emily for access.
- (g) In place of the regular schedule, the parties shall alternate March break, with Ms. Stone having Emily from the first Saturday of the break at noon through the following Sunday of the March break (8 days) at 5:00 p.m. in odd numbered years, and Mr. Crossman having Emily for March Break in even numbered years.
- (h) In place of the regular schedule, the parties shall alternate Christmas break, with Mr. Crossman having Emily in his care in odd numbered years from December 21st until Christmas eve (December 24th) at 4:00 p.m.; December 25th from noon until 7:00 p.m.; and again December 27th from noon until noon December 30th. Ms. Stone shall have Emily at Christmas under the same schedule in even numbered years.
- (i) The parties may arrange alternative and/or additional access by agreement in writing. Neither parent shall unreasonably deny the other parent's reasonable request for access on other special occasions, to include family events, provided advance notice of 48 hours is provided and make-up time is arranged. If a request is denied, the parent refusing such access shall provide written reasons.
- (j) If Mr. Crossman is late retrieving Emily on more than three occasions for more than 30 minutes each occasion, his access shall be suspended pending review of the access provisions by the Court. He shall provide notice to Ms. Stone in the event there will be an unavoidable delay picking up Emily. He may arrange for a third party to retrieve or drop off Emily.
- (k) In the event Emily is too ill to travel to attend or return from access, the parent having her in their care shall provide written notice to the other and deliver Emily as soon as she is well enough to travel. Make-up time shall be arranged within 14 days.
- (l) Mr. Crossman's access shall include phone, Skype or FaceTime with the child each evening at 7:00 p.m. on days when she is not in his care. In the event Ms. Stone or the child has scheduled plans which make such contact at that time impossible, Ms. Stone will advise Mr. Crossman at least 24 hours in advance and provide an alternative time for contact. The same access shall be available to Ms. Stone during summer block access.

- (m) Final decision making in relation to Emily's health, education and extra-curricular activities will be made after the parties each fully consult with the other regarding the decisions to be made. Meaningful consultation shall include discussions with the child's teacher and school representatives, her physician, dentist, coaches and instructors where applicable. If after meaningful consultation they cannot agree, then a mediator shall be retained to assist the parties in making such decision. The parties shall share the cost of the mediator.
- (n) Emily will not be enrolled in any new dance classes or extra-curricular activities without Mr. Crossman's consent.
- (o) There will be ancillary conditions attached to the parenting order. These conditions will include:
- Neither party will speak in a disparaging or negative manner about the other party or allow others to do so in the presence of the child. They shall communicate civilly through e-mail or text, and retain copies of all such communications for court purposes if necessary. No adult matters (including access and decision making under this order) shall be discussed with, in front of or within hearing of the child.
 - Each parent will be entitled to make emergency medical decisions for Emily while in their care. The parent making such decisions will notify the other parent immediately as to the nature of the emergency, the treatment undertaken and any further treatment proposed. Once the initial emergency is past, decision making in relation to Emily's health shall revert to Ms. Stone.
 - Both parents will be entitled to attend school meetings, concerts and dance recitals as well as Emily's other educational, social, and sports activities. They shall each be responsible to make themselves aware of such dates. Both parents will be named as a contact through the school and for extra-curricular activities. The parent in whose care Emily spent the night prior, shall respond to calls from school if Emily is ill, or if school is cancelled, unless the parties agree otherwise.

- Both parents will have the right to communicate with and obtain information from all third parties and professionals involved in Emily's life, including the right to obtain information and documentation from her doctors, teachers and schools, coaches, and instructors.
- Each party shall ensure that Emily's medical needs are met during their care, including an appropriate diet for celiac disease.
- Ms. Stone shall be entitled to claim any fitness tax credits or other tax credits related to Emily.
- Each parent shall be responsible to arrange child care for Emily in the event they are required to work, or have other commitments during the time they would otherwise have care of her.
- Both parties shall be entitled to remove Emily from the province of the country for access provided they give the other parent a written itinerary and contact number at least two weeks in advance. In the event one parent wishes to apply for Emily's passport to travel outside of Canada, the other shall sign the necessary forms and any necessary travel authorizations.

CHILD SUPPORT:

Prospective child support:

[28] Mr. Crossman earns \$51,864.00 per annum. He testified that irrespective of the outcome of the parenting decision, he is prepared to pay support for his daughter. I have declined to order shared care of Emily so an analysis under section 9 of the *Guidelines* is unnecessary. The table amount of child support payable in Nova Scotia for Mr. Crossman's annual income is \$436.00 per month. I order payment of that amount commencing February 1, 2015 and continuing monthly, until further order of the court.

Section 7 Expenses:

[29] Ms. Stone seeks a contribution to Emily's special expenses including child care during the school year, and during the summer at the YMCA day camp. She also seeks a contribution to the child's dance expenses and swimming costs.

[30] Mr. Crossman has contributed to these expenses in the past without a court order. He objected to paying YMCA day camp expenses, because he felt he should be able to take Emily on his days off. In doing so, he could not only enjoy time with her, but reduce the expense. Ms. Stone claims that his offer to care for Emily on his days off in 2014 came too late, and as a result she insisted that Emily be dropped off daily at the YMCA, even when Mr. Crossman was not working. She concedes that Emily would not have lost her place in the program had she stayed with her father on those days.

[31] The definition of special and extraordinary expenses is found in the *Child Maintenance Guidelines*. It states:

Special or extraordinary expenses

7. (1) In a child support order the court may, on either parent'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 parents and those of the child and to the family's spending pattern prior to the separation:

- (a) child care expenses incurred as a result of the custodial parent's employment, illness, disability or education or training for employment;
- (b) that portion of the medical and dental insurance premiums attributable to the child;
- (c) health-related expenses that exceed insurance reimbursement by at least \$100 annually, including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy and prescription drugs, hearing aids, glasses and contact lenses;
- (d) extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child's particular needs;
- (e) expenses for post-secondary education; and
- (f) extraordinary expenses for extracurricular activities.

Definition of "extraordinary expenses"

(1.1) For the purposes of paragraphs (1)(d) and (f), the term "extraordinary expenses" means

- (a) expenses that exceed those that the parent requesting an amount for the extraordinary expenses can reasonably cover, taking into account that parent's income and the amount that the parent would receive under the applicable table or, where the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate; or

(b) where paragraph (a) is not applicable, expenses that the court considers are extraordinary taking into account

- (i) the amount of the expense in relation to the income of the parent requesting the amount, including the amount that the parent would receive under the applicable table or, where the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate,
- (ii) the nature and number of the educational programs and extracurricular activities,
- (iii) any special needs and talents of the child or children,
- (iv) the overall cost of the programs and activities, and
- (v) any other similar factor that the court considers relevant.

Sharing of expense

(2) The guiding principle in determining the amount of an expense referred to in subsection (1) is that the expense is shared by the parents in proportion to their respective incomes after deducting from the expense, the contribution, if any, from the child.

Subsidies, tax deductions, etc.

(3) Subject to subsection (4), in determining the amount of an expense referred to in subsection (1), the court must take into account any subsidies, benefits or income tax deductions or credits relating to the expense, and any eligibility to claim a subsidy, benefit or income tax deduction or credit relating to the expense.

(4) In determining the amount of an expense referred to in subsection (1), the court shall not take into account any universal child care benefit or any eligibility to claim that benefit.

[32] Justice Jollimore in the decision of *Bocaneala v. Bocaneala* 2014 NSSC 450 considered a claim for similar expenses under the federal *Guidelines*. For all intents and purposes, the wording of the provincial *Guidelines* is the same. She determined that some expenses fall within the definition, while others do not. She stated:

Section 7: contribution to special or extraordinary expenses

22 Section 7 of the *Federal Child Support Guidelines* empowers me to order a former spouse to contribute to certain enumerated expenses. The particular expenses are itemized in subsection 7(1). According to subsection 7(1), the amount of a claimed expense may be estimated.

23 Before I can order that Ms. Loshi contribute, I must be satisfied that the cost is necessary in relation to each boy's best interests and reasonable in relation to the parents' means, the boy's means and the family's pre-separation spending pattern. According to Justice Roscoe (with whom Justices Saunders and Oland concurred), at paragraph 27 in *L.K.S. v. D.M.C.T.*, 2008 NSCA 61, it's "preferable to deal first with subsection 7(1) to determine whether the expenses are necessary in relation to the child's best interests and reasonable in relation to the means of the parents before dealing with the definition of extraordinary expenses in subsection 7(1A)." (Leave to appeal this decision to the Supreme Court of Canada was denied at *D.M.C.T. v. L.K.S.*, 2009 CanLII 1998 (SCC).) In that decision, the Court of Appeal was dealing with Nova Scotia's equivalent to the *Federal Child Support Guidelines*. Their language and analytic framework parallels the federal *Guidelines*, so I adopt the approach outlined by Justice Roscoe.

24 Of the six categories of expense listed in section 7, two are categories of expenses which must be "extraordinary" in order to be the subject of an order for contribution. These two categories are expenses for secondary school education (clause 7(1)(d)) and expenses for extra-curricular activities (clause 7(1)(e)). So, if I consider these costs to be necessary and reasonable pursuant to subsection 7(1), I must then determine they are also extraordinary before I can order that Ms. Loshi share in their cost.

[33] Using the same analysis, I find the child care expenses incurred during the school year by Ms. Stone for employment purposes are reasonable and necessary. The day camp expenses for her weeks during the summer when Emily is in her care are likewise reasonable and necessary.

[34] However, I do not find that after school program expenses or day camp expenses during times when Mr. Crossman is available to exercise access with Emily are reasonable nor necessary. He says he is prepared to care for her on his access days, which includes time after school during the school year. He will be required to do so.

[35] Nor do I find a family pass at the YMCA for Emily's swimming is an extraordinary expense which is not otherwise covered by the table amount of child support payable by Mr. Crossman. Likewise, the enrollment fees for dance classes are not an extraordinary expense.

[36] However, I do find the dance costumes to be an extraordinary expense. Both parents support her in this activity and agree it benefits her development. Emily is said to enjoy dance very much. By extension, in order to participate, she must have dance costumes. I find they are a necessary and reasonable expense which are not covered by the table amount. There will be a maximum amount of \$500.00 annually towards which Mr. Crossman must make a pro-rated contribution. This requirement is also limited to ongoing classes for dance styles in which Emily is currently enrolled, unless the parties otherwise agree in writing.

[37] The order will therefore contain a clause requiring the parties to share in Emily's net child care expenses for the school year and every second week during the summer, pro-rated according to their income levels. No calculations were provided to show the net amount Ms. Stone pays for child care. If the parties are unable to agree on the figure, they may make further submissions with the appropriate tax calculations within thirty days, and the court will determine the figure.

[38] Ms. Stone's 2014 income for purposes of the *Guidelines* was \$32,571.00; Mr. Crossman's was \$51,864.00. He will pay 62% and she will pay 38% of the approved section 7 expenses.

[39] Mr. Crossman will be required to maintain his family medical and dental coverage through his employment for so long as it is available. He will ensure that Emily's health and dental expenses are claimed through that coverage. Any uninsured expenses exceeding \$100.00 annually for Emily's health or dental requirements will be paid *pro rata* by the parties. Mr. Crossman shall enquire of the plan whether it will allow Ms. Stone to file claims and receive reimbursement of expenses directly. If the administrator will not allow this, he must ensure that all submissions are made within 14 days of receipt of an invoice from Ms. Stone, and that he reimburses her within 14 days of receipt. Thereafter, when and if the uninsured amounts exceed \$100.00 per year, he shall pay his pro-rated share within a further 14 days.

[40] Counsel for Ms. Stone shall prepare the Order.

MacLeod-Archer, J.