

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Legere v. Cole*, 2015 NSSC 148

Date: 2015-05-15

Docket: 1201-062437 SFHD No.057125

Registry: Halifax

Between:

Phillip Legere

Applicant

v.

Jenny Cole

Respondent

Judge: The Honourable Justice Moira Legere Sers

Heard: January 26, 2015, April 20 & 21, 2015, in Halifax, Nova Scotia

Written Release: May 13th, 2015

Counsel: Bernard Thibault for the Applicant
Michèle Poirier for the Respondent

By the Court:

[1] On December 13, 2013, Mr. Legere applied to vary his parenting schedule to a sole custody order in his favour.

[2] The Applicant indicated he was motivated to bring this application due to a serious change in his child's behavior.

[3] His testimony as to the child's behaviour was supported by collateral witnesses.

[4] On February 4, 2014, as amended on June 23, 2014, Ms. Cole responded, opposing his application and seeking retroactive and prospective child support adjusted effective January 2013 together with a contribution to section seven expenses.

[5] Before the hearing commenced, the Applicant amended his request for a sole custody order seeking instead a shared parenting arrangement.

[6] In the history of this legal relationship child support has never been adjudicated.

History

[7] The Applicant and Respondent began dating in 2004 when the Respondent mother was 17 years old. She became pregnant and they moved in together and had this child when she was 18 years of age.

[8] The parents lived together off and on.

[9] They married May 6, 2005 and divorced on July 30, 2008. The child, Ethan is 9 years old.

Subsequent Legal history

[10] A consent order dated June 13, 2008 was incorporated into the existing corollary relief judgement dated 31 December 2008.

[11] The parties were granted joint custody of Ethan (date of birth - August 10, 2005).

[12] The parenting schedule was a two week rotation with the child residing with the Applicant father Thursday to Sunday evening and the second week in his father's care Wednesday pick up from day care to Friday morning. This falls within 35-36 % time sharing arrangement.

[13] This schedule started May 12, 2008 when Ethan was 2 years and 8 months old. The child is now 9 years old.

Child Support

[14] The order is silent regarding specified child support. The order acknowledged that reasonable arrangements were made for the support of the child.

[15] At the time of the original order the mother was in receipt of social assistance.

[16] The parents agreed between themselves that the Applicant would pay \$150 towards a lease agreement for the mother's residence. He continued to contribute until sometime in 2011 when he learned the mother was employed.

[17] The parties also agreed between themselves that they would share the cost of extra-curricular and child care expenses. These included hockey, lacrosse, and baseball, violin, skating and swimming.

Consent Variation

[18] A variation consent order dated December 31, 2008 dealt with Christmas, Easter, holidays and special days.

Third Consent Order –June 25, 2014

[19] A further consent variation order outlined a drop off time and summer vacation. Mobility issues were also addressed.

Primary Parent

[20] There is not, in any of these orders, a distinction between the roles each parent played. There is no designation of a primary parent.

Express Common Intent

[21] In each agreement and order, the parents agreed they would make reasonable efforts to accommodate reasonable requests for changes. They incorporated flexibility and willingness to agree to extra parenting time.

[22] The parents have never been able to agree to integrating extra parenting time in a court order.

Employment

[23] The mother is currently employed and works from 9 a.m. to 4:30 p.m. in winter and 8:30 a.m. to 4:00 p.m. in the summer.

[24] The father works from 7:30 to 3:30.

[25] The child's school is close to the mother's home. The father lives less than a half hour from her home.

[26] On his parenting time the father drives Ethan to his mother's home. She takes him to school on her way to work.

Custody/Parenting

[27] Initially, the Applicant sought a custody report. None was provided.

[28] Between the start of the application and the hearing the Applicant amended his application removing the request for sole custody and replacing it with a request for a shared parenting order.

The Child

[29] The child is generally described by his father as very bright and athletic. He plays hockey, baseball and lacrosse.

[30] He is described by his mother as kind, affectionate and very active, taking part in all of his activities including sports, with great interest and enthusiasm.

[31] The mother testified that Ethan's coaches and teachers report good things about his attitude and energy.

[32] The child played on the rep team for both baseball and hockey. This increases the cost for these activities. The child has attended tournaments outside HRM and the Province. This involves extra expenses.

[33] The mother reports no concerns about the father's parenting.

[34] The application originated out of concerns the father has relating to the child's relationship with his mother. The child's behavior was observed by family and at school to change considerably over the preceding year.

[35] At the commencement of this application, the father was concerned about the mother's discipline practices. He described in detail what he perceived as a deterioration in the child's mental well-being.

[36] The father described that his formerly happy child began to exhibit to him signs of fear and a deterioration in his happiness and well-being.

[37] As a result of the child's comments at school, the mother's home was investigated by Child Protection.

[38] I have no information concerning the results of child protection involvement and assume there is not an open file with Child Protection.

[39] The child was presenting as unwilling and afraid to return to his mother's home. He also described her behavior as yelling and screaming. She has been heard to call him names.

[40] The father speaks of historic violence in their relationship as a couple; of a past history of aggression and violence perpetrated by the mother against the father.

[41] He described historical violence including one incident where the mother slammed his head into the side of his car and another where the mother kicked him in the stomach. She was charged with assault and a peace bond issued.

[42] However, before the current hearing date the father modified his request for relief from sole custody to shared custody.

[43] He acknowledged he observed a notable improvement in the child's behavior in the intervening time. He attributes this to the mother changing her behavior resulting in a happier and more settled child.

[44] The mother admits that their child reported being sad during 2012 and 2013.

[45] The evidence before me confirms that during this period there was considerable conflict between the mother and her biological mother which ignited and compounded old conflicts between the mother and the father.

[46] During this time, the father continued to bring the child to the maternal grandmother's home where the child was exposed to the conflict between the mother, the grandmother and her partner.

[47] The mother blames the grandmother. She advises when she restricted Ethan's contact with her mother and her partner the child behaved better.

[48] She believes the level of conflict is lower in recent months

Discipline

[49] The Applicant described an escalation of conflict with the mother when he exercised his parenting time.

[50] He describes the difficulties he had planning a trip in August 2013 to take Ethan to Toronto to a Blue Jays game.

[51] During the course of the days immediately preceding the intended trip, the mother continually called his home and threatened Ethan with the loss of this trip if his father and he did not comply with her wishes.

[52] Much of the father's description of the mother's behavior can best be summarized as manipulative and angry behavior. While this was present, the child was squarely in the middle of extended family disputes. This behavior began to seriously erode the child's well-being.

[53] The applicant testified that in the past he witnessed the mother slapping, kicking and pushing Ethan.

[54] He is very clear that he sees no current physical abuse. However, he believes the mother threatens Ethan causing him to be anxious and fearful.

[55] Ethan began to tell his father he wanted to run away. He began to cry when his father returned him to his mother's home. His father received phone calls from his mother while in the father's home. If Ethan refused to speak with his mother he advised he would be punished.

[56] The frequency of the mother's calls into the father's home began to be excessive. The calls began to impact on the peacefulness of the child while in the father's home.

[57] The Applicant testified that the Respondent continued to call his home to threaten Ethan that when he returned he would be in trouble.

[58] The father also described an incident at the rink where the mother grabbed hold of Ethan and while holding him close to herself began to scream at his father. He described Ethan as crying hysterically.

[59] In the Spring of 2013, the maternal grandparents and maternal aunt and uncle witnessed the mother striking Ethan in the mouth. The grandmother removed Ethan from the site of the incident.

[60] As a result, the mother removed the child's possessions from the grandmother's home and severely restricted her contact with him.

[61] Thereafter, the grandmother was unable to spend time with Ethan during the mother's parenting time.

Maternal Grandmother

[62] The father submitted two affidavits from the maternal grandmother in which she states her concern for her daughters parenting skills.

[63] The grandmother was concerned when Ethan became sad. She is concerned that her contact depends on how well she and her daughter get along.

[64] The grandmother's testimony supports the father's testimony that the mother began screaming early on in Ethan's life as a means of discipline. She advises that the mother yells and screams at her.

Historical Violence

[65] The mother grew up in a family in which there was significant family violence. The mother's youth was disturbed by violence.

[66] Child Protection intervened. Significant interventions took place in her life.

[67] At seven years old, the mother and her siblings were removed from the family home and placed in foster care. The mother remained there until 11 years old, returned to her mother's care for a ten month period and left permanently.

[68] Between the ages of 14 and 17 the mother had little contact with her biological mother. Aside from her foster mother, the mother spent vacation and holiday time with her grandparents.

[69] One of her foster mother's testified on her behalf.

[70] The mother lived with her from ages 12 to 14. She had a good relationship with the foster mother and has renewed that relationship recently.

[71] The maternal grandmother acknowledges that her former family life was dysfunctional.

[72] The grandmother downplayed her role in the problem although she admitted the children were at high risk when their father discovered their whereabouts. She admitted they all played a part in the dysfunction.

[73] I did not hear the grandmother acknowledge on her behalf or on behalf of her precious husband, principal responsibility for the problems and the effects on the children's lives. There was some attempt to suggest the Respondent mother played some role in this dysfunctional family history .

[74] The grandmother confirmed the father's testimony regarding the deterioration in the child's behavior over the 2012 and 2013 year. She testified that the mother's disciplinary practices were impairing the child's well-being.

[75] This history explains, in large part, why the relationship between the maternal grandmother, her partner and the mother is problematic.

[76] The grandmother acknowledges that their relationship between the mother and the maternal grandmother's partner is not a positive one. She confirmed that the child, while in her care, may have overheard her partner criticize the mother's parenting skills.

[77] Each witness has different recollections of the problem years. I did not have access to the child protection file to understand the nature and extent of the dysfunction.

[78] The mother is hostile to any involvement or advice from her biological mother on parenting issues and is not open to taking direction from her mother when her own childhood experience was so difficult.

[79] The mother admits but minimizes the incident described by the grandmother when she slapped her child on the mouth .

[80] Other than this incident the mother advises she does not use corporal punishment.

The Father–Son Relationship

[81] The father has a home in Eastern Passage where he lives with his fiancé. They have recently had a child together. The father describes his life with Ethan as very active and happy.

[82] The father describes his historic involvement with his son. The evidence confirms his extensive involvement in his school, his extracurricular activities, with his father's partner and their new baby in Eastern Passage.

[83] It is clear that his son is an integral part of his life. His schedule is wrapped around Ethan's activities and his growth and development.

Shared Parenting

[84] The mother is not in favour of a shared parenting arrangement because the father lives outside the school district, is unable to drive Ethan to school on his weekdays and get himself to work on time and occasionally has not driven him to his scheduled activities.

[85] The current arrangement has been working well. The father drops his son off at this mother's before school. She lives close to the school and drops his at school on her way to work.

[86] There is no evidence his residence (less than ½ hour away from the Mother) has had any detrimental effect on Ethan or that he has suffered from a lack of activity.

The Maternal Grandmother

[87] The relationship between the mother and the maternal grandmother is strained and stressful for both of them.

[88] When they are in conflict with one another the child suffers.

[89] The child is aware of the conflict while in his mother and grandmother's home. As a result, his contact with his grandmother becomes restricted.

[90] His father continued to take him to his maternal grandmother's home and this causes conflict between the father and mother. This makes his time in the father's home more uncertain.

Grandmother – Child Connection

[91] Historically, there were times when the Respondent relied heavily on her mother to babysit the child, particularly when the mother returned to school.

[92] Due in part to the mother's need to rely on her mother's assistance, the child has developed a positive attachment with his maternal grandmother.

[93] The father also lived with the grandmother for a short period of time after his separation from the mother.

[94] The father has continued to foster a relationship with the maternal grandmother in spite of the bad relations between the mother and grandmother. This has fuelled the conflict.

[95] When the relationship was rocky, the mother reduced the amount of time the grandmother could spend with her grandson.

The Father and Mother Relationship

[96] Historically the parents appeared to work matters out while maintaining a close to shared parenting arrangement without the need for court intervention.

Changes

[97] There have been significant changes in the child's life and surrounding family.

[98] His father has re-partnered, has a new baby; his mother went back to school and eventually to work.

[99] Ethan was less than three years old when the original parenting plan was put in place and was firmly established in both homes. This child is now 9 years old.

[100] He was significantly associated with his maternal grandmother despite the historical problems her family experienced in her earlier life.

[101] In 2012 and 2013, as the parental and extended family conflict grew, the child's anxiety increased as did the threat of being alienated from one or the other.

[102] The extended family discord seemed to spill into the parental relationship in part due to the change in the child's behavior.

[103] The child became sad, angry and anxious; fearful of returning to his mother's home, fearful of enjoying himself at his father's and grandmother and her partner's home, exposed to and in the middle of the extended family conflict.

[104] He was significantly associated with his maternal grandmother despite the historical problems she had earlier in her life.

[105] There has now been considerable improvement in the child's well-being.

[106] The Applicant's counsel indicated the original concerns were no longer evident and they were no longer making allegations of emotional abuse.

[107] The Applicant believes the mother was sufficiently concerned by the application and that she took steps to address his concerns.

The Mother's Role

[108] The mother has provided residential and financial security despite significant obstacles.

[109] The corollary relief judgement noted that the Court was satisfied that the parties had made reasonable arrangements for the financial support of the child.

[110] The mother testified she made many sacrifices including her employment and lifestyle to support her son.

[111] At the time of the original order, the mother's income was social assistance. While there was no child support base amount, the father paid half of the many extracurricular activities for the child.

[112] The father has been significantly involved in the child's day to day life and has contributed equally to maintain his many extracurricular activities which enhances this child's emotional, physical and social life.

[113] Given the parent's youth when this child was born and despite their own learning and maturation curve and their historical extended family problems, the child has flourished and developed.

Current Circumstances

[114] The period of heightened anxiety has diminished.

[115] The best explanation for the reduction in the child's anxiety is that all parties focused on what the conflict was doing to him.

[116] The mother in particular realized (although did not admit) that this was a wakeup call respecting how she was addressing the child's anxiety and her discipline and treatment of her child as he expressed a wish to maintain contact with his father and grandmother.

[117] Her method of responding to her own mother's involvement and the father's continued association with her mother was a large part of the problem. The child bore the brunt of the adult difficulties as he became involved in the disputes.

[118] The other part was the fact that the child's association with the father and the grandmother was threatened as the conflict grew.

[119] He was exposed to a heightened degree of visible and audible conflict and inappropriate anger.

[120] He was torn between those he loved; those adults who were supposed to be caring for him. He was being asked implicitly to take sides and he was squarely in the middle of their conflict, a conflict in which they all participated.

[121] The father and extended family want to put the blame on the mother yet each, in their own way, participated in the conflict.

[122] The mother has a responsibility to regulate her behavior. During the period between 2012 and 2013 she failed to do this.

[123] The father has a responsibility to recognize the maternal grandmother's historic effect on the mother and the fact that the child's contact with the grandparents, while important, must be regulated so that he is not exposed to negative commentary against the child's mother.

[124] Whatever has happened, they all are regulating their conduct better and thus managing the child's anxiety better.

Counselling

[125] The parents did not agree on providing professional counselling for their son. The mother approached the father for his consent and he initially refused to provide consent.

[126] More recently he acknowledged his son's need to participate in counselling. He denied he opposed counselling.

[127] In this instance, the parents individually and collectively have the right to engage a counsellor for their son from time to time and in particular should his anxiety increase.

[128] The father advises his employment has a program to assist with this.

[129] They shall first consult one another by providing the names of two counsellors who qualify under the employment program and they shall select from those names one person to assist their child.

[130] Should one of the parents refuse to participate in selecting the counsellor or making the arrangements, the other may do so without the necessity of obtaining the consent of the other.

[131] The counsellor shall be given the names, addresses and phone numbers of both parents.

Resolution

[132] I have no school records, no objective third party evidence and no evidence regarding any observations from child protection.

[133] I know that the conflict and pressure that the child experienced escalated in 2012 and 2103 when there was contact between the parents and grandmother while the child was in their home.

[134] The issue of abuse is not before me as I have been told the father is not alleging abuse. He has seen a positive change in the child's mental status.

[135] Should this arise again it is in the best interests of the child that this situation be reviewed to determine whether more significant changes ought to be made.

[136] There is now a considerable difference in the age and stage of development of this child. He is verbal, more mature, better able to tolerate larger blocks of time between parents.

[137] He is not yet able to participate in modulating or diverting the hostility he experiences between his parents and his grandmother's household.

[138] In the best of circumstances, the parents and extended parents and new partners working together can enhance the child's development. This is not happening in this child's life.

[139] To address the child's best interests and to avoid the necessity of unnecessary further litigation, the court has to ask whether the child's crises has ended. Will this improvement in his well-being continue past the scrutiny of the court?

[140] Having resolved the issue of the child's anxiety, the court is left to determine whether there are material changes and I have found that there are.

[141] The next step is to determine how to adjust for these changes within the parenting plan to preserve what he has and improve, if possible, the efficacy of the plan.

[142] I do not have evidence that a 50/50 shared parenting arrangement as suggested is necessarily in the best interests of this child. He has extensive contact with his mother, his father and extended family. He profits from this.

[143] However, the parties have been unable to agree on extra parenting or adjustments in the manner that was specifically identified in previous orders. There was some indication that the mother recently allowed extra time but there is no evidence this is a continuing pattern between the parents.

[144] The current arrangement, although designed to be flexible, has become somewhat rigid.

[145] The current schedule is one the child is comfortable with at this time, except due to his age and stage of development, he is likely able to spend more vacation time and block time with his father.

[146] This child has grown up with a schedule that integrated both parents in his life.

[147] Initially, one week block vacation time during the summer was restricted. The child is older now and has an established and extensive relationship with both his parents.

[148] He is older and better able to handle longer periods with each parent.

[149] While there are sufficient changes taking place and the schedule needs adjustment there is currently no evidence that suggests that the best interests of this child will be served at this time by a shared parenting arrangement.

[150] There is evidence to support that the child had been involved in an unhealthy way in the conflict experienced between his mother and grandmother.

[151] Should the improvement in the child's behaviour relate to the fact that the parties are before the court that may vanish once the possibility of court intervention is not present.

[152] There is safety in having contact with more than one parent within the week so that each parent has an ability to monitor his emotional state weekly.

[153] The father's parenting time may be expanded by increasing his summer parenting time and holiday time without further adjustment to the weekly parenting time. The weekly time is a pattern that for the most part works.

[154] The father has a partner who works outside the home as well.

[155] Consistency in his after school care is an important feature.

[156] Further dividing the week may lead to imposing different after school child care proposals or involving the grandmother more. That may further escalate the conflict.

[157] The current plan shall continue with the following modifications:

- The father shall have the right to extend his weekends to include the Friday or Monday of the long weekend or holiday.
- The father shall be entitled to one half of March break, Easter and one half of Christmas vacation time.
- This shall include their current Christmas schedule and in addition an equal share of the remainder of the school holiday.
- The parents shall share alternating years for the Easter long weekend.
- The father shall have four weeks of the school summer vacation with two consecutive week blocks separated by two week blocks for the mother
- In odd numbered years the father shall have first choice of vacation which choice he shall provide in writing to the mother by May 15th of each year except for this year when he shall provide notice by May 30th.
- In even numbered years the mother shall have first choice which she shall communicate to the father in the same manner.

Weekend Phone Access

- While the child is with the other parent, the other parent may have one phone call during the weekend and one barring emergency during the weekday.
- The child shall have unrestricted telephone contact with the other parent at his wish.

Grandparent Visits

- While the child is in the father's care he is responsible to monitor any contact between the child and the grandparent and her partner.

- The father shall ensure that, during any visits he has with the child with the maternal grandparents during his parenting time, the child is not exposed to any negative discussions about the mother. Should the child be exposed to this kind of discussion this visitation may be subject to variation.
- The father is not to use the grandmother as an alternate child care provider. Should he be unable to provide child care, he shall give the mother first option for arranging child care or providing child care herself.
- The Court would then look at the feasibility of further adjusting grandparent contact.

Access to Information

- Each parent may have access to the records of all third party service providers for the child including but not restricted to medical and educational professionals.

Corporal Punishment

- Neither parent shall use corporal punishment on the child.

Consultation

- Each parent shall consult on all major decisions and agree on a resolution.

Day to Day Decision Making

- While the child is in the care of a parent they shall be responsible for the day to day decisions.
- Each parent shall keep the other informed of any medical, educational or other third party involvement during their time with the child.

Emergency's

- In the event of an emergency, the parent shall immediately attend to the emergency and as soon as practicable thereafter they shall inform the other parent.

Incorporation of Previous Orders

- Clauses of the December 31, 2008 agreement and consent order numbered 4,6,7,8,9,10,11 ,12,13,14 are incorporated into this agreement and paragraphs 1 , 3 and 4 of the June 25th consent variation are also incorporated.

Current Child Support

Respondent's Income

[158] The Respondent's statement of income for 2015 discloses an income of \$34,673.62.

[159] In 2014 the mother earned a gross annual income of \$35,351. Her 2013 income was \$33,985 and 2012 was \$32,703.

[160] In 2011 her total income included social assistance payments as well as \$14,202 in employment income.

Applicant's Income

[161] Without income from the secondary source in 2015, the Applicant estimates his income will be \$58,537.80.

[162] He estimated his 2014 income to have been \$64,592 inclusive of his income from National Defence and Reliance Offshore.

[163] Historically, his employment income in 2013 was \$57,488.47; in 2012 it was \$57,145.26; and in 2013 it was \$55,376.

[164] **Prospectively** the Applicant shall pay monthly child support in the amount of \$495 per month to the Respondent commencing on the 1st day January 2015 and continuing on the 1st of each month payable through Maintenance Enforcement until further order of the Court .

Retroactive Child Support

[165] At paragraphs 99-116 Justice Bastarache, in *D.B.S. v. S.R.G.* (2006) SCC37 outlined the factors to be considered in retroactive awards.

[166] They include the reason for the delay in making the application, any blameworthy conduct on the payor's part, the child's past and current circumstances and whether the retroactive payments would cause hardship

[167] These factor must be weighted in the context of fairness and certainty.

[168] When the original order was issued the parties did not set a base amount of child support in part because the mother was on social assistance. The father agreed to pay \$150 per month towards the mother's lease.

[169] Sometime in 2011, when the Applicant learned the Respondent was employed, he ceased paying the \$150.

[170] The exact month he ceased contributing towards the rent is not in evidence. Up to that point both parties relied on their oral agreement and appear content with the arrangements.

[171] The mother made this application in March 2014 as a response to the father's application to change custody.

[172] Of the possible dates when a review should have taken place the date for a review of child support should have been on or about the date in 2011 when the Applicant stopped paying the rent in accordance with the parties agreement

[173] A parent's obligations to increase or adjust child support are explained in *D.B.S. v D.R.G. et al 2006 SCC 37*. The review could also have taken place when the Applicant's his income increased sufficiently to justify a review.

As situations evolve, fairness demands that obligations change to meet them. Yet when obligations appear to be settled fairness also demands that they not be gratuitously disrupted. (paragraph 37)

[174] The order identified that each party believed that reasonable arrangements had been made for the support of their child.

[175] There was a three year delay bringing the application forward. The Respondent testified she could not afford legal advice and did not qualify for legal

aid. She commenced this application when she was compelled to deal with the issue of custody arising out of the Applicant's application.

[176] While delay is not presumptively justifiable, courts are directed to recognize a reasonable excuse including financial means or lack of legal advice. (paragraph 100)

[177] Without knowledge of his income she could not know that she would be entitled to a significantly increased contribution beyond the section 7 expenses.

[178] In this context, the child support is the right of the child and cannot be waived by a recipient parent. (*Richardson v. Richardson*, [1987]1SCR 857 at p.869.)

[179] A child's standard of living should approximate as much as possible the standard they enjoyed when the parents were together or as in this case a standard commensurate with the ability of the parents to provide (paragraph 111)

[180] The parties continued to operate under their oral agreement that the Applicant should contribute to extraordinary expenses in addition to extracurricular activities not always determined to be reasonable expenses.

[181] There were significant extracurricular activities to which each parent contributed to the benefit of their child.

[182] The Applicant's income significantly changed from that on which child support was initially based.

[183] His failure to respond to her requests for income information or to adjust or even commence a base amount contribution given his increased capacity to contribute is considered blameworthy conduct.

[184] His income and expense statement demonstrates that he is paying the bulk of the household expenses for his wife and second child in spite of her income which exceeds that of the Respondent.

[185] The Applicant has attempted to supplement his income by self-employment. This venture has not been successful.

[186] He was able to find alternate employment in 2014; however, due to the birth of his second child he has decided to refrain from taking income that takes him away from his home.

[187] The father has a new child in his current relationship and his partner was on maternity leave until November 2014.

Notice

[188] He had actual notice of her intent to seek a monthly amount of child support as of the date of her application **February 14, 2014**.

[189] The Respondent has entered into credit card debt herself and has a balance of \$1,000 on the lease towards which the Applicant was at one time contributing to support their child.

[190] In balancing certainty and fairness, in light of all the relevant factors, I order retroactive support effective the date of her application.

[191] **Retroactively** effective **March 2014** the father shall pay child support for Ethan in the amount of \$546 based on his 2014 income.

[192] The retroactive amount to and including May 2015 is **\$7,935**.

[193] The Applicant shall be credited with any table amount support he paid calculated on his actual income. This is not intended to include allowing credit for payments made towards extraordinary expenses.

[194] While some of the extracurricular expenses may not have been included as an obligation, certainly his income would have demanded he pay a larger percentage of the section 7 expenses.

Revenue Canada Claims

[195] The order creates a schedule of time in which the father has parenting time 35% of the time and the mother 65%. During week one, he has 3 overnights and during week two, 2 overnights for a 5 out of 14 split during a 14 day period.

[196] In the 2014 year, the father missed parenting time due to his involvement in self-employment.

[197] Their schedule is historically not a shared parenting arrangement that would bring with it a setoff in child support or an entitlement to claim the child on one's income tax.

[198] While the mother was in receipt of social assistance she permitted the Father to claim their child as a dependant by providing to him a written consent for Revenue Canada

[199] She wishes to claim the child tax deduction. This would include 2012 forward.

[200] For the tax years 2012 and 2013, the father has claimed the child without her permission when she could have benefited from the tax credit. The mother was reassessed for those years a result of the father's claim.

[201] He shall be responsible for correcting his tax forms which indicate he is claiming the child as a dependant to permit the Respondent to do so for those years when he did not have her consent.

[202] If the parties are prohibited from retroactively amending their tax returns, the Applicant shall compensate the Respondent in the amount sufficient to put her in the same position as if she had claimed.

[203] Once this calculation is complete, the parties may agree to include a monetary amount into an order to be enforced by Maintenance Enforcement or return to court to have the amount defined precisely in order to allow for enforcement.

[204] This shall include any penalty and interest the Respondent paid and for which she was not reimbursed.

[205] The recalculations clauses shall be included in the order to provide for annual recalculation.

Section 7 Expenses

[206] The father testified he has also provided clothing, school supplies and living expenses for Ethan at his place and his mother's. He said Ethan had two sets of clothing and supplies to reduce the necessity to share between houses.

[207] The mother believes she is the parent responsible for providing their child's days to day needs inclusive of food, clothing and personal care items and school supplies.

[208] She agrees that on some occasions the father agreed to reimburse her for some of those costs.

[209] The father advises he has paid extensively for trips for their son some without any contribution from the mother.

[210] He arranges and pays for Ethan's dentist appointments

[211] The Applicant paid in cash and by email transfer. The Respondent would not provide the father with receipts for his payments.

[212] The father provided as many banking records as he could obtain showing payments to the mother for the many activities. . What he did provide through his bank records demonstrates that in 2012 he paid \$748; 2013 he paid \$1,765; in 2014 he paid \$4,365 and year to date \$175.

[213] In 2013, he paid all the hockey fees, he took his son to New Brunswick, New Glasgow and Sydney to tournaments each requiring hotel stays and registration and he gave evidence of other activities that indicates his son has benefited from his active participation in his life.

[214] They included in the past hockey, lacrosse, basketball, swimming, violin and Excel as well as day camps.

[215] He provided another exhibit from the bank detailing some payments not included previously concerning the 2013 year

[216] There was no strict accounting by either party. They both relied on their agreement since 2008.

[217] The mother is not seeking a retroactive assessment of section 7 expenses.

[218] I am unable to determine with any certainty what each paid and unable to determine whether what each paid was their fair share.

[219] Historically the majority of expenses were shared equally; specifically hockey, violin, lacrosse, swimming, baseball, Excel and Needham adventure camps.

[220] In her Affidavit dated January 8th, 2015, the Respondent acknowledged that the Applicant had been paying part of the section 7 expenses and she was not seeking retroactive compensation for past section 7 expenses.

[221] She seeks a proportionate sharing of future section 7 expenses.

[222] The child no longer plays violin and his baseball will be less expensive this year reduced from \$360 to approximately \$200 per year.

[223] The mother documents the basic costs of these in her statement of extraordinary expenses at \$5,815 per annum.

[224] Equipment costs and trips are in addition.

[225] The mother has received some subsidies. The evidence is uncertain as to whether she has passed these subsidies on to the father.

Child Care

[226] The parties shall share in proportion to their income the after tax costs of child care made necessary to continue to be employed

[227] The mother shall provide to the father each year her after tax calculations of child care, after school care and necessary summer program costs which are made necessary to continue their employment.

[228] The father shall make arrangements to pay his share either to her directly or through Maintenance Enforcement on a monthly basis .

[229] Should the parties agree in the drafting of this order that the father should pay directly through Maintenance Enforcement, they shall arrive at a set figure for payments enforceable by Maintenance Enforcement.

[230] The father shall be entitled to share the benefit of any subsidies received by either parent as a result of their sons participation in sporting activities

[231] He shall share equally the after tax cost of agreed upon extracurricular activities. This includes day care, summer camps and hockey registration.

[232] The parties shall give advance notice and provide sufficient time to consult prior to incurring the expense and shall provide confirmation of the expense by receipt no later than 10 days after the expense is incurred

Financial Disclosure

[233] In accordance with the *Child Support Guidelines* on or before June 1st of each year, each parent shall provide to the other a full and complete copy of their income tax return whether filed with Revenue Canada or not and they shall provide a copy of their notice of assessment and reassessment

[234] The child support and sharing of section expenses shall be adjusted accordingly.

[235] The usual recalculation clauses shall be included in the order.

Moira Legere Sers, J.