

**SUPREME COURT OF NOVA SCOTIA**  
**(FAMILY DIVISION)**

**Citation:** *Desrosiers v. Pastuck*, 2016 NSSC 308

**Date:** 2016-11-09

**Docket:** Sydney No. 94297

**Registry:** Sydney

**Between:**

Danielle Desrosiers

Applicant

v.

Andrew Pastuck

Respondent

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**LIBRARY HEADING**

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**Judge:** **The Honourable Justice Theresa Forgeron**

**Heard:** April 25, 26, 27, 28 and May 26, 2016 in Sydney, Nova Scotia

**Oral Decision:** November 9, 2016

**Written Release:** November 15, 2016

**Subject:** Family Law; High Conflict; Parenting Plan; Determination Of Income; Corporate Income; Business Expenses; Section 7

**Issues:** Expenses; Retroactive Child Maintenance.

**Outcome:** What parenting plan is in the best interests of the 7 year old son?

What is the father's income for child support purposes?

Should s.7 expenses be awarded?

Should retroactive child support be awarded?

A joint custody order was granted in which the mother was vested with primary care and final decision making authority in all matters except the child's enrolment in sports. Factors composing the best interests test were reviewed. The mother's plan was superior to the father's because the mother was the primary care provider before and after separation and had a history of making decisions which were in the child's best

interests. In contrast, the father had been violent and aggressive when he was upset or frustrated with the mother. The child was exposed to the parental conflict. Both parties were ordered to engage in therapeutic counselling to ensure that the child was not exposed to parental conflict and to improve their parenting approaches given the high conflict dispute. The father was ordered to participate in additional therapy to correct the issue of violence. Credibility factors reviewed.

The father's income was composed of corporate pre-tax income, together with an upward adjustment for business expenses which were not reasonable in the circumstances. A negative inference was drawn because the father failed to provide an evidentiary foundation to support the reasonableness of the business expenses. Legal principles were reviewed, including the requirement of a business owner to provide documentary proof in an organized fashion of alleged business expenses to enable the court to make a principled determination on the issue of reasonableness.

Section 7 expenses claimed by the father were granted even though the father was the payor because the father was the parent incurring the expense. The s.7 activity expenses were found to be reasonable and necessary and met the legislative test. The mother was ordered to pay 50% of the activity expenses, to a maximum of \$1,200 per year.

Retroactive child support was awarded where the father engaged in blameworthy conduct, the mother did not delay in making an application, the child would benefit from a retroactive award, and the father had an ability to pay. The award was based on what the father should have paid less credit for payments received.

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