

<u>CASE NO.</u>	<u>VOL. NO.</u>	<u>PAGE</u>
GREGORY FOST	- and -	CARLENE HOOD
Appellant		Respondent
C.A. No. 159646	Halifax	CHIPMAN, J.A.

[Cite as: Hood v. Fost, 2000 NSCA 34]

APPEAL HEARD: February 10, 2000

JUDGMENT DELIVERED: February 21, 2000

SUBJECT: **FAMILY LAW - FAMILY MAINTENANCE ACT - R.S., c. 160 - IMPUTING INCOME FOR THE PURPOSES OF CHILD SUPPORT**

SUMMARY: The appellant was the father of a child born to the respondent. The respondent made an application to the Family Court for custody, access and child maintenance. In fixing the child maintenance, the Family Court judge imputed income to the appellant based in part on rental received from a duplex which he had conveyed to his father shortly after he learned that the respondent was pregnant with his child. He had testified before the Family Court judge that he had entered into an escrow agreement to transfer the property to his father some five years earlier. The Family Court judge imputed income based on the gross rental from one-half of the duplex, making the finding that the appellant was not credible. The appellant appealed contending that income should not be imputed with respect to the duplex in any event, but that if it was, the Family Court judge erred in fixing it on the basis of gross revenues from one-half of the duplex.

ISSUE: Whether the Family Court judge erred in imputing income with respect to the duplex and, if so, with respect to the amount.

RESULT: The Nova Scotia Court of Appeal held that the Family Court judge had not erred in imputing income. She had made a finding that income had been diverted by reason of the conveyance, and she did not accept the appellant's explanation with respect to the conveyance. Her finding was not shown to be erroneous with respect to the amount of the

income. There was no error in selecting the gross income from one part of the building. No income was imputed with respect to the other part which was in possession of the appellant's father. Moreover, the appellant had ample opportunity to produce to the Court evidence of expenses with respect to the property, but did not do so. The appeal was dismissed with costs.

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