

IN THE FAMILY COURT OF NOVA SCOTIA  
**Citation:** P.I.A. v. R.R.N., 2004 NSFC 10

**Date:** June 25, 2004  
**Docket:** 02BG020262  
**Registry:** Yarmouth

**Between:**

P.I.A.

Applicant

v.

R.R.N.

Respondent

**Editorial Notice**

Identifying information has been removed from this electronic version of the judgment.

**Judge:** The Honourable Chief Judge John D. Comeau

**Heard:** May 21, 2004, in Barrington, Nova Scotia

**Written Decision:** June 25, 2004

**Counsel:** P.I.A., Unrepresented  
R.R.N., Unrepresented

**By the Court:**

**The Application:**

[1] This is an application for “special expenses for (rep hockey and baseball), for C. born December [...], 1992.” The parties are unrepresented.

**The Issue:**

[2] Whether the expenses requested are extraordinary expenses which would require a contribution from the Respondent or are they expenses that by their nature are included in the table amounts of the **Child Support Guidelines**?

**The Facts:**

[3] The child of the parties, C., is eleven years old, born December [...], 1992. He is involved in what is called rep “AAA” hockey and he also plays rep “AA” baseball. Judicial notice may be taken of the fact that athletes such as C. represent their communities against other teams from other areas. Documents including schedules submitted by the Applicant mother indicated games that include

Yarmouth to Halifax and numerous places in between. There are also many practices. It is conceded that those players on rep teams are of high caliber, not necessarily elite players but better than the average.

[4] Expenses submitted are as follows:

Total Spent on Hockey           \$5,174.00 per season (not including meals/snacks, etc.)

Also not including baseball:

Registration \$85.00 - 25 games and practices.

Plus plays rep "AA" baseball, extra 2 tournaments, Provincials.

Total Spent on C. in sports per year - \$7,000.00

Child Support per year - \$7,140.00

Some specifics of above totals and expenses to the end of 2004 are as follows:

<u>January</u>	4 practices -	\$ 40.00
	8 games -	<u>\$ 90.00</u>
		<u>\$130.00</u> gas

<u>February</u>	4 practices -	\$ 40.00	
	6 games -	<u>\$150.00</u>	
		<u>\$190.00</u> gas	Plus one practice Clare - \$15.00
<u>March</u>	3 practices -	\$ 30.00	
	9 games -	<u>\$200.00</u>	Plus one night hotel - \$75.00
<u>April</u>	2 practices -	\$ 20.00	
	Tournament	\$ 40.00 gas	
	- Halifax	<u>\$200.00</u> hotel	
		<u>\$260.00</u>	

**Spring Elite AAA****April/May**

\$ 627.00 - to play/jersey/ice/games

\$ 320.00 - hotels

\$ 370.00 - gas

\$1,317.00

\$ 55.00 - extra ice time

\$1,372.00

plus - eating ??

plus - skate sharpenings - once a week @\$3.50 (32 weeks) = \$112.00

plus - tape - approximately \$ 30.00

gear bought this year - sticks \$100.00 plus

shin pads - gloves \$ 40.00

gear needed for next season - skates, elbow pads, shoulder pads, pants.

Starting June 2003 - June 2004

June \$950.00 to play Canadian selects "AAA"

\$100.00 Team track suits/hats

\$200.00 Spending money for 7 days

Total: \$1250.00

Included:

4 nights Halifax for players

2 meals a day

3 hours on ice training a day

2 hours off ice training per day

Travel to and from New Hampshire

3 nights in New Hampshire

5 games



December            3 practices - \$ 30.00  
  
                          9 games        \$165.00  
  
    \$195.00 gas

Means of the parties:

The Applicant mother - annual income \$18,000.00 (19%)

The Respondent father - annual income \$75,000.00 (81%) with expenses of \$29,000.00 per annum.

**The Law:**

[5]    **Child Support Guidelines:**

The Nova Scotia Child Maintenance Guidelines have four objectives.

Section 1 (a) is relevant to the issue before the Court.

(a)    to establish a fair standard of maintenance for children that ensures that they benefit from the financial means of both parents.

“table” is defined in Section 2(1) and means a child support table set out in Schedule I of the **Federal Child Support Guidelines** established under the **Divorce Act** (Canada), as adopted in Schedule I of these guidelines.

[6]           Add ons to the table amount

Section 7 of the Guidelines provide for special or extraordinary expenses sometimes referred to as add-ons.

7(1) In a child maintenance order the Court may, on a 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, where the parents cohabited after the birth of the child, to the family's pattern or spending prior to the separation.

[7]   (f)   extraordinary expenses for extracurricular activities

Sharing of Expense

7(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 contributions, if any, from the child.



[8] The “table” amount in the child support guidelines includes an allowance for usual or ordinary extracurricular activities. See **Abulnaga v. Jamshidian**, 2002 Carswell BC 523 (S.C.B.C.)

[9] In this Province the Nova Scotia Court of Appeal has set out the test for determination of what are extraordinary expenses.

Flinn J. A. Speaking for the majority:

“In my opinion, parental income, while relevant to certain provisions of the Guidelines, has no relevance to a determination as to what constitutes “extraordinary expenses for extracurricular activities” within the meaning of s. 7(1)(f) of the Guidelines. Such a determination involves an objective assessment, giving the words “extraordinary expenses for extracurricular activities” their plain meaning in the context of the Guidelines as a whole. I will set out my reasons for coming to that conclusion. Section 3(1) of the Guidelines provides as follows:

3.(1) Unless otherwise provided under these Guidelines, the amount of a child support order for children under the age of majority is

(a) the amount set out in the applicable table, according to the number of children under the age of majority to

whom the order relates and the income of the spouse against whom the order is sought; and

(b) the amount, if any, determined under Section 7. In a release issued by the Department of Justice (Canada) at the time the Guidelines came into force, the Department indicated that the amounts set out in the applicable tables, as provided for in s. 3(1)(a) of the Guidelines “... are based on an average of what parents at various income levels spend on their children.”

When a trial judge considers an application, pursuant to s. 7(1)(f) of the Guidelines, several issues may arise:

1. Any order for payment of all, or a portion, of such expenses is discretionary. An applicant is not, on establishing certain criteria, entitled to an order. As in all cases of the exercise of discretion, circumstances will dictate whether it is exercised one way or the other.
2. The Court must decide if the expenses which are the subject of the application are “extraordinary expenses for extracurricular activities.” If they are not, the inquiry ends. There is no definition of “extraordinary expenses for extracurricular activities” in the Guidelines. I will say more about this later.

3. If the expenses are extraordinary expenses for extracurricular activities, then, pursuant to s. 7(1), the Court may provide an amount to cover those expense, after taking into account:

(a) the necessity of the expense, in relation to the child's best interest, and

(b) the reasonableness of the expense, having regard to the means of the spouses, and those of the child, and to the family's spending pattern prior to the separation.

4. If the expenses are extraordinary expenses for extracurricular activities, and if those expenses are necessary and reasonable, then in determining an amount which is required to be contributed, the guiding principle is that the expense is shared by the spouses in proportion to their respective incomes. In coming to this conclusion the Court considers the contribution, if any, from the child; and the Court takes into account any subsidies, benefits or income tax deductions or credits relating to the expense.

The words "extraordinary expenses for extracurricular activities", given their plain meaning, in the context of the Guidelines as a whole, can only refer to expenses which are "not usual", "additional to what is usual" or "exceptional". In my opinion, that must

be determined, not in light of parental income, but in considering the nature of the activities and the nature of the expenses.

The incomes of the parents will be considered, by the trial judge, after the expense has been found to be extraordinary, and after the expense has been found to be necessary, in the child's interest. Then - and only then - do the incomes of the parents come into play to assist the Court in determining whether an amount, and what amount, should be ordered to be paid. To do otherwise would be inconsistent with the objectives of the Guidelines, which are stated in s. 1 as follows:

(a) to establish a fair standard of support for children that ensures that they continue to benefit from the financial means of both spouses after separation;

(b) to reduce conflict and tension between spouses by making the calculation of child support orders more objective;

(c) to improve the efficiency of the legal process by giving courts and spouses guidance in setting the levels of child support orders and encourage settlement;

(d) to ensure consistent treatment of spouses and children who are in similar circumstance.

[10] In **MacEachern v. MacEachern** (1999), 174 N.S.R. (2d) 331 Justice Boudreau was dealing with a number of activities for the children and applying the reasoning in **Raftus** supra. He found certain hockey expenses to be extraordinary at p. 333.

“In the case at bar, the activities of hockey, soccer, music, tennis, and swimming are not, per se., extraordinary extracurricular activities. I am, however, satisfied that the extent and degree of some of these activities takes a portion of these expenses to the level of the extraordinary. For example, the elite and other hockey camps are extraordinary expenses, as is participation on the elite teams and the tryouts and travel.”

**Conclusions/Decision:**

[11] The trial judge in **Raftus** supra., was considering add-ons for extracurricular activities which included swimming, soccer, Tae Kwondo, school activities, birthdays, Christmas and special events. This application was dismissed because the trial judge found that they were not extraordinary expenses.

[12] Evidence before the Court is that those athletes who participate in hockey and baseball and represent their communities are the best candidates for their team. They are the exceptional players, “additional to what is usual.” There are the words expressed by Flinn J. A. In describing what “extraordinary expenses for extracurricular activities.” In addition the expense itself for many kilometres

of travel accommodations, meals etc. are not what is considered usual for an athlete who participates in local sports (house league so-called).

[13] It is a great honor to represent one's community in sport. The quality of play, the commitment and the expression of sportsmanship by the athlete reflects back on his/her community. It is a large responsibility. This type of role by a young person enhances self-esteem and provides for interaction with others in different communities. It can only be a positive aspect which goes to the child's best interest. Given this concept such an expense is necessary if the child has the ability.

[14] Expenses to participate in rep sports are very high, however, given the fact that the child has been involved since a very young age and has been supported by the family pattern of spending these expenses are reasonable.

[15] The Respondent earns over four times more annual income than does the Applicant and the Court finds the expenses requested as "extraordinary for extracurricular activities." He must, therefore, contribute in accordance with s. 7(2) of the guidelines. The Applicant's portion is 19% and the Respondent's is 81% and the total for rep sports during the year is \$7,000.00. The Respondent will be required to pay add-ons in the amount of \$5,670.00 for extraordinary expenses for extracurricular activities. The amount is payable in two installments which take

into account the seasonal nature of the two sports, hockey and baseball. The amount of \$2,835.00 is due on or before December 15, 2004 and \$2,835.00 on or before June 15, 2005 and thereafter on these dates in each and every year so long as the child is on rep teams. This amount will be payable through the Director of Maintenance Enforcement.

[16] The parties are unrepresented and the court reporter shall prepare this order.

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John D. Comeau Chief Judge of  
the Family Court of Nova Scotia