

## **B. Determination of Child Support for parties Sharing Parenting approximately equally**

***Contino v. Leonelli-Contino***, 2005 SCC 63 (2005-11-10)

***Contino v. Leonelli-Contino*** is the leading case on the calculation of child support in circumstances where a parenting paying child support is applying for a variation because the children are now living with him 50% of the time.

The Child Support Guidelines state that when parties share custody, such that the children are with each parent in excess of 40% of the time, there are 3 factors a Court must consider when ordering child support. These are: the Guideline Table amounts, the increased costs of shared parenting, and 'the conditions, means, needs and other circumstances' of the parties. For simplicity and consistency, many judges calculated child support in shared parenting situations by 'setting-off' the amounts owing by each parent. Setting-off child support meant that the court would determine the Table amount of child support for each parent, based on the parents incomes and the number of children and then subtract the lower number from the higher. The remainder would be paid by the higher income earner to the lower income earner.

In ***Contino***, the Supreme Court of Canada was asked whether the 'set-off' approach to calculating child support, in a situation where the parents went from a primary care to a shared parenting custody arrangement, was the correct approach.

In ***Contino***, the payor father had paid \$563 per month when the children lived primarily with their mother. When the children began living with him 50% of the time, he applied for a reduction in child support. The first court that heard the matter ordered a reduction to \$100 per month. The mother applied and the next court ordered an increase to \$688 per month. The Court of Appeal ordered \$399.61 per month. The Supreme Court of Canada ordered \$500 per month.

The Supreme Court of Canada held that the preferable starting point for determining child support in a shared parenting situation is the set-off amount. The SCC further stated that a review of the increased costs of shared parenting (i.e. the fact that the children may need two sets of clothing, equipment, etc), as well as the 'conditions, needs and other circumstances' needed to be reviewed. The SCC held that a full analysis is required to ensure that the needs of the children are met in both households.

In ***Contino***, it was found that the mother needed a certain amount of child support to pay for the house she had bought following the parties separation. The fixed cost of housing did not change for the mother when the father's time with the children increased. Taking that and other factors into account, the SCC ordered child support of \$500 per month.