

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

**Citation:** *LeBlanc v. Syms, 2017 NSSC 114*

**Date:** 2017-04-28

**Docket:** *SFSND* No. 1206-006760

**Registry:** Sydney

**Between:**

**Sandra LeBlanc**

Applicant

v.

**Shaun Syms**

Respondent

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

**Heard:** December 12, 14, and 19, 2016 and February 27, 2017 in  
Sydney, Nova Scotia

**Oral Decision:** April 28, 2017

**Counsel:** Sandra Leblanc, Self-Represented

Shaun Syms, Self-represented

## **By the Court [orally]:**

### **Introduction**

[1] We are here for decision in the matter involving Sandra LeBlanc and Shaun Syms. I will have this oral decision typed and released.

[2] Sandra LeBlanc and Shaun Syms are the divorced parents of 16 year old Stephen Alexander Syms. Stephen appears to be happy and well-grounded; he is a motivated student and athlete. His parents should be proud. I hope they are.

[3] Ms. LeBlanc and Mr. Syms have an acrimonious relationship. Communication is poor. Each is quick to judge and condemn the faults they see in the other. In contrast, each is slow to recognize their own failings. Unfortunately, introspection is not a trait found in either party.

[4] Years of hostility has not dulled the bitterness. Their situation is regrettable. Hopefully, today's decision will bring some closure and will allow both of you to move forward for Stephen's sake.

[5] By way of background, Ms. LeBlanc and Mr. Syms were married on July 24, 1999 and divorced on May 19, 2015. A settlement conference judge, Justice MacLellan, helped the parties reach an agreement. The terms of their agreement are reflected in the amended consent Corollary Relief Order dated May 1, 2015. The consent order states that the maintenance provisions can be examined if Mr. Syms "is found to have been untruthful at any time during this proceeding...".

[6] Although the consent order is less than two years old, both parties now seek to change its custody and maintenance provisions. Ms. LeBlanc is seeking sole custody and a retroactive increase in child support, for both the table amount and s.7 expenses. She also seeks costs.

[7] For his part, Mr. Syms seeks shared parenting of Stephen. Mr. Syms states that Ms. LeBlanc won't allow access. Mr. Syms disputes Ms. LeBlanc's claim for more maintenance. He says that he has no ability to pay; he has nothing left to give.

[8] The applications were heard on December 12, 14 and 19, 2016 and on February 27, 2017. In addition to the parties, I heard testimony from Matthew MacDonald, Larissa Smardon, and Otto Gates.

[9] In reaching my decision, I have considered the submissions of Ms. LeBlanc and Mr. Syms. In addition, I have considered all facts stated by the parties and their witnesses, and the facts introduced through exhibits.

[10] You should note, however, that not all facts are of equal value. For example, the law says that I must not consider inadmissible hearsay evidence. This means that I cannot consider facts presented in affidavits or oral testimony from people who were not called as witnesses. The law also states that I must not consider opinions from people who are not qualified as experts. Finally, the law says that I am not to consider facts that are not relevant to the issues that I must decide. I have followed these evidence rules when I made this decision.

### **Issues**

[11] To resolve the outstanding court applications, I must determine the following five issues:

- Should the parenting order be varied to provide Mr. Syms with shared parenting or Ms. LeBlanc with sole custody?
- Was Mr. Syms untruthful any the time during this proceeding?
- Should the court award retroactive child support for the table amount and for s.7 expenses?
- What is the appropriate ongoing child support obligation?
- Should costs be awarded to Ms. LeBlanc?

[12] I will now provide an analysis of each of the issues. I will start with the position of the parties, then talk about the law and then give my decision.

### **Analysis**

**[13] Should the parenting order be varied to provide Mr. Syms with shared parenting time or Ms. LeBlanc with sole custody?**

### *Position of the Parties*

[14] Mr. Syms seeks shared parenting time with Stephen because he loves Stephen and believes a shared parenting arrangement is best for Stephen. Mr. Syms states that Ms. LeBlanc negatively interfered with his parenting time and prevented Stephen from enjoying an open relationship with him. He says that Ms. LeBlanc engages in alienating behavior.

[15] In contrast, Ms. LeBlanc states that Mr. Syms was a disinterested and unengaged parent who spent little time with Stephen. Ms. LeBlanc said that she can no longer communicate with Mr. Syms because of his conduct. Further, she states that sole custody is necessary because Mr. Syms is unresponsive and uncooperative. Ms. LeBlanc notes that she is not responsible for Mr. Syms' lack of relationship with Stephen. Ms. LeBlanc says that Stephen is doing well in her care and this arrangement should continue.

[16] Ms. LeBlanc is also concerned with Mr. Syms' alcohol consumption. She wants to limit overnight access. Mr. Syms says he is not an alcoholic.

### *Law*

[17] The *Divorce Act* states that I can only change the parenting provisions of a court order if there has been a material change in the circumstances since the granting of the last court order such that the current order no longer meets the best interests of the child. A material change can be described as a permanent, lasting change that if known at the time would have resulted in a different order. A material change is one which impacts on the needs of the child and the ability of the parents to meet the needs of the child.

[18] The law also states that joint custody requires a co-operative relationship between separated parents. The separated parents do not have to be friends, but they must be able to communicate in a respectful and child-focused fashion.

### *Decision*

[19] I find that there has been a material change in the circumstances since May 2015 and that the current parenting order no longer meets the best interests of Stephen for the following reasons:

- Mr. Syms and Ms. LeBlanc have absolutely no ability to communicate in a respectful and child focused fashion. To the contrary, much of Mr. Syms' communication is destructive and not focused on Stephen's needs. For example, exhibit 13 shows Ms. LeBlanc reminding Mr. Syms that Stephen is trying to contact him to discuss a cell phone purchase. Mr. Syms' response texts are crude, belligerent and abusive.
- Mr. Syms also speaks negatively to Stephen about Ms. LeBlanc as is found in exhibit #12, which is a copy of a text message between Mr. Syms and Stephen. In the text, Mr. Syms tells Stephen that "your mom and i are going back to court. She told me she wants me dead ...." Mr. Syms inappropriately drags Stephen into the conflict. Mr. Syms does not appreciate the harm this may cause to Stephen.
- Ms. LeBlanc did not attempt to harm Mr. Syms as he believes. Before the parties separated, Ms. LeBlanc told Mr. Syms that she had a dream in which he was dead. Mr. Syms cannot forget that conversation. He perseverates on the topic as well as his belief that Ms. LeBlanc was unfaithful during their marriage. Mr. Syms' inability to let go of the past has negatively impacted on his ability to respectfully cooperate and communicate with Ms. LeBlanc about Stephen. Mr. Syms can't get past his anger.
- Mr. Syms also ignored Ms. LeBlanc when she inquired about Stephen's needs. An example of this is found in Mr. Syms' failure to address the European class trip. Stephen was unable to go on the class trip.
- For her part, Ms. LeBlanc does little to repair the parties' communication. She is understandably fed up, as is her husband Mr. Gates. However, Mr. Gates calling Mr. Syms disrespectful names is likewise not helpful. Name calling and posturing does little to improve the hostilities.
- The parties' relationship is volatile. Police have been called. There was at least one inappropriate scene during an access transfer.

- There is absolutely no hope that communication will improve. Neither party has an ability or desire to do so. They are each happy in their role of victim/martyr.
- It is not in Stephen's best interests to be placed in the middle of the parental conflict.
- Stephen has lived with Ms. LeBlanc for several years post separation. Stephen has an excellent academic record; he is involved in activities; and despite the parental discord, appears to be happy and well adjusted. Stephen's home environment should not be disrupted in such circumstances.
- Stephen is 16 years old. He is no longer an infant. Stephen's needs are much different at 16 than when he was younger. He is at an age when friends, school work and activities will likely place competing demands on his free time. Stephen knows his own schedule. Stephen is capable of making his own access arrangements directly with his father. Stephen's needs and wishes must be met in any access regime.

[20] Given these findings, I conclude that it is in Stephen's best interests for a variation order to issue which provides for the following:

- Sole custody to Ms. LeBlanc.
- Reasonable access to Mr. Syms with all access arrangements to be determined by Stephen and Mr. Syms.
- An alcohol prohibition when Mr. Syms is exercising access.
- A direction that neither party will say anything negative about the other, or their family, to Stephen.
- Confirmation that Ms. LeBlanc has the right to obtain a passport for Stephen without the consent and authorization of Mr. Syms.
- Confirmation that Stephen is authorized to travel outside of Canada for vacation without the consent and authorization of Mr. Syms.
- A direction that Ms. LeBlanc must email Mr. Syms the details of all travel plans involving Stephen, including dates of departure and

return, and the address where Stephen will be staying while on vacation. Further, every two weeks, Ms. LeBlanc must also email Mr. Syms important particulars about Stephen's health, education and general welfare. If Mr. Syms responds in an abusive or disrespectful manner, Ms. LeBlanc will no longer be required to provide Mr. Syms with such details.

- A direction that Mr. Syms is permitted to obtain information from professionals involved in Stephen's care, and at Mr. Syms' expense, without the authorization and consent of Ms. LeBlanc. This provision is subject to privacy laws given Stephen's age.

**[21] Was Mr. Syms untruthful at any time during this proceeding?**

*Clause 24 of Consent Order*

[22] Clause 24 of the Corollary Relief Order contains an unusual provision by agreement of the parties. It states as follows:

*If Shaun Syms is found to have been untruthful at any time during this proceeding, this matter can be brought forward and a total examination of s. 3's and 7's can be made available to Sandra LeBlanc, and Shaun Syms can be fined and costs awarded.*

[23] The *Oxford Dictionary of English* defines *untruthful* as follows:

Adjective saying or consisting of something that is false or incorrect

[24] The *Merriam-Webster* dictionary's definition of *untruthful* is as follows:

Not containing or telling the truth: false, inaccurate

*Position of the Parties*

[25] Ms. LeBlanc states that the financial information submitted by Mr. Syms for the 2015 settlement conference was incorrect and that Mr. Syms was consistently untruthful in his financial representations to her and to the court. Ms. LeBlanc urges me to exercise my discretion and recalculate all child support based on accurate figures.

[26] In contrast, Mr. Syms denies being untruthful, although he acknowledges math errors were made. He does not want the court to recalculate support.

### *Decision*

[27] Ms. LeBlanc has proven that Mr. Syms was untruthful during this proceeding as it relates to his financial disclosure. Mr. Syms did so knowingly or being willfully blind to the truth. Neither motive is acceptable. Examples of some of the untruthful comments made by Mr. Syms during this proceeding include the following:

- Exhibit #14 is the Statement of Income Mr. Syms filed on November 9, 2015. Mr. Syms' employment income is incorrectly stated. Mr. Syms was untruthful when he swore the contents of his statement. In 2014, Mr. Syms' income tax return discloses employment income of \$95,996 or \$7,999.67 per month. In 2015, Mr. Syms' income tax return discloses employment income of \$96,776 or \$8,064.67 per month. Yet, Mr. Syms' November 2015 Income Statement shows a monthly income of \$7,833.30, which is less than what he earned in either 2014 or 2015. Similar errors were likewise made in other Income Statements filed by Mr. Syms.
- Mr. Syms' 2015 Income Statement is erroneous in that the union dues are incorrect. Union dues were \$750 in both 2014 and 2015. This equates to a monthly deduction of \$62.50; Mr. Syms swore that his union dues were \$96.10 per month.
- Mr. Syms incorrectly deducted his child support payment from his total income as shown in Exhibit #14.
- Mr. Syms was untruthful when providing details of his rental income. Mr. Syms rented a portion of his home since 2011. He states that he receives \$750 a month in rent. Yet two previous tenants were subpoenaed and confirmed paying \$785 per month, which included heat, lights, water, laundry, Wi-Fi and shed access. Further, Mr. Syms did not provide proof of rental income received despite being ordered to do so and despite having ample opportunity to provide the outstanding disclosure.

- Mr. Syms did not produce any receipts to verify any of the rental expenses claimed despite the disclosure order that the court directed during the Date Assignment Conference held on March 15, 2016 and despite the many subsequent admonishments of the court. I draw a negative inference because of Mr. Syms' failure to disclose. A negative inference means that I don't believe Mr. Syms because he failed to produce rental income and expense documents which were in his control and which the court had ordered produced.
- In his November 2015 Income Statement, Mr. Syms does not reference the rental income he earned. Mr. Syms received rental income of \$785 per month from his tenant, Mr. MacDonald from July 2013 to June 2014; and \$785 per month from his tenant, Ms. Smartdon from July 16, 2014 to September 15, 2014. Mr. Syms had other tenants from 2011 to date.
- Mr. Syms misrepresented the rental income he received and the rental expenses he claimed on his tax returns, which returns were relied upon by Ms. LeBlanc and the court. For example, in 2015 Mr. Syms only declared rental income of \$5,600, but expenses of \$11,764. Mr. Syms did not produce one receipt to verify any of the claimed expenses. Similar misrepresentations were provided in each of the other years. For example, in 2014 Mr. Syms declared rental income of only \$4,200, but expenses of \$9,288, again without a shred of proof. In 2013, only \$7,620 was reported as rental income, while expenses of \$12,059 were claimed, with no receipts to verify any expense. In 2012, only \$6,300 was claimed as rental income, yet \$8,921 was claimed as expenses. Again, there was no verification.

[28] In summary, Mr. Syms was untruthful in the financial statements which he presented to the court throughout the proceeding, including before, during and after the settlement conference. He consistently underreported rental income, overreported rental expenses, and misrepresented his annual income. Accurate income information is necessary to properly assess child support.

[29] **Should this court award retroactive child support for the correct table amount and for s.7 expenses?**

### *Position of the Parties*

[30] Ms. LeBlanc wants child support recalculated based on what Mr. Syms should have paid in respect of the table amount and s.7 expenses. Mr. Syms resists all such attempts. Mr. Syms says that he has no ability to pay and that Ms. LeBlanc's financial circumstances are more robust than his.

### *Law*

[31] The Supreme Court of Canada directed all Canadian courts to balance four factors when a claim for retroactive child support is made. The four factors concern delay in seeking child support, blameworthy conduct, needs of the child, and hardship considerations.

### *Decision*

[32] I have determined that it is appropriate to order a retroactive payment to represent the table amount of child support that Mr. Syms should have paid based on his annual income. In contrast, I have determined that a retroactive payment for s.7 expenses is not appropriate.

[33] My reasons for allowing the retroactive claim for the table amount of child support are as follows:

- Ms. LeBlanc did not delay in seeking to have child support recalculated once she was able to secure proof that Mr. Syms was untruthful as required under the provisions of the consent Corollary Relief Order.
- Mr. Syms acted in a blameworthy fashion when he gave priority to his own needs and misrepresented his income and rental expenses. Full and complete disclosure is mandated in family law proceedings. Nondisclosure has been called the cancer of matrimonial property litigation. Mr. Syms' lack of candor to Revenue Canada, this Court, Ms. LeBlanc and his own son is not acceptable and there must be consequences flowing from his blameworthy conduct. False income tax returns and false Income Statements cannot be tolerated.

- Stephen has a right to the correct amount of child support. Ms. LeBlanc will use the retroactive award to continue to meet Stephen's needs.
- A retroactive child support award will likely mean that Mr. Syms will have to tighten and adjust his budget. Such budgeting challenges cannot be used to defeat a retroactive payment. Mr. Syms should not have been untruthful. He should have disclosed his correct income so maintenance could have been calculated properly. Mr. Syms should have paid the correct amount of support. Instead, he chose to be untruthful. He must now face the consequences of his choice. Stephen cannot be expected to receive less child support than is appropriate because his father hid income. The court will, however, reduce the financial burden associated with a retroactive payment by ordering monthly payments instead of the immediate payment of a lump sum award.

[34] The retroactive award will be calculated by determining the correct table amount that Mr. Syms should have paid commencing January 1, 2014 less credit for the support payments already received. I used the January 2014 date because, in the consent order, this is the date previously chosen by the parties as the start date for a retroactive payment. Further, in calculating Mr. Syms' income, I used his employment income after deducting union dues, and then added \$9,300 as rental income, given Ms. LeBlanc's submissions and the lack of expense receipts.

The following table provides the retroactive support calculation:

| <b>Year</b>                               | <b>Income</b> | <b>Due</b>          | <b>Paid</b> | <b>Outstanding</b> |
|---|---------------|---------------------|-------------|--------------------|
| 2014                                      | \$104,546     | \$872 x 12=\$10,464 | \$9,420     | <b>\$1,044</b>     |
| 2015                                      | \$105,326     | \$879 x 12=\$10,548 | \$9,566     | <b>\$982</b>       |
| 2016                                      | \$106,580     | \$889 x 12=\$10,668 | \$9,756     | <b>\$912</b>       |
| <b>Total Arrears to December 31, 2016</b> |               |                     |             | <b>\$2,938</b>     |

[35] Arrears will be paid at a rate of \$150 per month commencing May 15, 2017 and continuing the 15<sup>th</sup> of each month thereafter until all arrears have

been paid in full. Nothing in this order affects the collection of other arrears as stipulated in clause 5 of the amended Corollary Relief Order.

[36] I have determined that there should be no retroactive child support payment in respect of the s.7 expenses for the following reasons:

- Ms. LeBlanc did not provide the court with sufficient proof of the s.7 expenses to justify an amount over and above what is currently being paid.
- Not all activity expenses are necessarily eligible for s.7 relief. It is only expenses which are extraordinary.
- The cost for some of the s.7 expenses are presumptively included in the table amount.
- Mr. Syms does not have an unending pot of money. He too has expenses and is currently contributing \$2,000 a year. This is a reasonable and appropriate amount for his share of the s.7 expenses under the terms of the consent Corollary Relief Order.

[37] **What is the appropriate ongoing child support obligation?**

[38] Mr. Syms' income for 2017 is calculated at \$106,580. Child support is set at \$889 per month commencing the 1<sup>st</sup> day of January 2017 and continuing the 1<sup>st</sup> day of every month thereafter until further order of a court of competent jurisdiction.

[39] **Should Mr. Syms pay costs to Ms. LeBlanc?**

[40] Mr. Syms will pay costs to Ms. LeBlanc for these proceedings for two key reasons. First, Ms. LeBlanc was largely successful on the parenting issue and for much of the maintenance issue. Second, Mr. Syms misrepresented his income for child support purposes. As repeatedly noted by our courts, parties must provide frank and complete disclosure. The failure to do so will inevitably attract costs consequences. Costs are meant to act as a deterrent and to compensate a party for some of the unnecessary costs assumed in obtaining that which should have been produced without fanfare. Costs are not meant to compensate a party for 100% of their associated expenses. Costs are not meant to produce a windfall.

[41] I award costs of \$2,500 for the following reasons:

- This variation proceeding was heard over four days. Most of the court's time was directed at Mr. Syms' finances. If Ms. LeBlanc was represented by a lawyer, and had been 100% successful, Tariff C costs for four days would ordinarily result in an award of about \$8,000, without reference to any multiples or adjustments as permitted by the Rules. However, Ms. LeBlanc is self-represented. The cost award must therefore be reduced.
- Ms. LeBlanc spent significant personal time preparing for court and her documents were in order. Ms. LeBlanc also missed time from work to attend these proceedings.
- Mr. Syms misrepresented his income.
- The Corollary Relief Order states that I can award additional costs for the earlier proceedings given the untruthful conduct of Mr. Syms.

### **Conclusion**

[42] In summary, I am varying the parenting provisions of the consent order so that Ms. LeBlanc is granted sole custody and Mr. Syms reasonable access based on the terms and conditions previously stated. A retroactive payment for the table amount of child support is granted in the amount of \$2,938, payable by Mr. Syms to Ms. LeBlanc in monthly instalments of \$150 until the award is paid in full. No variation is granted in respect of s.7 expenses. Mr. Syms will continue paying s.7 expenses at a rate of \$2,000 a year pursuant to clause 15 of the order. Costs of \$2,500 are also awarded. All support and costs will be paid through the Maintenance Enforcement Program.

[43] The court will draft and circulate the variation order.

Forgeron, J