

**NOVA SCOTIA COURT OF APPEAL**  
**Citation: *Doncaster v. Field*, 2014 NSCA 39**

**Date:** 20140415  
**Docket:** CA 413485  
**Registry:** Halifax

**Between:**

Ralph Ivan Doncaster

Appellant

v.

Jennifer Lynn Field

Respondent

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**Judge:** The Honourable Justice Linda Lee Oland

**Appeal Heard:** November 13, 2013, in Halifax, Nova Scotia

**Subject:** Custody and Access; *Divorce Act*, s. 16; Maximum Contact Principle; Fresh Evidence; Costs

**Summary:** The appellant, who had been denied any access to his children since March 2012, sought a return to custody as previously or access. After considering the evidence, including a psychological assessment and a parental capacity assessment, the judge concluded that the appellant requires medication to control the consequence of his ADHD, including impulsively and angry outbursts; while he would not intentionally want to harm them, he has caused the children harm; and it was not presently in the best interests of the children to re-initiate access. The appellant appealed her Order denying him access.

**Issues:**

- (1) Should proffered fresh evidence be admitted?
- (2) Did the judge err by failing to apply the maximum contact principle in s. 16(10) and relying on parental conduct from years past?
- (3) Did she err in awarding costs based on a misapprehension of the appellant's financial situation?

**Result:**

Fresh evidence motion dismissed, and the appeal dismissed. The material proffered as fresh evidence was either not fresh, or not relevant, or could not have affected the result. The judge was clearly aware of the maximum contact principle and took its requirements into account. In the proceedings leading to her Order, she had crafted a means for the children and their father to recommence communications but, when it was not possible, she determined that there was no other way of permitting access in the present circumstances. She was not required to make an explicit finding of "substantial risk of harm", and the resolution of criminal charges does not mean that such charges cannot be considered in the family law context. The judge did not misapprehend the evidence in awarding costs against the appellant.

*This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 30 pages.*