

Cite as: Lariviere v. Lariviere, 1999 NSSC 138 (formerly 1999 NSSF 1)

**MONIQUE LOUISE LARIVIERE (now YURKIW)
-and-
JOSEPH ROLLAND RAYMOND LARIVIERE**

**Justice F.B. William Kelly
Halifax, Nova Scotia
File No. 1201-51961**

LIBRARY HEADING

DATE HEARD: at Halifax, Nova Scotia before the Honourable Justice F.B. William Kelly
ORAL DECISION: November 26th, 1999
SUBJECT: **Vary Custody, Access and Child Support**

SUMMARY: The father of two children, age four and six years old, applied to vary custody, access and child support. Both father and mother are members of the Armed Forces. The mother was not represented nor present at the hearing. The parties had a parenting plan as part of a Separation Agreement which was incorporated into the Corollary Relief Order. This provided joint custody to the parents with primary custody to the mother. The father was to have reasonable access and this has been exercised for some time. The mother was a pharmacist at a military base in Alberta and the father is stationed in Nova Scotia.

In July 99 the mother was anticipating a posting to Bosnia subsequent to several months training in Ontario. The parents entered an agreement in writing that the children would reside with him during the Fall, Winter and Spring of 1999-2000 and that subsequently matters would return to the status quo. In November of 1999 the mother arrived on a scheduled visit and advised the father she was no longer posted to Bosnia and was applying to take medical training at a university. She also

told him the children should be returned to her at the end of the school term in December 1999. The father advised her the change should take place at the end of the school year in the Spring of 1999, as it would be less disruptive of their education. She disagreed and he suggested mediation. The parties discussed it further, but the mother stated it was within the terms of the interim agreement they had reached. Shortly thereafter, at the time she was scheduled to leave, she phoned the father from out-of-Province and advised she was taking the children with her. The father argued this was extremely disruptive to the children as they had established roots within the Province and with his new wife and her 5 year old daughter.

The court found the method of the mother in removing the children abruptly was not in their best interests but frequent moves are a feature of military life and are more commonplace in an increasingly mobile society. However, the mother acted in the face of the father not agreeing to a more rational move at the end of the current school term, and in the face of an agreement that if her posting changed, the “children are to be promptly returned to her”.

The court considered the question of jurisdiction and whether the matter should be determined by a court in Nova Scotia or in Alberta. The court determined that in these fact situations, the court should be reluctant to assume jurisdiction on a custody motion as normally the physical presence of the child or ordinary residence should be established. Here the evidence of ordinary residence indicated Alberta where the children were now located and the court declined jurisdiction.

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DECISION. QUOTES MUST BE FROM THE DECISION, NOT THIS COVER SHEET.**