

**CASE NO.**

**VOL. NO.**

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Jacklyn Marie Brown

- and -

Tyler Fergus Hughes

(Appellant)

(Respondent)

CA 181116

Halifax, N.S.

Freeman, J.A. (Orally)

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**Citation:** *Brown v. Hughes*, 2002 NSCA 158

**APPEAL HEARD:**

December 5, 2002

**JUDGMENT DELIVERED:**

December 5, 2002

**WRITTEN RELEASE OF ORAL:**

December 10, 2002

**SUBJECT:** **Family Law, Correction of Custody Order, *Civil Procedure Rules 15:07 and 62:23.***

**SUMMARY:**

A judge of the Provincial Family Court on an application to vary a shared custody order respecting a child born July 31, 2000, to unmarried parents was asked to determine the primary care and the access schedule for the alternate parent. After considering various factors and noting a paucity of evidence on some of them, he awarded primary care to the father and fixed access for the mother. He describing his task as a “difficult, close-call decision” and repeatedly made it clear that it was subject to review, which could be triggered by better evidence as to child care and the impact of a new baby expected by the father’s new partner. The order did not reflect the provision that it be subject to review. The mother appealed.

**ISSUE:**

The mother submitted that the judge had not given sufficient reasons, and sought a rehearing.

**RESULT:** In light of the “accidental mistake or omission” in failing to designate the order as subject to review, which could have been remedied before the Family Court Judge under *Civil Procedure Rule 15:07*, the court allowed the appeal only to order that the Family Court Order be subject to review and dismissed the appeal as premature on the other grounds.

**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 3 pages.**