

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Zinck v. Fraser*, 2006 NSCA 14

**Date:** 20060209

**Docket:** CA 249933

**Registry:** Halifax

**Between:**

Crystal Zinck

Appellant

v.

Steven Fraser

Respondent

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**Judge:**

The Honourable Justice Nancy Bateman

**Appeal Heard:**

January 30, 2006

**Subject:**

*Variation of day-to-day care and control and access.*

**Summary:**

In January 2004, the parties settled a longstanding custody litigation where the central issue was the mother's plan to move from Nova Scotia to Alberta with the young child. They entered into a detailed order providing for joint custody, day-to-day care and control by the mother and frequent access by the father. The order required 90 days notice of intent to move. Thirteen days after reaching a settlement, the mother gave notice of her intent to move with the child to Alberta. The father applied for variation of custody and access. The mother abandoned her relocation application just days before the trial. On hearing the father's application, the judge ordered day-to-day care and control to the father with access to the mother.

**Issue:**

Did the judge err in finding a material change in circumstances since the January 2004 order?

**Result:**

Appeal dismissed with costs. The judge did not err in concluding that there had been a material change in

circumstances including the finding of bad faith on the part of the mother in entering the settlement, the ongoing and escalating hostility between the parents' families and the mother's consistent efforts to thwart the father's access. She did not rely on pre-order evidence to find the change in circumstances. Such evidence was used only to provide context to the issues before the court. Fact specific.

**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 9 pages.**