

<u>CASE NO.</u>	<u>VOLUME</u>	<u>PAGE</u>
K. F. C.	- and -	W. G. C.
(Appellant)		(Respondent)
C.A. No. 146072	Halifax, N.S.	FLINN, J.A. (orally)

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Cite as: K.F.C. v. W.G.C., 1998 NSCA 198

APPEAL HEARD: November 24, 1998

JUDGMENT DELIVERED: November 24, 1998

WRITTEN RELEASE OF ORAL: November 26, 1998

SUBJECT: **Custody and Access - Application to Vary Access**

SUMMARY: The father applied to enforce, and vary, an existing access order. The Chambers judge granted the application and varied the access provisions. Mother appealed claiming errors of law.

RESULT: Appeal allowed. The Chambers judge wrongly refused to permit the appellant to give evidence concerning allegations of abuse of one or more of the children by the respondent. After refusing to permit one of the children to testify at the hearing, and refusing to admit into evidence that same child's affidavit, the Chambers judge made reference in her decision to the affidavit of that child and in doing so drew negative inferences against the appellant.

Intertwined in this dispute on the matter of custody and access are allegations that the father has abused one or more of the children. These allegations which have been outstanding for some time have not been adjudicated upon on their merits.

The Appeal Court decided that the matter should be remitted to the Supreme Court for a new hearing before a different judge.

<p><b>THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION, QUOTES MUST BE FROM THE DECISION, NOT FROM THE COVER SHEET. THE FULL COURT DECISION CONSISTS OF 2 PAGES.</b></p>
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