

NOVA SCOTIA COURT OF APPEAL
Cite as: D'Anjou v. Riverin, 1997 NSCA 20

Hallett, Roscoe and Flinn, JJ.A.

BETWEEN:

LOUIS JOSEPH RENE D'ANJOU

Appellant

Caroll Daniels
for the Appellant

- and -

SANDRA RIVERIN

Respondent

David A. Proudfoot
for the Respondent

Appeal Heard:
January 15, 1997

Judgment Delivered:
January 15, 1997

THE COURT:

The appeal is dismissed with costs in the amount of \$900.00 as per oral reasons for judgment of Roscoe, J.A.; Hallett and Flinn, JJ.A., concurring.

The reasons for judgment of the Court were delivered orally by

ROSCOE, J.A.:

This is an appeal from a dismissal by Justice Donald Hall of an application to vary a child support order made under the provisions of the **Divorce Act**.

The Corollary Relief Judgment dated February 9, 1993 provided that the appellant father have primary care and control of the parties' son who was then nine years old, that the mother have primary care and control of the daughter, who was then five years old and that the appellant pay child support in the amount of \$300.00 per month. Additionally, the appellant was ordered to pay \$350.00 per month spousal support and \$100.00 monthly towards a matrimonial property settlement. At the time of the divorce the appellant, a member of the military stationed at Greenwood, earned approximately \$37,000 annually.

In May, 1993 the respondent began a common law relationship with Mr. Riverin, also a member of the Armed Forces, whom she married in December, 1994. In January, 1994 the parties consented to a variation of the order which terminated the spousal support as of May 31, 1993 and confirmed child support in the monthly amount of \$300.00. That consent order also provided the remaining balance of the property settlement be paid at the rate of \$200.00 per month. The respondent's new husband was posted to Ontario in June, 1996. The appellant's application to decrease the child support, dated June 4, 1996 was heard on August 6, 1996.

In dismissing the application, the learned trial judge found that there had been no material change of circumstances since the last variation which is a prerequisite to a variation as provided in s.17(4) of the **Divorce Act**. After reviewing the record, and considering the submissions of counsel, we find no error on the part of the learned trial judge in assessing the evidence and dismissing the application to vary. The appeal is accordingly dismissed with costs to the respondent taxed in the amount of \$900.00, plus disbursements.

Roscoe, J.A.

Concurred in:

Hallett, J.A.

Flinn, J.A.