

**NOVA SCOTIA COURT OF APPEAL**  
**Citation: *Koval v. Brinton*, 2010 NSCA 78**

**Date:** 20101013  
**Docket:** CA 323360  
**Registry:** Halifax

**Between:**

Rebecca Suzanne Koval

Appellant

v.

Donald Jeffrey Brinton

Respondent

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**Judge:** The Honourable Mr. Justice Jamie W.S. Saunders

**Appeal Heard:** September 27, 2010

**Subject:** **Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.). Provisional Orders. Variation. Section 7 Expenses. Access. Standard of Review. Fresh Evidence.**

**Summary:** A Nova Scotia judge refused to confirm a New Brunswick provisional order, choosing to vary it instead, with the result that the father was relieved from making future contributions towards Section 7 expenses for his children, on account of his substantial costs in exercising access.

The mother appealed, and sought to introduce fresh evidence, complaining that the judge's variation order resulted from error in law and the improper exercise of discretion. She said the file sent to Nova Scotia by the provisional court in New Brunswick was deficient in that it failed to include a transcript of the initial hearing. She argued that the trial judge ought to have remitted the case back to New Brunswick for further evidence.

**Result:** Appeal dismissed. In the unique circumstances of this case, fresh evidence was received to complete the record and provide

a full understanding of the proceedings in both provinces. The materials sent by the court in New Brunswick together with the recitals in the provisional order were sufficient to satisfy the requirements of s. 18(3) of the **Divorce Act**.

The trial judge neither erred in law nor in the exercise of his discretion when he refused to confirm the provisional order, preferring to vary it, thereby relieving the father of contributing to Section 7 expenses by effectively offsetting the future costs of access against the future costs of daycare on a go forward basis, and by requiring him to cover his children under his medical and dental insurance plans. The variation order provided a practical and fair solution, tailored to meet the needs of the children and the means of their parents.

**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 21 pages.**