

**SUPREME COURT OF NOVA SCOTIA**  
**FAMILY DIVISION**

**Citation:** *Fifield v. den Hollander, 2021 NSSC 9*

**Date:** 2021-01-08  
**Docket:** SFHPSA 109643  
**Registry:** Halifax

**Between:**

Tyler Dawn Fifield

Applicant

v.

Kyle Michael den Hollander

Respondent

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**LIBRARY HEADING**

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**Judge:** The Honourable Justice Elizabeth Jollimore

**Heard:** January 7-8, 2021.

**Written Decision:** January 14, 2021.

**Summary:** Mother applied to relocate 3 year old to Alberta. Father discharged presumption that relocation was in the boy's best interests by showing that the relocation would have a drastic impact on parenting time, likely removing all time.

**Key words:** Family, Child support, Mobility, Variation,

**Legislation:** *Parenting and Support Act*, R.S.N.S. 1989, c. 160, section 18, section 37

Nova Scotia *Child Support Guidelines*, NS Reg. 53/98,  
section 3, section 7

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**Counsel:** Tyler Fifield, Self-represented  
Kyle den Hollander, Self-represented

## Introduction

[1] Ms. Fifield's variation application followed an incident where Mr. den Hollander allowed Lincoln (then less than 2) to hold a BB gun and point it at another child. A month later, Mr. den Hollander applied to vary the order, as well.

[2] Months later, Ms. Fifield said she wanted to move Lincoln to Fort McMurray, Alberta.

[3] The variation application is under *Parenting and Support Act*.<sup>1</sup> It's presumed to be in Lincoln's best interest to move unless Mr. den Hollander proves it is not.<sup>2</sup>

## Best interest factors

[4] In determining what's in Lincoln's best interests, I look to the factors listed in subsection 18(6) of the *Parenting and Support Act*. I provided Ms. Fifield and Mr. den Hollander with information about the *Act* and these factors in the conference memo they received a few months before trial. The factors relevant to Lincoln are:

- Lincoln's physical, emotional, social, and educational needs
- each parent's willingness to support Lincoln's relationship with other parent
- the history of Lincoln's care
- each parent's plans for Lincoln's future
- the nature, strength, and stability of the relationship between Lincoln and each parent
- the nature, strength, and stability of the relationship between Lincoln and his extended family
- each parent's ability to communicate and co-operate with the other parent
- Ms. Fifield's reasons for relocating to Fort McMurray
- the effect of relocation on Mr. den Hollander's parenting time
- the effect of relocation on Lincoln's removal from his immediate and extended family

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<sup>1</sup> *Parenting and Support Act*, R.S.N.S. 1989, c. 160

<sup>2</sup> *Parenting and Support Act*, clause 18H(1)(a).

- any additional expenses resulting from the relocation
- the available transportation options, and
- whether Ms. Fifield has provided Mr. den Hollander with proper notice of the relocation

[5] Ms. Fifield has given sufficient notice and information about her plan to relocate.

[6] Given her proposed destination, flying is the only realistic transportation option. Mr. den Hollander didn't challenge Ms. Fifield's evidence about its cost. A flight for Lincoln would average \$590 and a parent's flight would average \$900. At age 3, Lincoln needs to be accompanied by an adult when he flies.

[7] In addition to the cost of air travel, if Mr. den Hollander visited Lincoln in Alberta, there'd be additional costs for ground transportation, accommodations, meals and any activities that Mr. den Hollander wanted to do with Lincoln.

[8] I'll discuss the implications of the travel costs in more detail later.

[9] Since he was about 8 months old, Lincoln's custody and parenting arrangements have been governed by a consent order: Lincoln is in his parents' joint custody. Lincoln was to have his main home with Ms. Fifield and to spend time every weekend with Mr. den Hollander. One weekend, he'd spend 8 hours with his father on Sunday and the next, he'd spend 24 hours from Saturday to Sunday. There'd be other time as the parents agreed.

[10] There have been times of as long as 3 months when Lincoln has gone without seeing his father. For example, during the early days of COVID-19, when Mr. den Hollander was working doing deliveries which brought him into contact with many people, he didn't have contact with Lincoln. This was to minimize the possibility of infection. This decision was sensible.

[11] On 2 other occasions, Ms. Fifield imposed restrictions on Mr. den Hollander, requiring that his contact with Lincoln be supervised. It's not clear that these decisions have been equally sensible. Once, for example, supervision was required because Ms. Fifield was concerned about the food Mr. den Hollander was feeding Lincoln. There would be a less drastic way to address this concern. It appears that Ms. Fifield is not entirely willing to support Lincoln's relationship with Mr. den Hollander.

[12] The parents don't communicate well. Telephone numbers and Facebook messages have been blocked. Mr. den Hollander spoke about a need for specific directions on timesharing and video or phone calls to ensure they happen.

[13] Relocating Lincoln to Alberta will require the parents to cooperate. They won't be in the same time zone. Since Lincoln is 3, all telephone and computer contact will be dependent on an adult operating the technology. Coordinating flights for Lincoln will also require the parents to talk and cooperate. The poor communication and Ms. Fifield's actions in restricting access in the past suggest the parties don't cooperate enough to ensure access will occur when the additional impediments of distance, technology, air travel and disparate time zones are added.

[14] There is no evidence that Lincoln has any special physical, emotional, social or education needs.

[15] Through Mr. den Hollander, Lincoln has time with other members of his paternal family. For Mr. den Hollander and Ms. Fifield, most of their family members (grandparents, aunts, uncles, cousins, and siblings) live in Maritimes, mainly in Nova Scotia.

[16] Lincoln lives in the basement apartment of his maternal grandfather's home. Ms. Fifield says Lincoln has a "great relationship" with his extended family. There was no evidence to suggest that Lincoln's relationship with either of his parents was anything other than strong and stable.

[17] Ms. Fifield's mother and stepfather live in Fort McMurray and Mr. den Hollander's sister lives in Alberta. There is no evidence about the quality of Lincoln's relationship with these 3.

[18] The impact of relocating on Lincoln's relationship with his father and extended family will be drastic. Visits will be brief (1 week at a time) and most often months apart (December, March, July and August).

[19] Ms. Fifield has a casual position in her chosen field with as a medical administrator with the Nova Scotia Health Authority. She says she has no medical benefits and that she struggles financially.

[20] Ms. Fifield said she was offered a job in Fort McMurray "with an increase in salary" and medical benefits. This is not a job in her chosen field. This job pays \$27.65/hour. It is full-time and there are 2 weeks paid vacation each year. If she's paid for 40 hours each week, for 52 weeks each year, Ms. Fifield will have a gross annual income of \$57,512.

[21] Ms. Fifield didn't provide any documentary evidence of the offer, so it's not clear if this is a term position, if she has a period of probation, or what her hours or days of work would be.

[22] Mr. den Hollander says that it's in Lincoln's best interests that the relationships he has with his father and his extended family are not drastically changed. Mr. den Hollander says that Lincoln's need for health insurance is already met because Mr. den Hollander has health insurance for Lincoln.

[23] Ms. Fifield says that relocating would provide Lincoln with a better standard of living, better education, and more opportunities. I can't make any judgments on Alberta's and Nova Scotia's education systems or opportunities. There was no evidence about these.

[24] I must look at Ms. Fifield's financial situation, comparing her situation in Alberta and Nova Scotia, to consider Ms. Fifield's argument that Lincoln will have a better standard of living in Alberta.

[25] Ms. Fifield offers Mr. den Hollander parenting time at Christmas, March Break and 2 separate weeks during the summer, along with any other time that he can travel to Fort McMurray. She says she and Mr. den Hollander would equally finance flights and 1 parent would always accompany Lincoln on his flights. She would forgo all child support from Mr. den Hollander so he can afford visits, and he and Lincoln would be able to talk by phone and electronically "as much as they can".

[26] Mr. den Hollander says the cost of travel will mean he would have no real relationship with Lincoln – even if he pays no child support.

[27] Ms. Fifield estimates Lincoln's annual childcare cost in Alberta would average \$13,475. This is based on 11 months: excluding the 4 weeks Lincoln would be with Mr. den Hollander. (It is also more than 3 times the cost of childcare in Nova Scotia.) Only \$7,000 of the childcare cost is deductible, so after she pays her taxes and childcare, Ms. Fifield's income would be \$35,221.

[28] Based on Ms. Fifield's estimated cost for 4 trips to Nova Scotia each year, her share of Lincoln's travel cost is \$4,740. So, her available income is \$30,481.

[29] Ms. Fifield didn't provide evidence of her current income. In a brief which was not introduced into evidence, she said her net income is \$29,100. This is just \$1,400 per year less than what her net income in Alberta would be.

[30] At Mr. den Hollander's current income of \$33,800, he would pay monthly child support \$290. This is \$3,480 per year and means that child support plus her

income, puts Ms. Fifield in a better position staying in Nova Scotia than moving to Alberta.

[31] Mr. den Hollander's share of the travel costs to Fort McMurray is \$4,740. The modest 4-week access schedule would cost Mr. den Hollander \$1,260 more than his annual child support.

[32] After paying his tax, Mr. den Hollander has \$28,299 or \$2,358 each month. Travel costs would equal 2 months' net income.

[33] I accept Mr. den Hollander's argument that it wouldn't be possible for him to afford parenting time with Lincoln in Alberta, even without paying any child support and with Ms. Fifield's help.

[34] Ms. Fifield plans to live, rent-free, with her mother and stepfather in Fort McMurray. Her mother would stay home from her job to be with Lincoln if he were sick or if daycare weren't available. Ms. Fifield's mother says that the rent Ms. Fifield saves will help her put aside money for Lincoln's future education, and to pay for extra-curricular activities.

[35] There was no description of the arrangements in Fort McMurray (the home, the neighbourhood, or the school) so I can't tell if this is a better arrangement than the one Lincoln has now. If housing is free, it will be cheaper. However, Ms. Fifield admitted that her mother has reneged on an agreement to provide rent-free accommodations in the past.

[36] In Nova Scotia, Lincoln's entire life has been around extended family. There's no evidence of community connections, though he does have a young friend, Clay, here. The entire fabric of Lincoln's life would be upset if he were moved to Fort McMurray.

[37] I find that Mr. den Hollander has met the burden of proving that a move would not be in Lincoln's best interests. Lincoln may not be moved to Fort McMurray.

### **How should I adjust Lincoln's parenting arrangement?**

[38] The parents' conflict and the restrictions on Mr. den Hollander's parenting time warrant an adjustment (and clarification) of Lincoln's parenting time with his father. Greater certainty and clarity will reduce conflict.

[39] Based on the evidence, I order as follows:

### **Regular parenting time**

Starting January 15, 2021 and on every second weekend, Lincoln will spend time with Kyle den Hollander from Friday at 6 p.m. until Sunday at 6 p.m.

Starting on January 21, 2021 and on every second Thursday, Lincoln will spend time with Kyle den Hollander from Thursday at 6 p.m. until Friday at 9 a.m. It is anticipated that Jacqueline Inness will be part of this parenting time and that Lincoln may be returned to his daycare.

### **Parenting time on long weekends**

In even-numbered years, if Heritage Day, Natal Day or Remembrance Day fall on Kyle den Hollander's weekend, his time with Lincoln will be extended to include that day.

In odd-numbered years, if Victoria Day, Canada Day or Thanksgiving Day fall on Kyle den Hollander's weekend, his time with Lincoln will be extended to include that day.

### **Easter**

In odd-numbered years, Lincoln will have parenting time with Kyle den Hollander from Saturday at 6 p.m. until Monday at 6 p.m.

In even-numbered years, Lincoln will have parenting time with Kyle den Hollander from Thursday at 6 p.m. until Saturday at 6 p.m.

### **Summer parenting time**

Every year, in each of July and August, each parent will have 1 uninterrupted week with Lincoln (for example, from Saturday at 10 a.m. until the following Saturday at 10 a.m.)

In odd-numbered years, Kyle den Hollander will identify his weeks to Tyler Fifield no later than April 1 and Tyler Fifield will identify her weeks to Kyle den Hollander no later than May 1.

In even-numbered years, Tyler Fifield will identify her weeks to Kyle den Hollander no later than April 1 and Kyle den Hollander will identify his weeks to Tyler Fifield no later than May 1.

## Christmas

In odd-numbered years, Lincoln will have parenting time with Kyle den Hollander from noon on December 23 until noon on December 25, and parenting time with Tyler Fifield from noon on December 25 until noon on December 28.

In even-numbered years, Lincoln will have parenting time with Tyler Fifield from noon on December 23 until noon on December 25, and parenting time with Kyle den Hollander from noon on December 25 until noon on December 28.

## Child support

[40] Based on his annual income of \$33,800, I order Kyle den Hollander to pay monthly child support of \$290 under section 3 of the Nova Scotia *Child Maintenance Guidelines*.<sup>3</sup>

[41] Ms. Fifield pays \$350 each month for childcare (\$4,200 annually). After tax, this is approximately \$3,150 annually. I estimate her gross annual income to be approximately \$31,200. This is based on her hourly wage of \$19.99, working 32.5 hours weekly for 48 weeks per year. I allow 2 weeks for statutory holidays, and 2 weeks for illness and family needs.

[42] Mr. den Hollander's annual income is \$33,800.

[43] A proportionate sharing of the after-tax cost of childcare sees Mr. den Hollander pay 52% of the expense or \$136.50 each month under clause 7(1)(a) of the *Guidelines*.

[44] In total, Mr. den Hollander would pay monthly child support of \$426.50.

[45] Mr. den Hollander prefers to pay his child support bi-weekly, so he will pay \$196.84. These payments will start immediately, and all payments will be made through the Maintenance Enforcement Program.

[46] The other terms of consent order August 13, 2018 remain in force, including the term of joint custody, which neither parent asked to change.

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Elizabeth Jollimore, JSC(FD)

Halifax, Nova Scotia

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<sup>3</sup> NS Reg 53/98