

**IN THE SUPREME COURT OF NOVA SCOTIA  
(FAMILY DIVISION)**

**Citation:** Pottinger v. Hann, 2003 NSSC 310; formerly 2003 NSSF 22

**Date:** 20030613

**Docket:** SFHF-013252

**Registry:** Halifax

**Between:**

Lorne Gregory Pottinger

Applicant/Respondent

v.

Judy Roxanne Hann

Respondent/Applicant

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**LIBRARY HEADING**

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**Judge:** The Honourable Justice Walter R. E. Goodfellow

**Heard:** June 3<sup>rd</sup>, 2003 in Halifax

**Written Decision:** June 13<sup>th</sup>, 2003

**Subject:** **DIVORCE - APPLICATION TO VARY**

**Summary:** Upon entry into common-law relationship, Ms. Hann has a son born three years earlier. The common-law relationship lasted over six years at the end of which the parties consented to an Order in Family Court November the 14<sup>th</sup>, 1997 for joint custody of two children, the latter born during their cohabitation. Mr. Pottinger exercised access and paid child support in accordance with Consent Order. In 1998 he was convicted of sexually assaulting Ms. Hann's niece and given probation. Unfortunately, there were additional allegations of sexual assault, for which he was either found not guilty, or were not pursued. Such allegations diminished trust between the parties and as one allegation involved friend of the oldest child, now 16, active father/son relationship terminated. Mr. Pottinger applied to vary and Ms. Hann sought arrears of child support, childcare, determination of pension entitlement and return of personal property.

**Issues:** There are five issues dealt with under result.

**Result:** 1. Termination of responsibility as parent -

Mr. Pottinger now takes the position that as a step-father, he has no legal obligation to support older child. *Reed v. Smith* (1998), 86 N.S.R. (2d) 72. The Court noted that in *Reed v. Smith* the Court of Appeal dealt with an appeal of the first instance whereas here, there was a Consent Order, acknowledgment of dependency and assumption of responsibility towards child. Father/son relationship lasted for several years and consent was not given conditionally, nor does it permit option at any time to decline responsibility readily accepted. Here, no appeal from the Consent Order and existing Order to continue. Declined to follow *Baker v. Peterson*, 2001 NSSF 06.

2. Childcare -

The obligation to provide child support is a clear obligation on a parent without any requirement of request/demand or court application. *Farnell v. Farnell* [2002] N.S.J. No. 491. Claim for childcare, however, requires the person incurring such an expenditure to provide, in a timely fashion, financial particulars and confirmation of such expenditure, including the after tax cost of such and Ms. Hann failed to do so. Claim for \$20,000.00 arrears of childcare dismissed, but childcare effective January the 1<sup>st</sup>, 2003 to be shared proportionate to their incomes.

3. Return of personal effects -

Personal effects divided at separation in 1997 too late and too uncertain as to what transpired since, with one exception, a particular game belonged to oldest child and must be returned to oldest child.

4. Custody/Access -

Sole custody appropriate. Ms. Hann failed to establish requirement of supervised access for their son, now 7. The Child Protection Services file closed.

5. Pension Entitlement -

Factual disagreement as to whether there was a break of several months in cohabitation. Concluded no break established since Mr. Pottinger a member of the Canadian Armed Forces plus Ms. Hann's health and other reasons resulted in period of absence but not cessation of cohabitation.