

SUPREME COURT OF NOVA SCOTIA

Citation: Smith v. Rand, 2013 NSSC 369

Date: 20131114

Docket: 1204-005525

SKD 0077451

Registry: Kentville

Between:

William Adam Smith

Applicant

v.

Elizabeth Ann Rand

Respondent

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Judge: The Honourable Justice Michael J. Wood

Heard: November 4, 2013, in Kentville, Nova Scotia

Decision: November 14, 2013 (Orally)

**Release of
Written Decision:** November 26, 2013

Subject: Family - Spousal Support - Variation

Summary: The parties entered into a separation agreement in 2011 which included a provision that spousal support could not be varied for a period of five years no matter what the parties' change in circumstances. The agreement was

incorporated into the corollary relief order in 2011.

In 2011 the husband's income was \$150,000, and in 2012 it increased to \$267,000. In 2013 he claimed it would be only \$44,000. His income was based upon commissions generated from sales of insurance products.

Issue: Was there a material change in circumstances justifying variation of spousal support?

Result: The husband's income was subject to periodic variation. The separation agreement placed the risk of income change on the husband. Applying *L.M.P. v. L.S.*, 2011 SCC 64, the Court concluded that the agreement should be a significant factor in determining if there is a material change justifying variation of support. In light of the lack of disclosure of some financial income and the uncertainty about income over the next few months, The Court decided that the husband had not established a material change in circumstances. Application was dismissed.

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