

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

**Citation:** *Kennedy v. McNiven*, 2014 NSSC 162

**Date:** 2014-05-12

**Docket:** No. SFHMCA-23192

**Registry:** Halifax

**Between:**

Blake F. Kennedy

Applicant

v.

C. Michelle McNiven

Respondent

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**Judge:** The Honourable Justice Carole A. Beaton

**Heard:** January 27 and February 27, 2014 in Halifax, Nova Scotia

**Written Decision:** May 13, 2014

**Summary:** The Applicant father sought a change under the joint custody order to have the child assume a primary residence with him and a requirement for the Respondent to pay child support. The Respondent mother opposed the request and sought a reduction in the Applicant's parenting time, retroactive child support, provision for medical coverage for the child by the Applicant and a retroactive contribution to special expenses.

**Issues:**

- (1) Has there been a change in circumstances?
- (2) What parenting arrangement is in the child's best interests

regarding primary residence, parenting time for each parent and block summer access?

(3) What are the appropriate financial arrangements for the child regarding prospective and retroactive support and special expenses?

(4) Should the mobility clause in the current Order be removed?

**Results:** A change in circumstances was found to exist in the change to the child's level of maturity over the eleven years. The Court was prepared to place great weight on the Child's Wishes Assessment, all other factors going to the question of the child's best interests being essentially "equal" as between the parties. Further evidence required to determine the quantum of prospective support pursuant to the *Child Support Guidelines*. Insufficient evidence upon which to determine retroactive child support and special expenses. Father required to provide medical coverage for the child if available.

**Keywords:** Child Maintenance Guidelines; Family; Family-Maintenance and Custody Act; Family-access to children; Family-child custody; Family-child custody-joint; Family-child support; Family-child support-application to vary; Family-child support-retroactive; Family-special expenses.

**Legislation:** *Maintenance and Custody Act*, RSNS 1989, c.160  
*Child Maintenance Guidelines*, NS Reg 53/89

**Caselaw:** *Gordon v. Goertz* (1996) S.C.J. No. 52  
*Legace v. Mannette*, 2012 NSSC 320  
*W.R.V. v. S.L.V.*, 2007 NSSC 251  
*DiLiberator v. Fabrizi*, 2005 NSSC 321  
*Poole v. Poole*, 2005 NSSF 7

*Young v. Young*, 1993 4 SCR 31  
*Tamlyn v. Wilcox* 2010 NSSC 266  
*Burgoyne v. Kenny*, 2009 NSCA 34  
*Foley v. Foley* (1993) N.S.J.R. No. 347  
*D.B.S. v. S.R.G.*; *T.A.R. v. L.G.W.*; *Henry v. Henry*; *Himestra v. Himestra*, 2006 S.C.C. 37

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