

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** Bjarnason v. Bjarnason, 2005 NSSC 205

**Date:** 20050711

**Docket:** 1202-001409

(SFH D 035684)

**Registry:** Amherst

**Between:**

Kerry Bjarnason

Petitioner

v.

Catherine Ann Bjarnason

Respondent

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**Judge:** The Honourable Justice Deborah Gass

**Heard:** June 9 and 10, 2005

**Release:** July 19, 2005

**Subject:** *Divorce Act*; Custody of Children; Separation Agreement; Material Change in Circumstance

**Summary:** Four years after parties' separation and almost one year following separation agreement, father petitioned for divorce claiming custody of two children; parties had an informal joint custodial arrangement since separation, confirmed by separation agreement, wherein children were with mother from Monday to Friday and at the father's parents' farm most weekends and holidays.

**Issues:** Was there a material change in circumstances since the agreement was signed? Was the original agreement contrary to the best interests of the children?

**Result:** Court held that there was no material change in circumstances to warrant a fresh inquiry into the parenting arrangement, applying *Rafuse* and *Handspiker* (2001) NSCA, 11 R.F.L. (5<sup>th</sup>) 363 and *Gordon v. Goerts* (1996), 19 R.F.L. (4<sup>th</sup>) 177 (S.C.C.) nor was the original agreement so flawed that it should be overturned.

Divorce granted; separation agreement incorporated to form part of Corollary Relief Judgment.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION. QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.***