

NOVA SCOTIA COURT OF APPEAL
Citation: *Desmond v. Holland*, 2007 NSCA 1

Date: 20070105
Docket: CA 268838
Registry: Halifax

Between:

Cleveland Hilton Desmond (Farrell)

Appellant

v.

Cedulea Rosalea Holland

Respondent

Judge: The Honourable Justice M. Jill Hamilton

Appeal Heard: November 30, 2006

Subject: **Family law; fresh evidence; custody of child of dating relationship**

Summary: Judge awarded custody of child to mother. The father appealed, seeking to introduce fresh evidence. He argued that the judge erred by misapprehending the evidence, that there was a reasonable apprehension of bias and that his trial counsel was incompetent.

Issue: Should the fresh evidence be admitted? Did the judge err, was there a reasonable apprehension of bias and was the father's trial counsel incompetent?

Result: Application for admission of fresh evidence dismissed. The proposed evidence could not have been expected to have affected the judge's decision. Appeal dismissed. While the judge was incorrect in some of her statements in her reasons, she did not seriously misapprehend the evidence. The judge's statements that led the father to believe that the judge was biased against him were her findings of credibility and fact which she is required to state in her reasons. There is no reasonable probability that the result of the hearing would have been different without the acts of his counsel that the father complained of.

<p>This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 16 pages.</p>
--