

**NOVA SCOTIA COURT OF APPEAL**

**Citation: *Nova Scotia (Community Services) v. B.L.C.*,  
2007 NSCA 48**

**Date:** 20070426  
**Docket:** 276472  
**Registry:** Halifax

**Between:**

Minister of Community Services

Appellant

v.

B.L.C.

Respondent

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**Restriction on publication: Pursuant to s. 94(1) of Childrens and Family Services Act**

**Judge:** The Honourable Justice M. Jill Hamilton

**Appeal Heard:** April 12, 2007

**Subject: Moot, Family law, Child protection, Section 44(1) of the Children and Family Services Act**

**Summary:** In a child protection matter, the Minister applied to have the mother referred for a parental capacity assessment with a psychological component. The Minister suggested referral to one assessor and the mother requested referral to a different one. No issue was raised as to the relative cost of the assessors and it was agreed all assessors were excellent and had done assessments for the Minister previously. The assessor recommended by the Minister indicated she could have her report ready earlier than the assessor requested by the mother. Both assessments could be ready well in advance of the trial dates, which had not been set, and the time limits provided in s. 45 of the **CFSA**. In a disposition order giving temporary care and control of the child to the Minister, the judge referred the mother for assessment to the assessor she requested. The parties agree the matter is now moot.

**Issues:** Should the Court exercise its discretion to decide the merits of the moot appeal? If so, did the judge err in holding that she had jurisdiction to refer the mother for assessment to an assessor different from the one put forward by the Minister?

**Result:** Court decided the moot jurisdiction issue but dismissed the appeal. Deciding this moot issue may highlight the very specific issue the judge decided. This issue was within the expertise of the Court, the adversarial context continued and the short time frames in the **CFSA** may make the issue generally evasive of appeal. The wording of s.44(1) of the **CFSA**, considered in light of the whole of the **CFSA**, indicates that in the specific fact situation in this appeal the judge had jurisdiction to refer the mother for assessment to an assessor other than the one recommended by the Minister. This was not an appeal dealing with the provision of services under s. 13 of the **CFSA**.

**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 11 pages.**