Date: 20010412
Docket: CA170194

NOVA SCOTIA COURT OF APPEAL
[Cite as: *I.C. v. Children's Aid Society of Shelburne County*, 2001 NSCA 65]

BETWEEN:

I. C. and **H. R. C.**
Applicants

- and -

CHILDREN'S AID SOCIETY OF SHELBURNE COUNTY
First Respondent

- and -

C. A. and W. S.
Second Respondent

DECISION

Editorial Notice

Identifying information has been removed from this electronic version of the judgment.

Counsel: Johanne L. Tournier, solicitor for the applicants
Donald G. Harding, solicitor for the first respondent
Timothy D. Landry, solicitor for the second respondents

Applications Heard: April 12, 2001
Judgment Delivered: April 12, 2001

BEFORE THE HON. JUSTICE JAMIE W. S. SAUNDERS IN CHAMBERS

Publishers of this case please take note that s.94(1) of the **Children and Family Services Act** applies and may require editing of this judgment or its heading before publication. Section 94(1) provides:

> 94(1) No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding pursuant to this Act, or a parent or guardian, a foster parent or a relative of the child.

Saunders, J.A. (Orally):

[1] This is my decision concerning this morning's motions. There are two applications. The style of cause referenced in the two interlocutory applications (*inter partes*) read as follows: Between I. C. and H. R. C., "Appellant" and Children's Aid Society of Shelburne County, First Respondent, and C. A. and W. S., Second Respondent.

[2] The first application is dated March 28th, 2001. Ms. Tournier, counsel for the "appellant" is said to request "a stay of execution with respect to the decision made by Judge John D. Comeau on March 16th, 2001, under Family Court File No. 97S B0028 and is given pursuant to CPR 62.10 and/or s. 49(3) of the **Children and Family Services Act** of Nova Scotia."

[3] The second application filed by the same counsel is dated April 19, 2001. It purports to claim the same sought-after remedy of a stay of execution with respect to the decision of Judge Comeau. Further, it states that "the appellant (singular) is seeking an order that the child J. not be removed from the home of the appellants pending disposition of the appeal."

[4] In support of these two applications Ms. Tournier filed a personal affidavit and certain case references.

[5] After reading the submissions filed both in support as well as the brief filed in response by Mr. Harding, counsel for the respondent Children's Aid Society of Shelburne County, I became very concerned with a number of preliminary procedural issues. The first is standing. I raised that with counsel first thing this morning and asked them to address it in their submissions. Specifically, I asked Ms. Tournier how it was she presumed her clients, I. C. and H. C., said to be the foster parents of J., had any standing to appear before me in Chambers this morning to seek the relief reflected in her applications. Having now heard from Ms. Tournier and Mr. Harding, I find that Mr. and Mrs. C., have no standing to appear in Appeal Court Chambers seeking such relief. In my view, they do not come within the definition of "party" under the **Act**. Neither are they a party under the **Civil Procedure Rules** entitling them to seek a stay.

[6] Even if Mr. and Mrs. C. were parties under the Rules or acquired some other form of standing before this Court, I conclude that a stay is not an appropriate remedy. A stay would be of absolutely no effect because the Children's Aid Society was granted care and custody of this little girl in 1998. The Children's Aid Society stands as her legal guardian, having all of the rights and powers vested by s. 47 of the **Act**.

[7] Furthermore, there is, in effect, no order following the decisions of Chief Judge Comeau. When the parties appeared before him he *dismissed* the

several applications brought by or on behalf of Mr. and Mrs. C.. Consequently, there is no order of the Family Court subject to stay or suspension. For all practical purposes, granting a stay would have no effect as regards the relationship between the Children's Aid Society and this little girl.

[8] I find that the doctrine of *parens patriae* has no application to this case this morning. Neither does the decision of Justice Hallett referred to by Ms. Cormier. Rather, the words of Justice Chipman quoted by Mr. Harding from **Re: D.T.** (1992) N.S.J. No. 289 are especially apt. I have no authority - as was suggested by Ms. Tournier - to virtually ignore the very clear intention of the Legislature in such matters as reflected in the operative provisions of the **Children and Family Services Act**.

[9] I understand from counsel's representations this morning that the matter is set down for appeal to this court in June. It will be for the panel sitting at that time to decide what, if any, submissions they are prepared to entertain from the so-called "appellant" Mr. and Mrs. C..

[10] Counsel, that concludes my decision on today's applications. Do you wish to say anything on the matter of costs?

[11] Taking into account your submissions, I find that the Society is entitled to some costs in successfully resisting this morning's applications. I fix those costs at $400.00 payable in any event of the cause.

Saunders, J.A.