

CASE NO.

VOL. NO.

PAGE

D.J.M.

- and -

THE MINISTER OF COMMUNITY SERVICES

(Appellant)

(Respondent)

CA 177775

Halifax, N.S.

HAMILTON, J.A.

Cite as: **D.J.M. v. Nova Scotia (Community Services), 2002 NSCA 103**

APPEAL HEARD:

June 13, 2002

JUDGMENT DELIVERED:

August 16, 2002

SUBJECT:

Section 63(3) of **Children and Family Services Act**, S.N.S. 1990, c. 5 - Child Abuse Register - whether the person whose name is sought to be entered on the Child Abuse Register is a compellable witness; Sections 7, 11(c) and 13 of the **Charter of Rights and Freedoms** and the **Civil Procedure Rules** - disclosure/production

SUMMARY:

The respondent applied to have the appellant's name entered in the Child Abuse Register. The appellant filed a Notice of Objection denying the allegations of abuse. A preliminary motion was made before the Chambers judge to determine if the appellant was a compellable witness at the hearing to determine whether his name should be entered in the Child Abuse Register and to determine whether the principles of disclosure set out in **R. v. Stinchcombe**, [1991] 3 S.C.R. 326; S.C.J. No. 83 (Q.L.) applied to this hearing. The application focussed on the **Charter** and was not one for civil production pursuant to any section of the **Children and Family Services Act** or the **Civil Procedure Rules**. The Chambers judge held that the appellant was a compellable witness and that the principles of disclosure set out in **Stinchcombe** did not apply. The Chambers judge did not order any further disclosure by the respondent.

ISSUES:

1. Did the Chambers judge err in finding that the appellant is a compellable witness at the hearing to determine if his name should be entered in the Child Abuse Register?
2. Did the trial judge err in finding the disclosure provisions set out in **R. v. Stinchcombe** do not apply to this hearing and refusing to order further production by the respondent?

RESULT:

Appeal dismissed.

1. The appellant is a compellable witness by virtue of s. 45 of the **Evidence Act**. In this case s. 7 of the **Charter** is not breached because the compellability of the appellant is in accord with the principles of fundamental justice since the appellant receives protection against the subsequent use of the compelled testimony under s. 13 of the **Charter**. There was no evidence the appellant's testimony was being sought for any improper purpose.
2. The principles of disclosure set out in **Stinchcombe** do not apply. Since the appellant has not made an application for disclosure pursuant to the **Act** or the **Rules**, there has, as yet, been no determination of what statutory or rule-based disclosure/production obligations apply or whether their use would assure a fair hearing. Without such a determination, it is not possible to assess whether the standard of fairness required in this proceeding by s. 7 of the **Charter** has been satisfied.

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 14 pages.