

<u>CASE NO.</u>	<u>VOLUME</u>	<u>PAGE</u>
Cite as: Nova Scotia (Community Services) v. C.O.B., 1997 NSCA 198		
MINISTER OF COMMUNITY SERVICES (Appellant)	- and -	C.O.B. and C.B. (Respondent)
C.A. No. 143372	Halifax, N.S.	Clarke, C.J.N.S. (orally)

APPEAL HEARD: December 12, 1997

JUDGMENT DELIVERED: December 12, 1997

WRITTEN RELEASE OF ORAL: December 17, 1997

SUBJECT: **FAMILY LAW - Protective Services - Placement and Access - Natural Justice; *Children and Family Services Act*, S.N.S. 1990, c. 5, s. 22(2)(b), (c), (h), (ja).**

SUMMARY: Four children ranging in age from three to eight years were taken into care in May, 1997. The protection hearing concluded in October, 1997, and the decision was delivered and an order was issued by the judge of the Family Court on November 18, 1997.

On May 20, 1997, the Minister was granted temporary care and custody with access to the mother two times per week as specified by the Agency. At various times the interim order was amended only as it related to the terms of access granted the mother. In September, 1997, her access was reduced to three hours on one day per week.

In the order given after the hearing was concluded, the judge found that while the children were in need of protection and required supervision, he also returned them to the respondent mother who had long since separated from their father. The Minister appealed.

ISSUE: The Minister alleged that the trial judge erred by,

1. ordering changes to the placement and access of the children without counsel having an opportunity to present evidence and

make submissions on the subject; and

Page 2

2. placing the children back with their mother without considering the needs of the children as specified by the preamble and other relevant sections of the **Act**.

**RESULT:** The Court allowed the appeal with respect to placement and access. It confirmed the finding of the judge that the four children are in need of protective services. The Court observed that returning the children to the mother represented a substantial change from all the earlier interim orders. It found that the focus of the proceeding was whether the children were in need of protection and the issue of placement was neither requested nor adequately addressed by counsel before the order was issued. The Court observed that it is a fundamental principle of natural justice that the appellant (Minister) had the right to be heard on placement and access before the children were returned to the respondent mother in the manner that the judge ordered. The Court concluded the judge erred in law by failing to provide counsel with that opportunity.

**This information sheet does not form part of the Court's decision. Quotes must be from the decision, not this cover sheet. The full court decision consists of 5 pages.**