

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Coltsfoot Publishing Ltd. v. Foster-Jacques*, 2012 NSCA 83

**Date:** 20120816

**Docket:** CA 367939

**Registry:** Halifax

**Between:**

Coltsfoot Publishing Limited

Appellant

v.

Sharon J. Foster-Jacques and Hector J. Jacques

Respondents

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**Judge:** The Honourable Justice Joel E. Fichaud

**Appeal Heard:** May 22, 2012 in Halifax, Nova Scotia

**Subject:** Confidentiality Orders - Open Court Principle

**Summary:** The Respondents are divorcing. They have filed financial material with the Supreme Court (Family Division) as required by Rule 59. *Frank Magazine* wishes to see that information. The Respondents moved under Rule 59.60 for an order that the file be sealed. The judge of the Family Division said that the risk of identity theft from personal information in the file justified a confidentiality order. The judge said that a partial publication ban would not suffice, because it could not be policed, and that redaction would be cumbersome and costly. So the judge ordered that the file be sealed in its entirety. There was no evidence on the motions, and the judge relied on judicial notice for the facts that supported her ruling. The magazine's publisher appealed to the Court of Appeal.

**Issue:** Did the judge err in law in her interpretation or application of the open court principle?

**Result:** The Court of Appeal allowed the appeal, overturned the sealing

order and substituted a partial publication ban and option for the respondents to redact the personal identifier information. There was no evidence to show that a partial publication ban or redaction were not reasonable alternatives. The judge erred in law by taking judicial notice of dispositive adjudicative facts that were neither notorious nor indisputable.

*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 34 pages.*