

CASE NO.

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**Cite as: G.D. v. Family and Children's Services of Lunenburg County,
1997 NSCA 123**

G. D.

**FAMILY AND CHILDREN'S SERVICES
OF LUNENBURG COUNTY**

(Appellant)

- and -

(Respondent)

C.A. No. 137403

Halifax, N.S.

PUGSLEY, J.A.

APPEAL HEARD:

June 6, 1997

JUDGMENT DELIVERED:

June 16, 1997

Editorial Notice

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

SUBJECT: **Children & Family Services Act, S.N.S. 1990, c. 5 - s. 41(4)(c); Limited jurisdiction of the Court of Appeal to set aside a consent order; Solicitor and client privilege.**

SUMMARY: The appellant requested the Court to set aside a consent order granted after the first day of trial, notwithstanding her counsel's verbal consent, and subsequent written consent in form and substance, to the order.

The appellant also submits the trial judge failed to satisfy himself, pursuant to s. 41(4)(c) of the **Act**, that the appellant understood the nature and consequences of the order, that the appellant consented to the order, and that her consent was voluntary.

Appellant applied to introduce fresh evidence on the appeal. The respondent consented to the introduction of the fresh evidence and also moved to introduce as fresh evidence an affidavit from the appellant's former trial counsel. The appellant objected to the introduction of the affidavit on the ground of solicitor and client privilege.

RESULT: Appeal allowed. The Court determined that if an application is made to set aside a consent order and it will result in the bringing forth of additional facts then the application should be brought by way of a separate proceeding in the Family Court.

Under the provisions of s. 41(4)(c) of the **Children and Family Services Act** the Court should have satisfied itself that the appellant understood the nature and consequences of her consent, that she consented to the order being sought, and that her consent was voluntary. Unless there are exceptional circumstances, the Court is obliged to conduct an in court inquiry by directing questions to the party, and should not be satisfied with responses from counsel. As a consequence of failing to comply with the provisions of s. 41(4)(c) the trial judge had no jurisdiction to approve the consent order submitted by counsel.

The appellant had clearly waived, by implication, any privilege respecting the issues raised in the affidavit submitted by her former counsel. It would be unfair if the privilege were maintained. Accordingly, solicitor and client privilege had been lost.

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 17 pages.