

<u>CASE NO.</u>	<u>VOLUME</u>	<u>PAGE</u>
Cite as: Family & Children's Services of Annapolis County v. J.M.M., 1997 NSCA 120		
FAMILY & CHILDREN'S SERVICES OF ANNAPOLIS COUNTY		J. M. M. and L. M.
(Appellant)	- and -	(Respondent)
C.A. No. 136806	Halifax, N.S.	FREEMAN, J.A. (orally)

APPEAL HEARD: June 12, 1997

JUDGMENT DELIVERED: June 12, 1997

WRITTEN RELEASE OF ORAL: June 18, 1997

SUMMARY: Family Law; **Family and Children's Services Act**, S.N.S. 1990, c. 3, s.39; five day hearings, interim findings.

ISSUE: A five day hearing was held pursuant to s. 39(1) of the **Family and Children's Services Act** within five days of his apprehension on allegations of sexual abuse to determine whether there were reasonable and probable grounds for the apprehension. The only evidence was an affidavit on behalf of the appellant agency; the respondent mother was present to give *viva voce* evidence but there was no time to hear her. The Family Court judge made an interim finding that there were reasonable and probable grounds and granted an order subject to further evidence. At an adjourned hearing three weeks later he dismissed the application. The agency appealed on grounds that s. 39 of the **Act** requires that a decision be made on the evidence presented at the five day hearing and does not permit dismissal at an adjourned hearing.

ISSUE: Was there jurisdiction under the **Act** for an interim finding and dismissal of the application at an adjourned hearing.

RESULT: The appeal was dismissed. A literal reading of the section supported the agency's position but the **Act** must be read in light of its preamble, which asserts that rights of children, families and individuals are guaranteed under the rule of law. In the circumstances of the case the Family Court judge did not lack jurisdiction nor commit a reversible error.

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 4 pages.