

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Nova Scotia (Community Services) v. Nova Scotia (Attorney General)*,  
2017 NSCA 73

**Date:** 20170331

**Docket:** CA 460500

**Registry:** Halifax

**Between:**

Minister of Community Services, M.A.C., and M.C.O.

Appellants

v.

The Attorney General of Nova Scotia

Respondent

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<b>Restriction on Publication: s. 94(1) <i>Children and Family Services Act</i></b>
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**Judge:** The Honourable Justice Cindy A. Bourgeois

**Appeal Heard:** March 30, 2017, in Halifax, Nova Scotia

**Subject:** *Stare decisis*; constitutional references; role of biological fathers in adoption applications

**Summary:** At the heart of this matter is a very young child, placed in the Minister of Community Services' care shortly after her birth. This was effected by way of an agreement made with the biological mother.

The Minister placed the child with a couple who, in due course, filed an Application for Adoption. The application came before the court. Despite the application being in appropriate form, the Minister consenting to the adoption, and the "paperwork" otherwise appearing to be "fine", the hearing judge declined to grant the order for adoption. Rather, he raised concerns regarding the lack of notice given to the

child's biological father, and invited submissions on the issue, including eventually from the Minister.

The Minister accepted the invitation and asserted that the issue of the involvement of a biological father, who did not fall within the statutory definition of "parent", had been conclusively determined by this Court.

The hearing judge released a written decision in which he, on his own motion, concluded he would refer several constitutional questions to himself for determination.

**Issues:**

- (1) Did the hearing judge err in legal principle by commencing a constitutional reference on his own motion?
- (2) Did the hearing judge cause a patent or obvious injustice to the adoption applicants?

**Result:**

Appeal allowed and an order for adoption was issued. The Court was satisfied that the hearing judge erred in legal principle when forging ahead with a self-directed constitutional reference. Further, the hearing judge caused a patent injustice to the adoption applicants and the child, in how he chose to respond to their application.

<p><i>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 33 pages.</i></p>
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