

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Finck v. The Queen*, 2004 NSCA 121

**Date:** 20041012

**Docket:** CAC 230452

**Registry:** Halifax

**Between:**

Lawrence Ross Finck and Carline A. VandenElsen

Applicants/Appellants

v.

Her Majesty the Queen, Central Nova Scotia Correctional  
Facility and Minister of Community Services

Respondents

- and -

Attorney General for Nova Scotia

Intervenor

**Judges:** Fichaud, J.A.

**Application Heard:** October 7, 2004, in Halifax, Nova Scotia, In Chambers

**Held:** Directions given respecting contents and filing of appeal book.

**Counsel:** applicants/appellants in person  
Kenda Murphy, for the respondents Nova Scotia Correctional  
Facility and Minister of Community Services and for the  
Intervenor, Attorney General of Nova Scotia  
Elizabeth Whelton and Nicolas Barr for the Children's Aid  
Society

**Decision:**

[1] On August 19, 2004, Justice MacAdam ruled that he had no jurisdiction to consider the appellants' application to review the apprehension of the appellants' child by Children's Aid authorities. His reason was that the matter was already under review by a justice of the Family Division of the Supreme Court in another proceeding. On September 10, 2004, the appellants filed a notice of appeal to this Court from Justice MacAdam's decision of August 19, 2004. Justice MacAdam's decision of August 19, 2004, is the only matter under appeal in this proceeding.

[2] The appellants filed an interlocutory notice in Court of Appeal Chambers.

[3] The interlocutory notice, and the oral submissions by the appellants, who appeared on their own behalf, requested that I issue various remedies, including an order for *habeas corpus* to return their child, that I reverse the decision of Justice MacAdam, and that I rule upon the merits of the proceeding which is under way in the Family Division of the Supreme Court. I have no jurisdiction to consider any of these matters. This Court hears appeals, not original applications for *habeas corpus*. The appeal from the decision of Justice MacAdam is for a panel of this Court, not for a single Chambers justice, to determine. This appeal has not been taken from any decision of the Family Division of the Supreme Court.

[4] Of the various points in the interlocutory notice, and addressed in the oral submissions of the appellants, the only matter over which I have jurisdiction is the appellants' request for directions on the contents and filings of the appeal book and factum and the setting of a hearing date.

[5] The appellants requested that I consider ruling (1) that, under *Rule 62.14(2)*, they be permitted to file a Case on Appeal in the form required by the Supreme Court of Canada Rules, instead of the appeal book required by the Nova Scotia *Rule 62*; and further, (2) that the material which the appellants have already filed be considered as satisfying the requirements for a printed case under the *Supreme Court of Canada Rules*. I decline to make such an order. There is no reason to depart from the normal practice in this Court concerning the contents of an appeal book. Further, the materials which have been filed to date by the appellants do not comply with the requirements of the *Supreme Court of Canada Rules*. Nor do they comply with the requirements of an appeal book to be filed under *Rule 62*.

[6] I understand from counsel for the respondents that, for the hearing which resulted in Justice MacAdam's decision of August 19, 2004, the appellants filed a Notice of Application, which was amended, and two affidavits, one from each appellant. I understand that the respondents filed affidavits of Laurel Purcell and Sean Kelly. I am told by counsel that there was no cross-examination on any of these affidavits, that no other witness testified, and that no documents were tendered as exhibits other than documents which may have been marked as exhibits to the four affidavits. Justice MacAdam issued an oral decision on August 19, an unofficial transcript of which was provided to me for this Chambers application.

[7] Justice MacAdam's oral decision refers to written submissions from one of the parties and incorporates comments from that written submission as supporting reasons for his decision.

[8] My directions are that the appeal book shall contain the following documents:

- (a) the notice of appeal and any amendments to the notice of appeal;
- (b) the notice of application for the matter which resulted in Justice MacAdam's decision of August 19, 2004, and any amendments to that notice;
- (c) the four affidavits, being the affidavits of each appellant, Laurel Purcell and Sean Kelly, and all exhibits which were attached to those affidavits;
- (d) the written submissions from counsel which were referred to in the transcript of the oral decision of Justice MacAdam;
- (e) all other written submissions from the parties or their counsel which were filed with Justice MacAdam for the application which was decided on August 19, 2004;
- (f) the decision of Justice MacAdam dated August 19, 2004, either in an approved version if available or in the transcribed version;
- (g) the order which confirms Justice MacAdam's decision of August 19, 2004.

[9] As there was no oral testimony, it is not necessary that there be a transcript of the proceedings. Each appellant at the Chambers hearing confirmed that a transcript is not required for their purposes. If one of the respondents wishes that

the appeal book contain a transcript of the submissions to Justice MacAdam, then that respondent would be responsible for the preparation and cost of that transcript. As no respondent volunteered to undertake that expense, I direct that the transcript of argument need not be included in the appeal book.

[10] Since the only decision under appeal is Justice McAdam's ruling of August 19, 2004, it is not necessary that documents related to subsequent proceedings before Justice MacAdam, or to the proceedings in the Family Division, or to any criminal prosecution, be included in the appeal book for this appeal.

[11] The appellants are responsible for the preparation and filing of five copies of this appeal book and for service of one copy of the appeal book on counsel for each of the respondents. The appeal book shall be filed and served no later than December 21, 2004.

[12] After the appellants have filed and served the appeal book, and have filed with the Court the certificate in Form 62.02(5) as provided in *Civil Procedure Rule* 62.02(5), properly completed and signed, the appellants may apply to a Chambers justice of this Court for an order setting down the dates for filing of written arguments and the date of the hearing. If the appellants file and serve the appeal books and the certificate, before December 21, 2004, then the appellants may apply to a Chambers justice, at any time after those documents are filed and served, for an order prescribing the dates of filing of written arguments and the date of hearing.

[13] At the Chambers hearing, Ms. Whelton, solicitor for the Children's Aid Society of Halifax, requested that the Children's Aid Society of Halifax be added as a party, described as an intervenor. The appellants each stated that they had no objection to this request. Accordingly, I will order that the Children's Aid Society of Halifax be added as an intervenor.

[14] The appellants shall serve that intervenor, through their solicitor, Ms. Whelton, with a copy of the appeal book by December 21, 2004.

[15] Any further applications by the appellants on this matter shall be on two clear days notice to the counsel for the other parties, including the intervenor, Children's Aid Society of Halifax.

[16] Costs of this application shall be in the cause.

Fichaud, J.A.