

FAMILY COURT OF NOVA SCOTIA

Citation: Nova Scotia (Community Services) v. P.C., 2009 NSFC 34

Date: 2009-08-06

Docket: FANMCA-051375

Registry: Annapolis Royal

IN THE MATTER OF the *Change of Name Act*

- and -

IN THE MATTER OF an Application by PL and AL, Guardians under the *Maintenance and Custody Act* for change of name of the female children, BRC and FSC

Between:

MINISTER OF COMMUNITY SERVICES and
PL and AL

Applicants

- and -

PC and THC

Respondents

Editorial Notice:

Edited by Judge for grammar, punctuation & readability

Judge: The Honourable Judge Marci Lin Melvin

Heard: August 6, 2009

Counsel: Bruce Gillis, counsel on behalf of the Applicants
Respondents, unrepresented

By the Court:

[1] This is an Application under the **Change of Name Act**, R.S.N.S., 1989, ch.66, sec.10, to change the surname name of the children, B.R.C., and F.S.C., to “L”.

[2] Mr. Gillis, on behalf of the Applicants filed an Affidavit stating he acted as counsel for the Minister of Community Services in proceedings under the **Children and Family Services Act** with respect to the children, B.R.C., and F.S.C.

[3] He stated the children were placed in the foster care of P.L. and A.L. and remained with them as a foster placement until 14 March 2007, at which time the Court terminated the order under the **Children and Family Services Act** and granted an order under the **Maintenance and Custody Act** placing the children in the care and custody of P.L. and A.L.

[4] According to Mr. Gillis also stated that the children suffer from confusion and anxiety arising from the fact that they are called by a different last name than the other members of the family who are in school with them. The children have expressed a preference to have their last name changed to "L".

[5] He advised that he submitted an Application to the Deputy Registrar General of the Province and was told they require the consent of the Court to process the Application.

[6] In the brief Mr. Gillis filed with the Court he indicated he was filing the Application "...on an ex parte basis on behalf of the current custodial parent for an Order from the Family Court granting consent to change the name."

[7] No jurisprudence was referred to in the brief.

[8] Does this Court have jurisdiction to change a name pursuant to the **Change of Name Act**?

[9] Section 10(2) of the Act sets out:

“(2) Notwithstanding subsection (1), a judge may dispense with the consent of a parent of an unmarried infant child on whose behalf an application is being made where the child has been known by the proposed name for a period of at least three years immediately preceding the application, 1977, c 6, s. 10.”

[10] Section 2(e) of the Act defines Judge as a Judge of the County Court. There is no reference to the Family Court or a Family Court Judge.

[11] The **County Court Act**, R.S.N.S., 1967, Chapter 64, was repealed in approximately 1993, and the Judges of the then County Court were elevated to the Supreme Court.

[12] The **Interpretation Act**, R.S.N.S., 1989, Chapter 235, s. 23(3) states:

“Where an enactment is repealed and other provisions are substituted for it, every proceeding taken under the enactment shall be taken up and continued under an in conformity with provisions so substituted, as far as consistently may be.”

[13] The missing piece of the puzzle is the legislation that I have not been able to find that specifies that, once the County Court was repealed, all matters were to go to the Supreme Court, but I think I can certainly take judicial notice of the fact that that was what happened.

[14] The **Judicature Act**, R.S.N.S., defines jurisdiction of the Supreme Court, Family Division, as follows:

“The Supreme Court, Family division, has and may exercise in such judicial districts or parts of a district as designated by Governor in Council, pursuant to sec. 38(h), the powers and duties possessed by the Supreme Court in relation to, and have, and may exercise jurisdiction in relation to proceedings in the following matter: Change of Name Act.”

[15] It is therefore the finding of this Court that the Family Court does not have jurisdiction in this matter and must dismiss the Application for change of name.

Marci Lin Melvin
A Judge of the Family Court
for the Province of Nova Scotia