

IN THE FAMILY COURT OF NOVA SCOTIA

Citation: Children's Aid Society of Halifax v. C.O. , 2004 NSFC 15

Date: November 5, 2004

Docket: S.F.H. No. C29020

Registry: Halifax

Between:

C.A.S. of Halifax

Applicant

v.

C.O. and M.A. and S.S.

Respondents

Publication restriction:

Publishers of this case please take note that **Section 94(1)** of the **Children and Family Services Act** applies and may require editing of this judgment or its heading before publication. **Section 94** provides:

94(1) No person shall publish or make public information that has the effect of identifying a child who is a witness or a participant in a hearing or the subject of a proceeding pursuant to this Act, or a parent or a guardian, a foster parent or a relative of the child.

LIBRARY HEADING

Judge: The Honourable Chief Judge John D. Comeau

Heard: November 3, 2004 in Yarmouth, N.S.

**Last Written
Submissions:**

Written Decision: November 5, 2004

Subject: **Civil Procedure Rule 69.04(3) - Transfer of a Protection Hearing from the Supreme Court, Family Division, to the Family Court of Nova Scotia**

Issue: Whether protection proceeding was properly transferred from a Justice of the Supreme Court, Family Division, to a Judge of the Family Court of Nova Scotia

Summary: A Justice of the Supreme Court, Family Division, purported to transfer a Protection Hearing to a Judge of the Family Court of Nova Scotia by using Civil Procedure Rule 69.04(3) in the face of C.P. Rule 69.10(2), and without using C.P. Rule 39.03, which in any event appeared to be inapplicable.

The Justice had heard the Interim Hearing, the Protection Hearing, the Disposition Hearing, and one review.

Result: *The Justice should have transferred the proceeding under CP 69.04(03) before becoming seized with it. He was seized once he heard the Protection Hearing. C.P. Rule 69.10(2) requires in that instance that the Justice conduct the Disposition Hearing and all subsequent reviews unless C.P. Rule 39.03 is applicable. That rule is only of benefit if the Justice dies, retires, or ceases for any reason to be a Justice of that court or for any other reason it is impossible or inconvenient for the Justice to act in the proceeding. This would require a special or general order of the Chief Justice of the Supreme Court of Nova Scotia nominating another Justice. There is some question as to whether the Chief Justice can nominate a Judge of the Family Court of Nova Scotia.*

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.
QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.***