

Case No.

Vol. No.

KYRA FOSTER

-and-

KENT KIEHL

Justice F.B. William Kelly

Halifax, Nova Scotia

File No. S.H. No. 169752

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[Cite as: Foster v. Kiehl, 2001 NSSC 149]

DATE HEARD: at Halifax, Nova Scotia before the Honourable Justice F.B. William Kelly on September 28th, 2001

DECISION: October 29th, 2001

SUMMARY: An appeal from the Appellant, Ms. Foster against the decision of a Small Claims Court Adjudicator who dismissed her claim of ownership of a dog named “Jake”. The Adjudicator ordered the return of Jake to the Respondent. After the hearing, the Appellant had requested an opportunity to respond to “documentary” evidence presented by the Respondent at the hearing she had.

The main ground of appeal was on the failure of the Adjudicator to allow the Appellant to present this additional evidence, after the hearing but before the decision was filed.

The Supreme Court on appeal found that such an application must be considered by an adjudicator as it is a Charter/guaranteed fair trial issue and the Adjudicator must exercise discretion in that consideration, *R. v. Travers*, [2001] N.S.J. No. 154 CC.A.). The test on such an application is explained in *Griffin v. Corcoran* (2001), 193 N.S.R. (2d) 279, and *Federal Business Development Bank v. Silver Spoon Desserts Enterprises Ltd.* (2001), 189 N.S.R. (2d) 133 (C.A.)

The Court concluded the Adjudicator did not fully apply that test. However, as in *Griffin*, the Court found it appropriate to exercise the Adjudicator's discretion, did so, and concluded that the test for admitting such evidence had not been met. When the “new” evidence was examined with the complete record, it was not “practically conclusive” on the main issue of credibility as to whether Jake was gifted to the Appellant by the Respondent. The appeal was denied and the Order of the Adjudicator for the return of Jake to the Respondent upheld.

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