

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Nova Scotia (Community Services) v. Birth Registration #*
2016-02-002781, 2017 NSSC 95

Date: 20170329

Docket: SFHCFSA 102013

Registry: Halifax

Between:

Nova Scotia (Community Services)

Applicant

and

Birth Registration # 2016-02-002781

Respondent

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

Section 94(1) provides:

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

Addendum to the Decision of February 2nd, 2017

Judge: Associate Chief Justice Lawrence I. O’Neil

Released: March 29, 2017 in Halifax, Nova Scotia

Counsel: Peter McVey, QC
Judith A. Schoen

By the Court:

Introduction

[1] On February 2, 2017 this Court informed counsel for the parties by written decision that it was proceeding to schedule a hearing to address constitutional questions the Court raised and arising from the language of the *Children and Family Services Act*, S.N.S. 1990 c.5. Those questions and related commentary appear as part of that decision reported as *MCS v. Birth Registration #2016-02-002781*, 2017 NSSC 27. This Court then proceeded to identify judicial time for the anticipated hearing.

[2] Unknown to this Court, the Minister of Community Services and the parents proposing to adopt the subject child, filed a Notice of Motion in the Nova Scotia Court of Appeal on February 17, 2017 seeking *inter alia* a stay of these proceedings.

[3] That stay was granted. This Court learned of the Notice of Motion and the 'stay' when the 'stay order' was delivered to it with no accompanying explanation or backgrounder.

[4] This is an unusual proceeding in that it is '*ex-parte*' and 'in camera'.

[5] Had the matter proceeded to a hearing before me or should it continue before me, a question for the Minister and the other parties is whether this is an appropriate case for the appointment of an *amicus curiae*. The parties are alerted that they may need to offer a position in response.

[6] In the case of *CAS v. C.V.*, 2005 NSCA 113, counsel was appointed to assist parents in the preparation of a legal brief for the Court of Appeal. In the case of *B.E.D. v. J.L.H* [2003] N.S.J. 142, the Department of Community Services intervened as *amicus curiae*.

[7] In *Nova Scotia (Minister of Community Services) v. A.A.*, [2009] N.S.J. 310, the mental capacity of the subject parent was at issue. An *amicus* was appointed to assist the Court in its assessment of the case put forward by the Minister of Community Services which was that the parent lacked capacity.

[8] The constitutional questions raised herein could hardly be more important for the “unknown parent” and the “unrepresented child” and therefore, for society and the Court.

[9] There is a precedent for the appointment of *amicus curiae* in family law circumstances.

[10] The question of whether this is such a case is held in abeyance pending further order of the Court of Appeal.

O’Neil, ACJ