

CASE NO.**VOL. NO.****PAGE****DANIEL EVANS CLEVELAND**

- and -

CHRISTINE MARIE CLEVELAND

(Appellant)

(Respondent)

CA156704

Halifax, N.S.

Pugsley, J.A.

[Cite as: Cleveland v. Cleveland, 1999 NSCA 142]

APPEAL HEARD:

November 18, 1999

JUDGMENT DELIVERED:

November 24, 1999

SUBJECT:**Application to vary order respecting primary custody of children,
application to strike****SUMMARY:**

The appellant gave notice of an application to vary an order granting the primary care of the parties' children to the respondent. The respondent then gave notice to strike the application to vary on the ground it was vexatious and an abuse of process. The appellant objected to the Chambers judge adjudicating on either motion as the Chambers judge was the original trial judge who determined the issues respecting custody. The Chambers judge said he would determine the application to strike, but that the application to vary should be heard by another judge. In the course of granting the motion to strike, the Chambers judge said the application to vary was "not based on any real change in circumstances". The appellant appealed.

RESULT:

Appeal allowed. The Chambers judge erred when he considered and determined not only the application to strike, but also the application to vary, the very issue he concluded should be determined by another judge.

**This information sheet does not form part of the court's judgment.
Quotes must be from the judgment, not this cover sheet. The full court
judgment consists of 5 pages.**