

NOVA SCOTIA COURT OF APPEAL

Citation: *Mi'kmaw Family and Children's Services of Nova Scotia v. H.O.*,
2013 NSCA 141

Date: 20131209
Docket: CA 414340
Registry: Halifax

Between:

Mi'kmaw Family and Children's Services of Nova Scotia

Appellant

v.

H.O., M.T. and B.T.

Respondents

and

Minister of Community Services

Intervenor

Restriction on Publication: 94(1) of the Children and Family Services Act

Judges: Saunders, J.A.

Appeal Heard: October 9, 2013, in Halifax, Nova Scotia

Subject: **Child Protection Proceedings. Severance. Children with Native or Non-Native Heritage. Standing. Standard of Review. Discretion. Fresh Evidence.**

Summary: Child protection proceedings were initiated for three children: a brother and a sister whose father was of First Nations descent but whose mother was not; and their half-brother who shared their common mother but a different father who was not of First Nations descent. On application by the non-native father to sever his son's case from the other proceedings, the trial judge ordered severance, finding that separating the proceedings would be in the best interests of the children. The judge also ruled that the Mi'kmaw Family and Children's

Services had no standing under the *Children and Family Services Act*, S.N.S. 1990, c. 5, to make an application in protection cases involving non-First Nations children the effect of which was to leave that child's case in jeopardy, absent any application by the Minister to intervene.

Held:

Fresh evidence admitted. The trial judge did not err in the exercise of her discretion in concluding that severance of these proceedings was necessary to protect the best interests of all three children. On that basis the appeal was dismissed and her decision as it related to severing the proceedings, stands. The Court declined to consider and decide the question of standing or pronounce on the authority of the Mi'kmaw FCS to be involved in child protection cases that concern children of non-First Nations descent. That important jurisdictional question would engage principles of statutory interpretation as well as constitutional law and must be left for another day when a proper record based on relevant evidence and comprehensive argument emanates from the court below.

Accordingly, nothing in these reasons should be taken to be a comment upon or an endorsement of the trial judge's analysis or conclusions with respect to the issue of standing.

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 16 pages.