

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Gates Estate v. Pirate's Lure Beverage Room*, 2004 NSCA36

**Date:** 20040302

**Docket:** CA 205008

**Registry:** Halifax

**Between:**

Estate of Hedley Harry Gates, by Sharon Darlene Gates,  
Administratrix, Sharon Darlene Gates, and Kendall David Gates, an  
infant, by Sharon Darlene Gates, his Parent/Guardian

Appellants

v.

Pirate's Lure Beverage Room, a registered partnership/business  
name, 1882201 Nova Scotia Limited, a body corporate, Robert  
J. Wentzell and James "Jim" Sampson

Respondents

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**Judge:** Hamilton, J.A.

**Appeal Heard:** January 23, 2004

**Subject:** *Consent Order in procedural matter*

**Summary:** An interlocutory order for production of documents consented to by appellants' former counsel provided that if the documents listed in the order were not provided to the respondents within 30 days, "the action shall be dismissed". The documents were not provided within the 30 days. Counsel for the respondents took the position the action was at an end without applying for an order dismissing it. New counsel for the appellants were forced to take action and applied to chambers to have the interlocutory consent order set aside. The chambers judge reluctantly dismissed the application because it was granted with the consent of the appellants.

**Issue:** Did the chambers judge err in refusing to set aside the interlocutory consent order?

**Result:** The appeal was allowed. The Supreme Court has inherent jurisdiction to set aside interlocutory consent orders of a procedural nature. This type of consent order, used to ensure the efficient carriage of an action, are distinguishable from consent orders intended to give effect to a negotiated settlement reached by the parties to finally resolve the dispute between themselves.

**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 14 pages.**