

CANADA  
PROVINCE OF NOVA SCOTIA

CK. 9237

IN THE COURT FOR DISTRICT NUMBER FOUR

BETWEEN:

EDWARD DAWSON,

APPELLANT FATHER

-and-

FAMILY AND CHILDREN'S SERVICES OF KINGS COUNTY,  
RESPONDENT

O R D E R

BEFORE HIS HONOUR JUDGE DONALD M. HALL IN CHAMBERS ON NOVEMBER 6,  
1987:

UPON Appeal of the October 6, 1987 Temporary Care and Custody  
Order of Her Honour Judge Margaret Stewart; and

UPON this Court granting leave to appeal that Order on October  
27, 1987; and

UPON hearing the Appeal of that Order on November 6, 1987; and  
upon reading submissions by Edward Dawson, Appellant and  
Alison Scott Butler, on behalf of the Respondent; and  
further upon hearing Jean Swantko, Friend of the Court,  
and Alison Scott Butler, counsel for the Respondent; F.C.S.;

1) IT IS HEREBY ORDERED THAT the Family Court Order of October  
6, 1987 granting temporary care and custody of the Appellant's  
son to Respondent F.C.S. is invalid and therefore void;

2) IT IS FURTHER ORDERED THAT the Appellant's child, M.D., be  
returned to his father, forthwith.

3) IT IS FURTHER ORDERED, the Court being aware of F.C.S.'s  
concerns, that:

A. The child M.D. not leave the province;

B. The child M.D. continue to reside at Myrtle Tree Farm in  
Waterville, Nova Scotia;

C. The child M.D. be visited by F.C.S. once a week until  
November 30, 1987 or until further Order of a Family Court in the  
exercise of its lawful jurisdiction, or until further Order of this



*Order  
Hall*

Section 46 (1) provides:

"When a judge is satisfied upon the oath of an agent..."

that is, of a child-caring agency,

"When a judge is satisfied upon the oath of an agent or a peace officer that there are reasonable and probable grounds for suspecting that a child is in need of protection and is concealed in premises, he may issue a warrant authorizing any person named therein to conduct a search of the premises, using force if necessary, and where necessary to take the child into care."

From my perusal of the transcript of the evidence taken in support of the application for the warrant, Judge Stewart acknowledged that there was no evidence to indicate that the child was concealed. It would appear therefore to me that the warrant was invalid for that reason, that is, that one of the prerequisites to the issuing of the warrant was not established before the Judge who heard the application for the warrant, namely, the requirement that there be evidence to support the contention that the child is concealed in premises.

With respect to the other aspect of the appeal, that is, the validity of the order for temporary care and custody dated October 6th, the appellant takes the position that the order is not valid because there has been no hearing or, more accurately, that there has been no inquiry held with respect to the temporary care or otherwise of the child and that the child is therefore being unlawfully detained and kept away from the father.

The respondent's position as I understand it is that it does not matter whether the order is valid or not as the apprehension was under Section 45