

**FAMILY COURT OF NOVA SCOTIA**

**Citation:** *Nova Scotia (Community Services) v. T.A.*, 2018 NSFC 21

**Date:** 2018-10-29

**Docket:** FKCFSA-109283

**Registry:** Kentville, N.S.

**Between:**

MINISTER OF COMMUNITY SERVICES

Applicant

v.

T.A.

Respondent

Restriction on Publication: 94(1) of the *Children and Family Services Act*,  
S.N.S. 1990, C.5.

Judge: The Honourable Judge Jean Dewolfé

Heard: August 30, 2018, in Kentville, Nova Scotia

Final Written: November 1, 2018

Counsel: Sanaz Gerami, for the Minister of Community Services  
Cheri Killam, for T.A.

**By the Court:**

[1] This is an application by the Minister of Community Services (“the Minister”) to enter the Respondent, T.A.’s (“T”) name on the Child Abuse Registry pursuant to the “*Children and Family Services Act* (“the Act”). The Minister alleges that in 2014, while residing with T. and her daughters, T.’s boyfriend, J. sexually abused T.’s daughter, L., who was three years old at that time. The Minister further alleges that T. knew or ought to have known that J. had sexually abused L., and that T. failed to protect L. accordingly.

[2] The Court has found that J. sexually abused L., and ordered that his name be entered on the Child Abuse Register. (*M.C.S v. J.J.* 2018 NSFC20)

The Minister, by separate application, has applied to enter T.’s name on the Child Abuse Register.

**LAW**

[3] In this case, there has been no finding pursuant to 22 (2) of the Act and neither J. nor T. have been convicted of a criminal offence against L.

[4] Therefore, in order to enter T's name on the Child Abuse Register the Minister must prove pursuant to S. 63(3) of the Act, on the balance of probabilities, that T. "abused" L.

[5] Abuse of a child by a person means that:

62. ....child:

(b) has been sexually abused by the person or by another person where the person, having the care of the child, knows or should know of the possibility of sexual abuse and fails to protect the child; or

(c) has suffered serious emotional harm caused by the intentional conduct of the person. 1990, c. 5, s. 62.

[6] Counsel for the Minister referred the Court to a number of provisions of the *Act*, including the preamble, the definition section, s. 22 (2) (c), s. 22 (2) (f) and (g). Counsel for the Minister also argued that the Court must be mindful of the purpose of the Child Abuse Register, i.e., to protect children from abuse by practically restricting an individual's ability to work or volunteer with children.

## **FACTS**

[7] In May 2014, J. and T. met. They moved in together along with T.'s daughters, L. (age 3.5) and E. (age 5.5) in September 2014.

[8] In late December 2014, L. stated at her daycare that J. “pees” on her nightie, she doesn’t like it and Mommy gets “mad”.

[9] L. was interviewed that day by social workers, Kendra Mountain and Lael Aucoin, at her daycare (“the first interview”). L. restated that J. peed on her and added detail, i.e., that his hands were on his penis, that he was “whole naked”, that she was wearing her purple Dora nightgown, that he peed on her twice (her head, face, elastic) and that the pee colour was grey. She said it happened, “last night”, then stated it happened in the summer, but then said it was cold outside the last time it happened. She said she told her Mom and her Mom got mad at J. and told him never to do it again.

[10] L. was picked up from daycare by her father, G. Later that day, G. took L. to the New Minas RCMP station to be interviewed again by Kendra Mountain and Constable Melissa Lee of the RCMP (the “second interview”). At that time, L. said she remembered what she had told Kendra Mountain earlier, but said her Dad had told her not to say that again because someone would get in trouble.

[11] On further questioning, she said J. peed on her forehead, under her hair, on her hair, on her bedroom floor, and her bed, but not on her nightgown. She said her nightgown was pink and then said it was red. She said J.’s pee was grey, and J.

was wearing underwear but there was so much pee it got on her forehead and clothes. She said it happened when it was cold outside “lots of times ago”. She also reported that she had told her mother who had cleaned up the pee.

[12] L. was interviewed on two more occasions in February 2015. In an interview on February 19, 2015 (“the third interview”), she identified J. as her mother’s boyfriend and then talked about boyfriends “peeing” on you. She also rubbed her vagina area and said boyfriends did that and rubbed a handheld audio recorder and told the workers “boyfriends do that”.

[13] In the next interview, on February 27, 2015 (“the fourth interview”), L. was angry and talked about seeing J. and T. in the tub and bathroom together and also talked about J. looking at her in the bathroom.

[14] On April 27, 2015 a joint interview of L. was conducted by Ms. Mountain and Cst. Lee (“the fifth interview”). L. was very aggressive with Ms. Mountain and would not answer any questions.

[15] On April 18, 2015, L. told BriAnna Simons that T. touched J.’s penis all the time; that J. told L. that she (L.) had a ticklish spot on her vagina; that J. had touched L.’s ticklish spot on her vagina five times; and that she (L.) had told T., who had talked to J. about it.

[16] J. denied L.'s allegations. T. indicated that L. had never made the alleged disclosures to her and that she did not believe the allegations against J.

## **EVIDENCE**

[17] The Minister's evidence consisted of an affidavit of Lael Aucoin, a Social Worker employed by the Minister; two reports from BriAnna Simons, L.'s therapist in 2015-2016; and a C.V. and "STOP Discharge Report" of Mary McGrath. T. submitted two affidavits.

[18] Ms. Aucoin's affidavit contained various out of Court statements made by L.:

- 1) initial referral information regarding L.'s disclosure to a daycare worker on December 23, 2014;
- 2) notes taken by Kendra Mountain (Social Worker) in the initial interview by Ms. Mountain and Ms. Aucoin with L. at her daycare on December 23, 2014: (the first interview);
- 3) notes taken by Kendra Mountain of an interview by Ms. Mountain, Ms. Aucoin and Cst. Lee of the RCMP on December 23, 2014: (the second interview);
- 4) notes of an interview of L. by Kendra Mountain and Tammy MacAskill (Social Worker) on February 19, 2015: (the third interview);
- 5) summary of an interview of L. by Devin Ogilvie (Social Worker) and Tammy MacAskill on February 27, 2015: (the fourth interview); and

6) comments made by L. to BriAnna Simons, L.'s therapist, in April 2015 (as contained in a report by Ms. Simons who testified before the Court).

[19] The Minister sought to introduce these hearsay statements without calling L. to testify. I have permitted these statements to be admitted in the J.J. decision. On the basis of the same reasoning, and I am prepared to admit them in this proceeding as well.

[20] Ms. Aucoin's affidavit also provided details of T.'s interactions with the Minister after L.'s disclosures.

[21] J. denied that a sexual encounter had occurred with L. T. was initially uncooperative with the Minister. She blamed her mother for "feeding the children lies". She said J. had never been left alone with the girls except for one fifteen minute occasion when J. had locked himself in his bedroom. She confirmed that no one else had resided with the children in the past seven months.

[22] She indicated that following L.'s third interview the Minister concluded that they had substantiated a risk of sexual harm to L. and that T. presented as a non-protective parent.

[23] L. and her sister had been placed with their father on December 23, 2014. In February 2015, T. said she would ask J. to leave her home if the girls were allowed to come home. She later told the Minister that he had left her home. T. agreed to

have access supervised by a friend which later broke down due to information received by the Minister that J. was being allowed to have contact with the children during access.

[24] In August 2015, T. told Kendra Mountain that she and J. were no longer in a relationship.

[25] Throughout this time T. did not accept that J. had sexually abused L.

[26] In late December 2015 and early 2016, T. attended the STOP program with Mary McGrath. Ms. McGrath testified at the hearing and was qualified by consent as an expert in the assessment and treatment of sex offenders and in the treatment of families in the prevention of sexual abuse of children.

[27] STOP is a program that provides information to assist individuals in understanding sexual offending and the prevention of sexual abuse. Ms. McGrath testified that T. reached all her goals in attending the program. She noted that T. “vacillated between believing and discounting that (J.) sexually abused (L.)”. Her “final stance” was that she believed J. abused L., but did not “rule out” that someone else did it. Ms. McGrath noted that during therapy T. identified J.’s behaviours towards L. as possible warning signs of grooming and sexual abuse.



These behaviours included J. “finding ways” to have T. leave J. alone with the children.

[28] Ms. McGrath also noted that T. identified her own vulnerabilities which could get in the way of protecting her children, Ms. McGrath cautioned that while T. had fully participated in the program, she remained at risk of making poor choices which would put children in her care at risk. She noted in her February 2, 2016 report:

“(T.) feels vulnerable when she does not have a male partner in her life, and this has lead (sic) to her making choices based on her needs and not necessarily in the best interest of her children. Counselling for herself could help break away from this dependency.

(T.) attended all but one session, she was attentive and appeared interested in the program material, and she actively participated. She alluded to multiple traumatic incidents in her life which continue to cause her anxiety now, and are likely contributors to her choice in partners and to her “need” to have intimate partners in her life despite their history of sexual abuse allegations”.

[29] At the end of the program, T. told Ms. McGrath that her new partner had been accused of sexual assault when he was young, and asked for advice on what she should do.

[30] In her affidavits, T. indicates that she had accepted that J. sexually abused L. “over two years ago”, i.e. prior to April 2016. She states that she has not been in a

romantic relationship for the past 10 months. She also acknowledges that L. has been “affected by the trauma of sexual abuse”.

[31] T. denies that L. ever told her about the incidents L. disclosed in her statements. She also denies getting angry at L. for making disclosures to her, and denies allowing J. to attend supervised access after the disclosures.

[32] T. does not disclose any counselling or treatment for herself since February 2016.

[33] T. maintained that J. was “very seldom” left alone with L. (maybe 3 times). This was different than what she told Ms. McGrath. She also provided a confusing explanation of safety measures in her home, e.g. locks on the bathroom door, but leaving the door open a crack while she was in the bath so she could see who was “coming” and “going”.

[34] In previous statements (to Mary McGrath and as set out in her affidavit of April 20, 2018), she had accepted that J. had abused L.

[35] On cross examination, T. testified that while she believed L., and thought something had happened to her, she was not sure J. was the person who had abused L.

[36] T.'s testimony was therefore inconsistent with previous statements. The Court also found it was self serving and confused at times, and therefore accepts L.'s statements in preference to T.'s evidence.

### **ANALYSIS**

[37] The Minister must prove the elements of s. 62(a) or (b) on a balance of probabilities.

[38] The Court has found that L. was sexually abused by J. while in T.'s care.

[39] The Minister relies on L.'s out of Court statements to prove that T. knew or should have known about the possibility of abuse and failed to protect the child.

[40] In her initial disclosure at the daycare, L. said her Mom got mad when J. "peed" on her, thereby indicating that T. knew about J.'s behaviour. She maintained this in the first interview, and in the second interview, she added further detail, i.e. that her Mom cleaned up the "pee". L. also informed Brianna Simons that she had told T. about J. touching a "ticklish spot" on her vagina, and that T. had talked to J. about this.

[41] T.'s evidence is that L. made no such disclosures to her. T. also testified that she did not witness anything that would indicate that J. was sexually abusing L., and did not clean up J.'s "pee" as alleged by L.

[42] The Court therefore must consider the contradictory evidence of L. and T.

[43] L., although she was young, gave a clear account of T.'s behaviour in her first interview. This was consistent with her initial spontaneous disclosure, and was not revoked or changed in her subsequent interviews.

[44] T.'s *viva voce* evidence contradicted her previous statements and affidavit evidence. Her accounts of J.'s opportunities to care for the children alone varied and were confused and self-serving.

[45] The Court accepts L.'s statements in preference to T.'s, and therefore finds that L. told T. that J. had sexually abused her, and that T. did not protect L. from further abuse.

The Court also finds that T.'s intentional actions of failing to protect L. from sexual abuse, caused L. serious emotional harm. T. herself admitted that L. had been "affected by the trauma of sexual abuse". Ms. Simons' testimony indicates that L. struggled with her emotions, and expressed significant anger towards T. following L.'s disclosures. T.'s failure to protect L. from sexual abuse led directly

to a significant disruption in L.'s life when she was removed from T.'s care. The Court finds on the balance of probabilities that this disruption, in addition to the trauma of the sexual abuse she experienced, caused L. serious emotional harm.

[46] Therefore, T.'s name shall be entered on the Child Abuse Register.

---

Jean Dewolfe, JFC