

**FAMILY COURT OF NOVA SCOTIA**

**Citation:** *MB v. Minister of Community Services*, 2023 NSFC 1

**Date:** 20231030

**Docket:** SFTCFSA-122541

**Registry:** Truro

Between:

MB

*Applicant*

-and-

Minister of Community Services

*Respondent*

**DECISION**

**Judge:** The Honourable Judge Timothy Daley

**Heard:** April 28, 2023

**Decision Reserved:** April 28, 2023

**Written Decision:** October 30, 2023

**Counsel:** Sanaz Gerami, counsel for MCS  
Anthony Buckland, counsel for respondent, MB

## **Introduction**

[1] This decision concerns an application by MB to have his name removed from the Nova Scotia Child Abuse Register (the Register”). MB says that the offences that gave rise to him being placed on the Register occurred approximately 30 years ago when he was a young man going through a troubled time, and he now takes responsibility for his actions. He says that he has spent his life since then around children, including his own and others, through his involvement in the community, and there have been no further difficulties of any sort. He believes that enough time has passed to establish that he is no longer a risk and can be removed from the Register.

[2] The Minister of Community Services (“the Minister”) correctly notes the burden of proof lies with MB to establish on a balance of probabilities that he is no longer a risk to young people and may be removed from the Register. She says that, though it has been a long time since the events occurred and no further charges or concerns have been raised, MB has failed repeatedly to take responsibility for the offences, blames the young people involved, his former wife, and his lawyer for convincing him to enter a guilty plea on the charges. He has therefore demonstrated no insight into what led him to be placed on the Register in the first instance. Therefore, removing him from the Register would be a risk to young people and the application should be denied.

## **Summary of Evidence**

[3] MB confirms that he pled guilty to three offences in 1993, two counts of sexual interference and one count of exposure, all involving minor females. He did so on the advice of counsel, and he served 3 months concurrent sentences for the offenses.

[4] During his incarceration, he volunteered to take any tests or assessments to assess his risk. One of these was Phallometric Testing, the report of which was included as part of his affidavit evidence. That report, dated December 11, 1995, found that he only showed "arousal to video depictions of adult heterosexual contact, essentially, a normal adult male profile." The report went on to find that the risk determined was assessed to be at the "low to moderate" range and that "MB reports no cognitive distortions with regards to adult/child sexual contact, denies deviant sexual interest and he only shows arousal to adult heterosexual activity." This report was taken into account as part of a prerelease decision of February 14, 1996. He was later granted full parole and there were no conditions respecting him being around children.

[5] Further, in 1997 a Community Risk/Needs Management Scale Report was produced while he was on parole. Under a section entitled "Special Needs" the report said "no" in the "Sexual Offender" category.

[6] He says that since his release from prison, there have been no issues with respect to his conduct around children or young people.

[7] He has coached children's hockey, been involved in activities in the community involving children and, in his work as a barber cuts children's hair on a regular basis.

[8] He also testifies he has raised five children and is currently raising his teenage daughter, while also spending a great deal of time with his current partner's children.

[9] He claims that he did not realize he was on the Register until roughly January 2021. Since then, he said he has had to turn down multiple requests to coach children and youth sports, something he always enjoyed doing.

[10] In general, he says that this has had a huge impact on his life and says he poses no risk to children, either through his family contact, coaching or cutting children's hair.

[11] The evidence of the offences that gave rise to placing him on the Register are before the court as well. There is no formal record of findings made by the court at the time of the convictions but is reflected in the evidence of MB and through cross-examination.

[12] Scott Clark, a representative of the Minister, gave evidence that there were gaps in the evidence of MB in his affidavits, including that there were three, not two, convictions involving three separate children. All occurred in late 1993.

[13] The victim of one sexual interference conviction was 12 years old at the time when MB was 27 years old.

[14] Another victim of sexual interference was 12 years old at the time when MB was also 27 years old.

[15] Another victim in which he was charged and convicted for exposing his genital organs was 12 years old at the time of the offence when MB was 27 years old at that time as well.

[16] Finally, Mr. Clark provides evidence that in 1993, MB also faced other charges, including robbery, unlawful confinement and break and enter. He pled guilty to these charges and was sentenced on February 9, 1994. He pled guilty to the sexual offences and was sentenced on February 14th, 1994.

[17] From this, I conclude that this MB's life was consistent with the description given by him as being "difficult and troubled".

[18] Mr. Clark goes on to say that MB denied the sexual abuses in 1994 and 1995, saying the girls involved were co-opted by his ex-wife to make the allegations, blaming the girls, his ex-wife and then his lawyer for persuading him to enter guilty pleas which he would not have done had he known the consequence of being placed on the Register. Mr. Clark says that MB continued to deny responsibility into 2021 and 2022.

[19] He notes that MB has not provided any evidence of treatment or counselling to address the offences.

[20] In cross-examination, Mr. Clark confirmed that MB appears to accept some responsibility now. He does demonstrate some insight of the effect his behaviors have had on his children, parents and family but denies there is any indication of insight of the effect on the three victims.

[21] He also confirms there have been no allegations in the many years since against MB in his role as a barber, as a coach, as a father or as a stepfather.

[22] In his direct evidence at the hearing, MB accepted responsibility for all three convictions of a sexual nature, saying he served three months. He also said, in addition to the phallometric testing, he attended for anger management programming.

[23] He described that period in his life as tough for about one to one and a half years. He had two young children and his partner had left him. He became involved with "deviants". Having been through that ordeal, he now describes his life as "great", though realizing recently he was on the Register has negatively impacted him in terms of his coaching and other parts of his life.

[24] In response to the allegation that he only noted two offences in his application, not three, he simply said he only recalled two. He said, "I was a mess".

[25] In cross-examination, MB claimed that the offences consisted of events. The first, a kiss on the forehead of one young girl, the second when he accidentally kicked a young girl in the breast and the third when he came downstairs in a bathrobe and accidentally exposed himself to young girls. He again believes that he was set up by his ex-partner.

[26] He acknowledged that when pleading guilty he was admitting to all of the offences yet continued to say that his lawyer talked him into it, and he would not have done so if he had realized the consequences.

[27] There was additional evidence brought forward in support of MB. JC provided evidence by affidavit and viva voce confirming she and MB have been good friends for the past four years. She owns a business next door to MB's barbershop, and they worked almost side-by-side for three years.

[28] Due to that proximity, she has observed many people come and go out of his shop, has spent time chatting with him each day and with his customers. She has observed and interacted with both young and older customers, and that he has a great rapport with all of them.

[29] She observed that MB has had children in his shop daily to get their hair cut and he treats them all like a grandparent treats a grandchild. He often jokes and laughs with the children and young people that come in for haircuts and they seem to have a genuinely good experience. His demeanour is appropriate, and he always is happy and pleasant to be around. She has never observed nor heard any complaints regarding MB's behaviour or risk to any customers.

[30] In cross-examination, she admitted that the young people were usually accompanied by adults, and she doesn't always see him with children when they're at his shop.

[31] When asked about the convictions involving MB, she confirmed her understanding that they involved improper touching of a breast or buttocks, a kiss on the forehead and that he accidentally exposed himself when he came out of the shower.

[32] She did have knowledge of gossip about MB and believes that he was around 20 years old at the time but didn't confirm his age at the time of the offences. He did say there was more than one victim and he had entered guilty pleas.

[33] MB's daughter, BB, provided evidence by affidavit and viva voce as well. She is 31 years old and says that she is aware of her father's successful barber business. She has observed him interacting with children on multiple occasions and had many sleepovers growing up with her father being there.

[34] MB has been to her children's birthday parties and interacted with the children there and they love him. She has had her friends tell her they wish their fathers were more like MB.

[35] She has never witnessed inappropriate contact between her father and any children or experienced inappropriate conduct between her father and her.

[36] In cross-examination, she confirmed she was aware of the convictions and that he says her mother framed him. She was aware that there were a few minor children involved in the allegations, which involved a kiss on the forehead and a kick in the breast, but she never discussed these with her father.

[37] She feels and believes that her father was framed by her mother, consistent with his claim.

[38] Finally, she confirms that she has three children, ages 3 ½, 6 and 13, and that MB has spent time alone with them over the years. He is usually with his girlfriend



and that he also cuts the hair of the children. She has had no concerns with his behaviour at all.

[39] SR, a friend and former partner of MB, provided evidence by affidavit and viva voce as well. She has known MB for over 30 years, and they used to be in a romantic relationship. She is the mother of four children, currently 19, 17, 15 and 6 years old. She has observed MB with her children on many occasions over the years and has no concerns and hasn't observed any improper conduct.

[40] She also says that MB has acted as a minder or babysitter for her children on many occasions, and that they enjoy having him babysit them. There have been no problems or suggestions of problems during those times. She has no reason to believe he poses a risk or danger to her children, or any other children.

[41] In cross-examination, she says she has known MB since 1993 when they began a romantic relationship for about a year. At the time she was 15 years old but told MB she was 17 when they met at a bar. At the time he was 25 or 26 from her recollection.

[42] Her recollection of what MB told her was that there were three victims of approximately 13 or 14 years of age and that she was aware of his guilty pleas.

[43] When asked about what she told MB her age was, at one point she said she was 17 and later she said she was 16. They kept up an intimate relationship after she disclosed her age. It is worth noting the age of consent is 16 and MB has never been charged with an offence respecting this relationship.

[44] Finally, DD, the life partner of MB, gave evidence by affidavit and viva voce. She first met MB at a local gym two years prior, and from her observations of him at the gym, he stood out as one of the kindest and friendliest members. It was very apparent to her that he is well liked by all members.

[45] She confirmed he has and continues to play recreational sports such as hockey, golf and baseball with a lot of young people in the community. She understands they welcome his advice in conversation.

[46] When they met, they connected quickly, and he appeared to be a proud father and family man with a close relationship with his parents, siblings and children.

[47] She says he has been open and honest about his past, and that his version of past events has been consistent over the years.

[48] When they began the relationship, her daughter was 10 years old and is now 12. Her daughter has many friends who frequent the house regularly and she has observed MB having a great time with them from the beginning.

[49] She was clear that she never once felt she could not trust MB around any of the children that live in or come to her house and that her daughter is very fond of him and prefers that their day trips and vacations include him as well as his daughter P.

[50] MB's daughter, P, moved into their home in July 2021 when she was 15, relocating from out west, choosing to reside with her father because he had a more

laid-back and open parenting style.

[51] DD observed P's love for MB and that she is open and honest with everything when speaking to her father. She adores the bond MB and P have. She goes on to say that P's friends also appear to like MB, saying that they love talking to him and sometimes go to him for "boy advice".

[52] She has also witnessed MB interact with his grandsons ranging in age from 1 to 12 years old. They all appear to adore him and gravitate to him as soon as they see him. His oldest grandson has a girlfriend who reaches out to MB to ask questions about his grandson. Observing him with the children and young people is always a positive experience for her.

[53] She's aware that MB operates a barbershop in the community and often cuts children's hair. She says the parents can't wait to go in for their haircuts as MB makes it a fun experience for them and their children. She attaches to her affidavit customer feedback for the business from Facebook that indicates very positive interactions for young people with MB.

[54] She says in the two years they have been together she has never observed MB to be disrespectful to her or anyone else. He has told her what happened many years ago, resulting in his convictions, saying it was not the best time of his life, he was immature, a young father, made some stupid choices and pled guilty to things to try to ease more suffering for his parents and children.

[55] She maintains that if she had any suspicion or thought that MB was a risk or danger to her or her children, she would not have him in her life or allow him

around her children.

[56] She says she has observed the impact of MB being recently aware of being on the Register and its effect on him. He is limited and cannot be involved in many of the volunteer activities while on that Register. She is quite clear that she sees him as no risk to children or young people whatsoever.

[57] In cross-examination, an impeachment document was presented to her. This is a consent order between herself and her former partner respecting their two children. In that order it requires that she ensure that MB is not alone in the presence of their daughter, nor shall he be in any bedroom or bathroom with her and if that provision is breached, it will be considered a material change in circumstances sufficient for an application to vary.

[58] I do not consider that this order impeaches her credibility. It is a consent order which would have involved negotiations between the parties. There is no evidence as to how this provision was arrived at and could well have been a requirement of the father involved.

### **The Legislation**

[59] The relevant provision of the *Children and Family Services Act* (“the Act”) is section 64 (2) which reads as follows:

64 (2) a person whose name is entered on the Child Abuse Register may, upon providing written notice to the Minister, apply to the court at any time to have the person’s name removed from the register and, if the court is satisfied by the

person that the person does not pose a risk to children, the court shall order that the person's name be removed from the register.

[60] As noted earlier, the section makes clear that the burden of proof rests with MB to establish, on a balance of probabilities, that at this time, he does not pose a risk to children. If so, the court must order that his name be removed from the Register.

### **Analysis and Decision**

[61] In this case, MB has made the application and says that he has changed over the almost 30 years since the actions which gave rise to the convictions and his placement on the Register. There is no question of the record of the convictions entered against him. He points to several factors that argue in favour of his removal from the register.

[62] First, he says that he now takes responsibility for what occurred. It is true that initially, and for many years thereafter, he denied such responsibility and still blames his ex-partner for setting him up but there is some level of recognition and responsibility now.

[63] The Minister is correct in pointing out that he appears to be deflecting blame on others, including his ex-partner, the children involved, and his counsel, but I find that over the decades, he has come to some understanding that he has some responsibility for what happened. Though that insight is not deep currently, it is sufficient for the court to consider.

[64] MB also notes that there have been no offences, or any concerns raised by any authority respecting his contact with young people since those convictions were entered.

[65] Third, he notes that he has been heavily involved in his community as a coach of young people, and other community activities. Moreover, his business as a barber brings him in regular contact with young people daily as confirmed by other witnesses. These interactions have given rise to no concerns whatsoever, as is evidenced by the witnesses who testified on his behalf.

[66] He also notes that he has had a solid family life for the many years since the events that led to his conviction. His own daughter confirms her close relationship with her father and his relationship with her family, as does his partner. All of those who spoke on his behalf confirm that he interacts with and has a positive and solid relationship with young people and adults throughout his life, and there have been absolutely no concerns respecting his behaviour in the almost 30 years since the convictions.

[67] MB also notes that the phallometric testing that took place while he was imprisoned confirmed he had no sexual attraction or arousal for young females or males, and he posed a low to moderate risk at that time. He says this, coupled with an absence of any ill behaviour almost three decades since, demonstrate he poses no risk to children.

[68] The Minister rightly points out that there is some doubt as to his insight and acceptance of responsibility for the activities that took place those many years ago. These involved young girls and I doubt that these charges and convictions arose

from the minimized circumstance he described such as accidentally kicking a breast, kissing a forehead, or inadvertently exposing himself after a shower. I find he is not credible on those issues and that it is more likely than not that the offences involved more significant events than described.

[69] When assessing his credibility on this issue, I am mindful of the helpful guidance of Justice Forgeron in *Baker-Warren v. Denault*, 2009 NSSC 59 when she wrote in part,

**18** For the benefit of the parties, I will review some of the factors which I have considered when making credibility determinations. It is important to note, however, that credibility assessment is not a science. It is not always possible to "articulate with precision the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events:" **R. v. Gagnon** 2006 SCC 17, para. 20. I further note that "assessing credibility is a difficult and delicate matter that does not always lend itself to precise and complete verbalization:" **R. v. R.E.M.** 2008 SCC 51, para. 49.

**19** With these caveats in mind, the following are some of the factors which were balanced when the court assessed credibility:

- a) What were the inconsistencies and weaknesses in the witness' evidence, which include internal inconsistencies, prior inconsistent statements, inconsistencies between the witness' testimony, and the documentary evidence, and the testimony of other witnesses: **Re: Novak Estate**, 2008 NSSC 283 (S.C.);
- b) Did the witness have an interest in the outcome or was he/she personally connected to either party;
- c) Did the witness have a motive to deceive;
- d) Did the witness have the ability to observe the factual matters about which he/she testified;
- e) Did the witness have a sufficient power of recollection to provide the court with an accurate account;
- f) Is the testimony in harmony with the preponderance of probabilities which a practical and informed person would find reasonable given the particular place and conditions: **Faryna v. Chorney** [1952] 2 D.L.R. 354;
- g) Was there an internal consistency and logical flow to the evidence;
- h) Was the evidence provided in a candid and straight forward manner, or was the witness evasive, strategic, hesitant, or biased; and
- i) Where appropriate, was the witness capable of making an admission against interest, or was the witness self-serving?

20 I have placed little weight on the demeanor of the witnesses because demeanor is often not a good indicator of credibility: **R v. Norman**, (1993) 16 O.R. (3d) 295 (C.A.) at para. 55. In addition, I have also adopted the following rule, succinctly paraphrased by Warner J. in **Re: Novak Estate**, *supra*, at para 37:

There is no principle of law that requires a trier of fact to believe or disbelieve a witness's testimony in its entirety. On the contrary, a trier may believe none, part or all of a witness's evidence, and may attach different weight to different parts of a witness's evidence. (See **R. v. D.R.**, [1996] 2 S.C.R. 291 at 93 and **R. v. J.H.**, [2005] O.J. No. 39, *supra*).

[70] In reviewing those factors, I am mindful that I may find part of MB's evidence credible and part of it not credible, which I do in this circumstance. I do not find his evidence of the events that occurred which gave rise to the convictions as credible and find that he has minimized those. He has therefore not taken full responsibility for what occurred to these young girls those many years ago. I accept that he has tended to look elsewhere for blame and responsibility, blaming his ex-partner, the children themselves and his lawyer.

[71] That said, I find that the best evidence of risk or absence of risk is his behaviour since those convictions and his release from prison. In almost three decades, he has built a life in his community, which has involved strong family connections with his daughter, grandchildren, new partner and her children and many others in the community. He has been involved in coaching and other activities, has operated a barbershop which includes haircuts for young people and has interacted with people of all ages without any concerns whatsoever.

[72] In addition, I consider the phallometric test to be of some assistance in assessing his risk. There was no indication of sexual arousal involving young people or children. He was assessed to be at a low to moderate risk at that time. This testing is given some weight by the court.



[73] While it is an important factor to consider when an applicant fails to demonstrate insight or take direct responsibility for the convictions that give rise to his placement on the Register, I find it is not determinative. In this circumstance, I find that this is but one of several factors that must be considered.

[74] I find that his long tenure in the same community since the offences without any complaint or concern raised about him respecting young people, particularly given his involvement with family, as a coach and as a barber persuades me that he does not pose a risk to children at this time. While it would be ideal if he would express regret and insight respecting the original offences, that does not determine the matter and when weighed against the almost 30 years he has lived since then, I am persuaded on a balance of probabilities that he does not pose a risk to children at this time.

[75] I therefore order that his name be removed from the Register.

Timothy G. Daley, JFC