IN THE FAMILY COURT OF NOVA SCOTIA
Citation: R.C.C. v. Nova Scotia (Community Services), 2008 NSFC 8

Date: 20080328
Docket: 07Y051651
Registry: Yarmouth

Between:

R.C.C.

- Applicant

v.

Minister of Community Services

- Respondent

Before the Honourable Judge John D. Comeau, Chief Judge of the Family Court of Nova Scotia

Heard:	March 21, 2007, April 24, 2007, May 2, 20007, June 20, 2007, October 3, 2007, December 5, 2007, February 13, 2008, at Yarmouth, Nova Scotia
Counsel:	Raymond Jacquard Esq. , for the Applicant Terrence Potter Esq., for the Respondent
Decision date:	March 28, 2008

DECISION

THE APPLICATION:

[1] This is an application brought by R.C.C. to have his name removed from the Child Abuse Register, pursuant to section 64(2) of the **Children and Family Services Act.**

[2] The Applicant's statement of why he does not now pose a risk to children is as follows:

> "Offence for which I was placed on Register happened approx. 1984, when I was 19 years old. I was convicted of the offence of sexual assault against a female, on January 4, 1996, and have now received a pardon for the offence. I received 60 days of weekends (in jail) and a year probation. I completed my probation, which included seeing a psychiatrist, for sexual or mental issues. I have not had any further involvement with the law, nor committed any further offences since 1984."

THE FACTS:

[3] The offence of sexual assault, for which the Applicant was convicted, occurred in 1984. He was between eighteen and nineteen years of age, born August *, 1965, (*editorial note- date removed to protect identity*) and the victim, a relative, was 10. The conviction was entered on October 16, 1995.

[4] There is no documentary evidence (transcript or crown sheet) of the details of the offence. The Applicant testified that this was a one time occurrence and was a sexual touching under the clothes of the child, a female relative.

[5] Following his conviction, he served weekends in jail, and completed one year probation without incident. Part of the conditions in the probation order, was that he “attend at a mental health clinic for assessment and counselling and follow any course of treatment as may be directed by your probation officer.”

[6] He received a pardon, dated July 18, 2006. His counselling consisted of five or six one hour sessions with Dr. Cottreau, a psychiatrist. Unfortunately, Dr. Cottreau passed away, and he is unable to obtain any reports or records on his progress with this medical professional.

[7] As a result of this evidence, the Court adjourned, so that the Applicant could obtain a professional report, in support of his application. He has placed in evidence, a report from Michael S Donaldson, who refers to himself as a marriage and family therapist. He is not a psychologist or psychiatrist, although he has been

qualified by this Court on many occasions, to give opinion evidence, respecting custody and access.

[8] In his report, Mr. Donaldson refers to collateral sources he interviewed, which include the Applicant's parents, his sister and child protection workers. The pardon the Applicant received on July 18, 2006 and his probation order of January, 1996, were also reviewed.

[9] Mr. Donaldson also took into account, a Family Court Order, dated March 23, 2007, which gives the Applicant access to a ten year old child, D.R.C.

[10] The Applicant does not have any biological children, but he has a connection to a ten year old male child, that he had stood in *loco parentis*, or was a step-parent, at the time the child was apprehended from the mother. The apprehension had nothing to do with him.

[11] Family and Children Services placed the child with the mother's sister. As a result of being denied access, because his name was on the Child Abuse Register,

he took the matter to court. By Family Court Order, heard November 29, 2006, and issued March 23, 2007, the Applicant received the following relief.

> "THAT for a period of six months following the hearing of this matter, the Respondent, R.C.C., shall enjoy supervised access to the child, D., one weekend per month, on Saturday from 9:00 a.m. through to 6:00 p.m, then again on Sunday from 9:00 a.m. through to 6:00 p.m. Said access to be supervised by the Applicants, C.R. and T.R., their agent or nominee.
>
> THAT following the initial six (6) month period, the Respondent R.C.C., shall enjoy access to the child, D., one weekend per month on Saturday and Sunday from 9:00 a.m. through to 6:00 p.m.; said access to be unsupervised.
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> THAT following the initial six (6) month period, the Respondent R.C.C., shall enjoy such other reasonable unsupervised access to the child, D., as may be agreed by te Applicants herein.

[12] He regularly travels to T. on Saturday and Sunday, to see the child during the day.

[13] Mr. Donaldson's observations and recommendations are as follows:

> "**Observations**
>
> R.C.C.'s extended family, is aware of the details of his conviction, and subsequently being placed on the Child Abuse Registry. They are supportive of his efforts to remove his name. They do not believe that he is a risk or threat sexually or otherwise to any minor child.

R.C.C. is active socially and his lifestyle would indicate a history for the past twenty-two years of making healthy choices with no inappropriate concerns arising in regards to sexual behaviors that I am aware of.

R.C.C. is also active in his local church. He said that in 1997, he had a spiritual experience that ‘changed my life’. He stated that his desire to travel abroad, led him to seek a pardon, which he received. He is currently planning a pilgrimage to Europe in the very near future.

In my opinion, the sexual crime for which he was convicted and subsequently had his name added to the Child Abuse Registry was, the inappropriate and tragic decision of a young man who now years later, does not present as a risk to do so again, and such behavior would seem to be behavior inconsistent with is current mind set.

In my opinion, Mr. R.C.C. has taken the requested and appropriate steps to address the requirements of his conviction. The subsequent years seem to also demonstrate his ability/capacity to make appropriate decisions regarding his sexual behaviors.

Finally, in my opinion, Mr. R.C.C. has clearly taken responsibility for his actions that led to his name being placed on the Child Abuse Registry. His subsequent lifestyle choices and behaviors, as well as family and social support, would suggest that the likelihood of his re-offending, are within acceptable societal boundaries.

Recommendation

In my opinion, Mr. R.C.C. warrants consideration for having his name removed from the Child Abuse Registry.”

THE LAW:

[14] Following his conviction for sexual assault in 1995, the Applicant's name was placed on the Child Abuse Register, in accordance with section 63 of the **Children and Family Services Act.**

> **"Child Abuse Register**
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> 63(1) The Minister shall establish and maintain a Child Abuse Register.
>
> (2) The Minister shall enter the name of a person and such information as is prescribed by the regulations in the Child Abuse Register where
>
> (b) the person is convicted of an offence against a child pursuant to the **Criminal Code (Canada)** as prescribed in the regulations; or
>
> **Notice of entry in and application to remove name from the Child Abuse Register**
>
> 64(1) A person whose name is entered in the Child Abuse Register shall be given written notice of registration in the form prescribed by the regulations.
>
> (2) A person whose name is entered on the Child Abuse Register may 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 teh Register. 1990, c. 5, s.64."

[15] The burden of proof is clearly on the applicant, under this section to satisfy the Court that he does not pose a risk to children. (See **M.H.** v. **Minister of Community Services**, 1992 F.Y. 92Y0129, Milner J.F.C., unreported)

[16] In **M.H. Supra**, Judge Milner dealt with what is meant by "risk to children."

> "**RISK TO CHILDREN"**
>
> The definitions of 'abuse' in section 62 of the **Act** coincide with some of the definitions in section 22 of what is meant for a child to be 'in need of protective services'.
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> There is no definition in section 64 of what is meant by 'risk to children'; therefore, I think the Legislature must have intended the meaning to be the same as the risk defined in section 22, i.e. 'Substantial risk', or 'a real chance of danger that is apparent on the evidence'.
>
> It would appear inconsistent to interpret 'risk', for example, as the ; 'possibility' of harm. Such an interpretation would, in my view, place an unfair and excessive onus on an Applicant, and does not appear to be the intention of the Legislature."

[17] Following a conviction for sexual assault, the perpetrator's name is automatically entered on the Child Abuse Registry. If the Minister, in the absence of any criminal offence, asks the Court to make a finding that a person has abused

a child, the burden of proof on the Minister is, on the balance of probabilities, the person has abused a child.

[18] Judge Milner in **M.H.** (the Applicant was convicted of assault on a child), dealt with the burden of proof, under section 64(2).

> "**BURDEN OF PROOF:**
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> Under section 63(3) of the **Act**, the burden of proof on the Minister or an agency to establish abuse (resulting in entry on the Register) is 'on the balance of probabilities.' It would appear that the burden on an Applicant for removal, under section 64(2), should be no heavier.
>
> As to the standard of proof required, in cases such as these, I agree with the views expressed by Grant, J. in **H.P.** v. **H**. (1985), 72 N.S.R. (2d) 104 104 (N.S. Sup. Ct. - T.D.) at page 108:
>
> 'It is a civil action in which proof is to be on the balance of probabilities or by a preponderance of evidence. Where the allegation is one involving the commission of a criminal offence, the standard of proof, although not required to be beyond a reasonable doubt, is by a strong balance of probabilities or a strong preponderance of evidence commensurate with the gravity of the offence or conduct alleged.'"

CONCLUSION/DECISION:

[19] The Applicant is a 42 year old man, who was convicted in 1996 of an offence of sexual assault, against a child in 1984. He was 19 years old at the time. Since then, there have been no incidents of this nature, which could lead to the conclusion this was an isolated incident, occurring almost 24 years ago. He successfully completed probation, designed toward the rehabilitative aspect of sentencing. This part of the criminal procedure, is more relevant to the consideration before the Court. The pardon he received, also indicates rehabilitation was successful.

[20] Counsel on behalf of the Minister, questions the credentials of the professional, who has provided the Court with a report and opinion. There has been no formal objection to the report from Mr. Donaldson, forming part of the evidence. His report provides an opinion on the possibility of the Applicant re-offending, which he says, given his lifestyle choices and social history since the offence is “within acceptable boundaries”. He believes the Applicant warrants consideration of having his name removed from the Child Abuse Registry.

[21] The professional report does not address the main issue of whether the applicant poses a risk to children. This report forms part of the evidence, and given its contents and the question raised about the reporter's qualifications, it is a question of how much weight the Court will give t it. It is one part of other considerations, but not a major one.

[22] The Court finds that "risk to children: means that set out in section 22, i.e. 'Substantial risk' or a real chance of danger, that is apparent on the evidence".

[23] The evidence indicates the sexual assault was an isolated incident, because of the passage of time (24 years and the Applicant's lifestyle and social choices). He has a very good relationship with a ten year old child, who he treats like his son. There have been no concerns expressed here. He has done everything required of him, to make sure the mistake he made when he was 19 years of age, would never happen again.

[24] The issue is whether he poses a risk to children, and on a balance of probabilities and a "strong preponderance of the evidence, commensurate with the

gravity of the offence", the Court is satisfied the Applicant does not pose a risk to children. It is ordered that his name be removed from the Child Abuse Register.

[25] Counsel for the Applicant shall prepare the order.

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JOHN D. COMEAU
Chief Judge of the Family of Nova Scotia