

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Nova Scotia (Community Services) v. Z., 2012 NSSC 87

Date: 20120308

Docket: SFHCFSA-076380

Registry: Halifax

Between:

Minister of Community Services

Applicant

v.

Z.

Respondent

Editorial Notice

Identifying information has been removed from this electronic version of the judgment.
--

Restriction on publication:

Publishers of this case please take note that s. 94(1) of the *Children and Family Services Act* applies and may require editing of this judgment or its heading before publication.

Section 94(1) provides:

"No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding pursuant to this Act, or a parent or guardian, a foster parent or relative of the child."

Judge: The Honourable Justice R. James Williams

Heard: December 1 and 2, 2011, in Halifax, Nova Scotia

Decision Rendered: March 8, 2012

Counsel: Peter McVey, for the Applicant
Donald Murray, for the Respondent

By the Court:

[1] This is an application by the Minister of Community Services pursuant to s. 63(3) of the *Children and Family Services Act*, R.S.N.S. 1990, c. 5, s. 1. The application seeks to have Z.'s name placed on the Child Abuse Register.

THE LEGISLATIVE CONTEXT

[2] **A.** Section 63 of the *Children and Family Services Act* reads as follows:

- 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
 - (a) the court finds that a child is in need of protective services in respect of the person within the meaning of clause (a) or (c) of subsection (2) of Section 22;
 - (b) the person is convicted of an offence against a child pursuant to the *Criminal Code* (Canada) as prescribed in the regulation; or
 - (c) the court makes a finding pursuant to subsection (3).
- (3) The Minister or an agency may apply to the court, upon notice to the person whose name is intended to be entered in the Child Abuse Register, for a finding that, on the balance of probabilities, the person has abused a child.

[3] Here, there has been no finding in need of protective services pursuant to s. 63(2)(a) (or s. 22(2)). Z. has not been convicted of an offence against a child pursuant to the *Criminal Code* (s. 63(2)(b)).

[4] The Minister asks the Court find, pursuant to s. 63(3), that “on the balance of probabilities” Z. “has abused a child”. More specifically, the Minister alleges that Z. has sexually abused three children.

[5] **B.** The legislative framework for the Child Abuse Registry is found within the *Children and Family Services Act* (supra).

[6] This is legislation that states:

- AND WHEREAS children are entitled to protection from abuse and neglect;
- [Preamble paragraph 2]
- 2 (1) The purpose of this Act is to protect children from harm, promote the integrity of the family and assure the best interests of children.

(2) In all proceedings and matters pursuant to this Act, the paramount consideration is the best interests of the child.

[7] I have considered this broad legislative context.

[8] **C.** The Child Abuse Register is maintained by the Minister of Community Services. Its process allows an employer or volunteer organization to request a Child Abuse Register “check” if a person applying for an employment or volunteer position (involving contact with children); or to adopt, or be a foster parent. The check can only be done with the applicant’s consent (s. 66(4)). Common sense suggests that were such an applicant to refuse to consent to a “check”, the application would be denied. A person on the Register may apply to have their name removed by establishing that they do “not pose a risk to children” (s. 64(2)).

[9] **D.** Section 62 of the *Children and Family Services Act* reads in part:

62 In Section 63 to 66, “abuse” of a child by the person means that the 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;

[10] It is alleged that Z. sexually abused three children: J. (b. August *, 1994); A. (b. November *, 1996) and M. (b. July *, 1993). It is alleged that Z. sexually abused these individuals while each was a resident of the Nova Scotia Home for Colored Children (NSHCC). Z. was employed there from 2007 until September 2010. Z. was employed as a supervisor.

J.

[11] J. asserts that she resided at the NSHCC from May 2009 to April 2010. J. asserts in her Affidavit of June 28, 2011:

8. Early in 2010, Z. was transporting me from a therapy appointment (a meeting with my therapist, Christina Wilson).

9. I was sitting on the front passenger seat of the motor vehicle and Z. was driving. No one else was in the vehicle.
10. Z. placed his right hand on my upper thigh, beside my groin, at the top of part of my thigh. Z. then left his hand there.
11. I tried to move away from Z. in the passenger seat, moving as close to the passenger door as I could. I remember Z. tried to make a joke about what he had done (after I tried to move away), but I do not remember saying anything to him.
12. I remember this happened when we were driving to and very close to the NSHCC. I can describe where we were in Dartmouth when this happened. We arrived at the NSHCC shortly afterwards.
13. I immediately told Candice Jennings, a staff member on the female unit, what had happened. To the best of my knowledge, nothing was done by the staff member I told about this event.

Candice Jennings was not called as a witness.

14. I repeated my concern about two weeks later to another staff member, Maddie Howe, and believe note was taken of my allegation on this occasion.
15. I spoke with a social worker (Brian MacAulay) about these experiences in June 2010. Before speaking to him, I did not know that other girls had similar experiences.

[12] In her testimony, J. asserted that:

- this (Z.'s placement of his hand on her thigh) happened in the car at an intersection as they were approaching the NSHCC;
- he placed his hand on her thigh and she was nervous;
- it was winter, she was wearing pants;
- she moved away from him and said "that makes me feel uncomfortable";
- she scrunched up towards the passenger door, but his hand did not follow her over, he took it away;

- he made a joke of it;
- she testified “I wouldn’t say I was offended”, “just uncomfortable”;
- she did not remember if Z. said anything (when he touched her); “it was a long time ago”;
- she did not like Z. and had argued with him before that day about her clothing check;
- days after the alleged touching, J. was caught by Z. having cigarettes delivered to the NSHCC by cab. This was January 21, 2010. There was yelling, swearing at staff by J.. J. was part of a group who pushed or took a couch down a flight of stairs. The same night this occurred, J. exclaimed (while, it appears, yelling and swearing at staff,) “and write down that he touched my leg last week”;
- she had been “written up” for threatening staff at the NSHCC;
- she had run away and been brought back by police;
- she used marijuana, ecstasy, cocaine at the NSHCC and “they knew”;
- she had not spoken to M. about her (J.’s) allegation, that she did not talk to M. about it and did not know what M. was saying, or was going to say in her affidavit.

[13] The assertion J. made January 21, 2010 (that Z. had “touched her leg last week”) was “written up” internally and Z. was given an opportunity to respond. He did so in writing January 22, 2010 [Exhibit 5]:

An allegation has been made against me to which I vehemently deny. I can though respond to the events of January 21 2010 that might have precipitated her allegation. I witnessed J. and another resident obtain a package from a cabby. I was able to secure the cab number, the firm identify and the license plate number. J. was extremely angry with me. I indicated to her that I was just doing my job. In the past were to believe this was the way to which she was able to secure cigarettes.

The evening of the 21, January was an eventful one with staff assisting with me to secure furniture from the basement to the Common room. Resident J. was the most vocal in indicating her disapproval. She and resident A proceeded to remove the sofa down the stairs of the front entrance to the basement. When staff Kamaldeep and I were in the basement we heard what sounded like pounding from the Common Room only to find that the residents had removed the sofa from the Common room and had the sofa down the back stairway and near the lobby of the Chapel.

Resident J. was insistent that she was entitled to \$272.00 that the Home was denying her money that was rightfully hers. Our policy has always been clothes purchase were done so on an as need basis.

The above events are in my opinion precipitated the allegation. I did not place my hand on any part of J. when took J. to her counselor on the 14, January 2010.

The events of the 21 of January are true and to the best of my knowledge.

[14] This appears to have been “the end” of J.’s allegation (until June of 2011, some five months later). The evidence of social worker Brian MacAulay outlines what followed.

BRIAN MACAULAY

[15] Brian MacAulay, a social worker employed by the Department of Community Services, testified. His Affidavit of June 24, 2011 indicates:

2. On June 11, 2010, the Agency received a referral form [*sic*] the Nova Scotia Home for Colored Children regarding an alleged physical assault upon A., a child in care. A physical altercation had occurred that morning between the young person and a group home staff member (Z.). The referral information was reviewed by the Intake Unit of the Agency, and a decision was made to investigate the allegation.

3. On June 23, 2010, I attended at the school of A. to speak to her about the physical abuse allegation. A. described to me the events of June 11, 2010.

4. At the end of our interview (which was not videotaped or recorded), A. also disclosed to me the following information:

- a. Z. makes her and other girls (she believed) at the Nova Scotia Home for Colored Children feel “creepy”;
- b. Z. touches her by putting his hand on her shoulders, rubbing her back, and engages in incidental or unnecessary touching;
- c. Approximately three months prior to my interview, while transporting her alone in a motor vehicle, Z. placed his hand on A.’s upper thigh and rubbed her thigh;
- d. A. described “flinching” and telling Z. not to touch her;
- e. A. reported that Z. made a joke about touching her and did not move his hand away until she became upset. She stated that his hand was on her thigh for “only a few seconds”;
- f. She believed a previous residence [*sic*] (J.) had similar experiences but she did not know the details.

5. This disclosure by A., which was not the subject of my interview or investigation that day, led me to speak with a number of other female children in care, who resided at the Nova Scotia Home for Coloured Children in the months prior to that date. In particular, I undertook an investigation to determine whether or not any similar incidents or concerns relating to physical touching of adolescent girls by Z. had been experienced or reported by female residence at the Child-Caring Facility.

8. On June 23, 2010, I attended at the Wood Street Centre, Secure Care, where J. was a resident. I explained to her the purpose of my investigation. J. provided information to me of a similar nature to that described by A.. She also suggested that M., T., and A. were all girls who had also mentioned their discomfort with Z. in the past.

10. On June 25, 2010, I spoke with M., who was then at the home of her sister (K.). M. provided me with information also describing touching in a motor vehicle. She suggested I speak with J. and P., another child in care.

11. On June 25, 2010, I spoke with T. (or “T.”, as she had been named to me by J.) T. was aware of allegations made by other girls, had made observations about other behaviours of Z., but did not disclose being touched in the manner similar to the above youth. She did provide me with the names of two other girls (F. and S.) who may have had similar experiences.

12. On June 29, 2010, I spoke with F., a resident at the Wood Street Centre. She did describe Z. as often touching girls while talking to them, trying to touch her when talking to her despite being asked not to, trying to give her hugs despite being asked not to, but noted no concerns of a nature similar to the girls discussed above (touching while alone in a motor vehicle).

13. On June 29, 2010, I spoke with S., child in care at the Chisholm Centre. S. informed me that she had no concerns to report about her time at the Nova Scotia Home for Coloured Children, and did not wish to speak with me.

15. At or about this time I learned that P. was then resident in the State of *, United States of America (*). Attempted to make contact with P. through a Child Protection Agency in the State of *, asking them to follow up and interview P. on her experiences at the Nova Scotia Home for Coloured Children. However, I was informed by child welfare staff on August 13, 2010, that P. was not willing to make herself available for an interview.

16. On August 26, 2010, I spoke with Detective Sandra McNaughton of the Halifax Regional Police, Major Crimes Unit. She informed me that the police had reviewed the matter and concluded that the actions of Z., if proven, did not amount to a criminal offence. However, they did ask for copies of my interview notes and said they would bring Z. in for an interview.

17. On September 29, 2010, Detective Sandra McNaughton informed Anna Finlayson, an Intake Social Worker in my office, that she had interviewed Z. and he denied all of the allegations of inappropriate touching. Detective Sandra McNaughton informed the Agency on this date that she believed there was insufficient evidence to proceed with criminal charges and the police file would be closed.

18. On November 4, 2010, I attended at the home of Z.. I informed him that he was not under any obligation to speak with me, could consult with a lawyer, and that anything he told me could be used in a family court or criminal court proceeding. He informed me that he understood and was willing to speak with me.

19. I first addressed with Z. the allegation of A. that he had physically abused her on June 11, 2010. Z. described the incident to me.

20. I asked Z. whether or not he was a person who generally touched others while talking. He admitted that he touched people when talking but said he only did this with “peers”. He stated that he would touch staff members but “never” made physical contact in this manner with a youth. He informed me of his belief that “crossing this boundary” is not acceptable.

21. On this date, Z. informed me that he was aware that J. had made an allegation of inappropriate touching in the past. He denied any inappropriate touching. I asked him why J. would make such an allegation and he informed me that he did

not know. He then informed me that J. had been “angry with him” a number of times and he could remember an incident when she was particularly angry with him.

22. I informed Z. that a number of children had made similar allegations. I asked him directly if he touched any other youth in the manner described by J. and he said that he had not. I asked him if he could explain why a number of youth would make similar allegations, and he was unable to provide an explanation.

24. Of the youth who made allegations of touching by Z., only J. informed me that she had alerted Group Home staff at the time of the incident. I contacted the Nova Scotia Home for Coloured Children, and requested any documents or records that might confirm or deny the allegation.

25. On April 18, 2011, I received from Patricia Mugridge, Nova Scotia Home for Coloured Children, copies of documents dated January 21, 2010, which I reviewed and confirm the following:

a. On January 21, 2010, J. did disclose being touched by Z. while in his car. The disclosure was consistent with that she provided to me during my interview, and was documented on a “FORM 1, Child Abuse Reporting Form” sent to the Social Worker of the child at or about that time.

b. Patricia Mugidge also provided me with a letter, written and signed by Z. dated January 22, 2010, denying the allegation of inappropriate touching by J., as well as other documents relating to notification to the Minister of Community Services of this disclosure.

c. Finally, Patricia Mugidge provided copies of daily log sheets showing that J. was driven to a therapy appointment on January 14, 2010 (according to Patricia Mugidge), by “Z.”, which she said was presumably Z..

[16] Mr. MacAulay indicated his notes concerning his first meeting with M. did not mention the touching having occurred in a car.

A.

[17] A.’s Affidavit of June 29, 2011 indicates:

2. I was born on November *, 1996, and am now fourteen years of age. At the time of the events described below, I believe I was thirteen years of age.

3. I am a young person in the care and custody of the Minister of Community Services.

4. I was resided at the Nova Scotia Home for Colored Children on Main Street in Dartmouth, Nova Scotia (hereinafter, “the NSHCC”), between December 29, 2009 and November 25, 2010.

5. In 2009-10, Z. was a staff member of the NSHCC.

6. The NSHCC was a group home for adolescents, divided into male and female units or “sides” for most of the time I was there.

7. I resided on the female unit, and Z. worked on the male unit.

8. In or about March, 2010 (a few months before I later spoke to Brian MacAulay about it), Z. and I were driving in a car. There were just the two of us in the car. I believe he was driving me to school (* School).

9. During the drive, Z. placed his hand on my upper thigh. His hand was on my thigh, about six inches from my hip. Z. rubbed his hand on my thigh.

10. Z. kept his hand on my thigh for a few seconds. I flinched and told him not to touch me. He moved his hand off my thigh and made a joke about it. I was clothed during this incident and sitting in the passenger seat of the motor vehicle.

11. I did not report this incident to staff of the Nova Scotia Home at the time it occurred.

12. I became aware in 2010 that other girls at the NSHCC had experiences similar to mine. As a result, I spoke with a social worker (Brian MacAulay) about these experiences in June 2010.

[18] A. asserted she flinched when touched, that she told Z. not to touch her. He took his hand away. It had not happened before. It did not happen again.

[19] A. said she “might have” said something to one of the staff or one of the girls who lived there, that she wanted them to make a report. There is no other evidence that such a report was made. Her Affidavit suggests she did not make a report to staff of the NSHCC.

[20] A. was asked “When did you discover that M. was making a complaint about Z.?” She answered that “...when they all lived there, we were all sitting in

the living room and we were all just telling our stories and it was brought up...that had happened to them too and stuff.” She thought this was before she talked to Mr. MacAulay June 25, 2010. Her testimony continued:

- Q. Okay. When J. and M. and you are sitting on the couch...and T., talking about this, was there any discussion about, What are we going to do?
- A. No. I don't remember.
- Q. Was anyone talking about, Well, I'm going to complain to staff and get it written up?
- A. I don't remember.
- Q. Okay. Do you remember if anybody suggested that?
- A. No.
- Q. And do you recall if anyone encouraged you to make your report? If one person was going to make a report, that you'd make a report too?
- A. I don't remember that.
- Q. Okay. Could that have happened?
- A. No.
- Q. Okay. Why could that not have happened?
- A. Well, I just remember that we were talking about it. That's all.
- Q. Okay, and is it too long ago for you to provide me with any detail about that?
- A. Yes.

[21] On June 11, 2010 A. and Z. were involved in an incident. A. was attempting to enter a storage room at the NSHCC where pain medication was kept - A. wanted a pain medication. Z. pushed her out. She was physically and verbally upset, yelling, swearing, pushing, threatening to hurt someone. She stated “I'm going to call my social worker and the Ombudsman”, then “I'm going to get him fired, he can't do this to me”. I conclude she was referring to Z.. She complained that Z. assaulted her that day (June 11, 2010). Her complaint was made to Hank Simmons and investigated at the NSHCC, then by Mr. MacAulay.

[22] Z.'s testimony was that A. was trying to push her way into the storage room to get medication. Her arm was apparently bruised when he pushed or forced her out of that room.

[23] Two weeks after her complaint that Z. had assaulted her on June 11, 2010 A. spoke to Mr. MacAulay (about this June 11, 2010 incident) and said “at the end of the interview” that “about three months ago” Z. had put his hand on her thigh.

[24] She said the touch was annoying, not repeated, there was no on-going harm.

M.

[25] M. was born July*5, 1993. She turned 16 on July 15, 2009. She has asserted in her Affidavit (of June 28, 2011):

2. I was born on July *, 1993 and am now seventeen years of age. At the time of the events described below, I believe I was fifteen or sixteen years of age.
3. I am a young person in the care and custody of the Minister of Community Services.
4. In 2009, I was residing at the Nova Scotia Home for Colored Children on Main Street in Dartmouth, Nova Scotia (hereinafter, “the NSHCC”).
5. In 2009, Z. ... was a staff member of the NSHCC.
6. The NSHCC was a group home for adolescents, divided into male and female units or “sides”.
7. I resided on the female unit. I noted at the time that Z. would often be on the female unit.
8. Z. would often touch me at times and in a way that I thought was quite unnecessary. For example, he would rub my lower back or touch my shoulder when passing by me or when speaking with me.
9. Z. made me feel uncomfortable by touching me in this manner, and I asked him more than once not to do this. However, he continued to do this.
10. Z. would also often drive me or other girls at the NSHCC to appointments. Z. often volunteered to do this, even when other staff members, including female staff of the NSHCC, offered to do so.
11. I also remember that Z. would volunteer to drive me or other girls to Tim Horton’s.
12. On one occasion, I was alone in a car with Z. after he drove me to Tim Horton’s. I remember that we were parked at the Tim Horton’s on Main Street

and Forest Hills Parkway. I was sitting in the front passenger seat and he was in the driver's seat.

13. On this occasion, Z. put his hand on my left thigh, between my knee and my hip, but closer to my hip. I felt uncomfortable and pushed his hand away.

14. After this happened, I refused to drive with Z. for any further appointments.

15. I remember there was only once when I got in the car with Z.. On this occasion, Z. was going to drive two other girls, J. and P., to Bridges for Learning at the Reigh Allen Centre on Pleasant Street, in Dartmouth.

16. Z. argued with me on this occasion, insisting that I must sit up front with him; however, I refused and he eventually drove me back to the NSHCC anyway.

17. I did not know that other girls at the NSHCC had experiences like mine until I spoke with a social worker (Brian MacAulay) about these experiences in June 2010.

[26] In her testimony, M. indicated:

- Z. put his hand on her leg, it was in the car, she felt uncomfortable;
- she does not like people touching her;
- it happened three times;
- he would touch my back or leg when talking;
- he only touched my leg twice, said "stop touching me";
- she made no report to staff;
- she talked to J. and A. about Z.;
- she did not tell anyone until Brian (MacAulay) came;
- Brian told her there were others.

[27] M.'s assertions are uncertain with respect to day, month, even year. It is not clear whether she was 16 or older. She was pregnant during 2010. It is unclear when she had the baby.

Z.

[28] Z. testified. He is 58 years of age. He is university educated. He is in a graduate university program that could lead to a career involving contact with children.

[29] He worked at the NSHCC from 2007 to September 2010, leaving when the number of residents dwindled to the point that his position was unnecessary. Z. indicates his responsibilities at the NSHCC as a Youth Care Supervisor included supervision of other staff, residence, medications, conduct issues, appointments, curfews and record keeping.

[30] The Home had a male and female side - up to six residents on each side. Records are kept. There is a complaint process for complaints by residents about staff. Each side (male, female) had two or three staff he supervised.

[31] He denied touching these children. He denied sexually touching them.

[32] He said his relationship with J. was contentious, that she could be loud, angry. She pushed furniture (or helped push it) down two flights of stairs during a January 2010 incident. She was livid ("How dare you, how dare you.") when he stopped her taxi-delivered cigarettes. He described her as out of control on January 21, 2010 (when the furniture was displaced) when she alleged that he had placed his hand on her thigh.

[33] He denied placing his hand on J.'s thigh in his written response (January 22, 2010) to the complaint (of June 21, 2010), to the police, to Mr. MacAulay and when testifying.

[34] Z. indicated M. could be very physical, angry, if she did not get her way. She broke a window or windows. He indicated M. was pregnant when she left the NSHCC, that D., the father of her child, was a resident of the home. On one

occasion, D. was “taken down” by police at the Home. M. was very upset; had choice words for him, Z..

[35] Z. denied ever driving M. to Tim Horton’s; denied placing his hand on her thigh. It is unclear when this is alleged to have occurred - it is unclear whether it was 2009 or 2010; it is unclear whether it was before or after M. turned 16, whether she was pregnant at the time, and if so, what stage of pregnancy.

[36] After the birth of M.’s child, while still employed at the NSHCC, Z. said he delivered clothes, baby supplies to M.. He felt this was positive, felt she appreciated the “supplies”. She indicated he only brought “her things” to her.

[37] Z. described A. as smart, imaginative, determined. She could be loud. She was okay “if she was getting her own way”. “All hell would break loose “ on occasion however.

[38] In June 2010 he was to drive A. to school. She wanted pain medication before they left. She got very upset when it was refused - she was physically and verbally upset. She said she “was going to hurt someone”, that she would get him fired. She tried to push her way into the small room where the medication was kept. Z. pushed her out. She complained. It was “written up”. The date was June 9, 2010.

[39] Z. said he did not touch her on the thigh as alleged.

[40] He stated he had no memory of touching these girls as alleged, that if it did occur it was innocuous, incidental.

CONCLUSIONS

[41] The Minister of Community Services seeks to prove, on the balance of probabilities, that Z. sexually abused a child, all or one of these three adolescent girls.

[42] The Minister submits, concerning the phrase “sexual abuse”, that:

the ‘grammatical and ordinary sense’ of the expression ‘sexual abuse’ is itself still a matter of interpretation, requiring the Court to view that matter objectively, adopting the observation of a reasonable person in light of all the circumstances.

and refers to *R. v. Chase* (1987) S.C.J. No. 57, 2 S.C.R. 293, para. 11 (emphasis added):

Sexual assault is an assault...which is committed in circumstances of a sexual nature, such that the sexual integrity of the victim is violated. The test to be applied in determining whether the impugned conduct has the requisite sexual nature is an objective one. Viewed in all the circumstances, is the sexual or carnal context of the assault visible to a reasonable observer. The part of the body touched, the nature of the contact, the situation in which it occurred, the words and gestures accompanying the act, and all the other circumstances surrounding the conduct including threats which may or may not have been accompanied by force, will be relevant. The intent or purpose of the person committing the act, to the extent that this may appear from the evidence, may also be a factor in considering whether the conduct is sexual. If the motive of the accused is sexual gratification, to the extent that this may appear from the evidence, it may be a factor in determining whether the conduct is sexual. It must be emphasized, however, that the existence of such a motive is simply one of many factors to be considered, the importance of which will vary on the circumstances.

[43] I have considered this view of sexual assault in coming to my decision.

[44] I am unable to conclude that the Minister of Community Services has proven on the balance of probabilities that Z. has sexually abused a child or children.

[45] The Minister, I conclude, has not proven on the balance of probabilities:

1. that Z. placed his hand on J.’s thigh;

or that if he did so, that it was done so in a sexual or carnal context;
or that J.'s sexual integrity was violated or compromised;
or that sexual abuse occurred.

[46] The only evidence of a threat is that J. had threatened staff at the NSHCC in the past. J. indicated "I wouldn't say I was offended, just uncomfortable". There is little evidence of what was said at the time of the alleged incident ("It was a long time ago". "He made a joke of it".) J.'s allegation arose following an incident at the NSHCC when Z.'s actions angered her. Her evidence was at times general, vague. He denied the allegation.

2. That Z. placed his hand on M.'s thigh;
or that if done, it was done in a sexual or carnal context;
or that if done, M.'s sexual integrity was violated or compromised;
or that M. was a child at the relevant time;
or that sexual abuse occurred.

[47] The Minister's evidence put forward with respect to M. is vague as to date (month or year). It is alleged to have occurred when M. was 15 or 16. M. indicated she had talked to J. and A. about Z.. M. stated Z. made her feel uncomfortable. Her evidence is unclear, vague and somewhat inconsistent in its description of how often "it" happened. There is little indication of what was said at the time of the alleged abuse, little context. M.'s allegations follow an incident where I conclude she was angry at Z. as a result of an incident involving her then boyfriend. Z. denies her assertions.

[48] The *Children and Family Services Act* defines child as:

3 (1) (e) "child" means a person under sixteen years of age unless the context otherwise requires;

[49] The lack of evidence concerning M.'s age at the time of the alleged sexual abuse is not what my conclusions turn on. The evidence concerning M.'s allegation is vague or uncertain in many respects (including her age at the time of the alleged events). Had I concluded that sexual abuse occurred the question of M.'s status within this legislation - "was she a child at the relevant time?" - would be an issue. Given my conclusions, it is not.

3. That Z. placed his hand on the thigh of A. or that if this occurred: that it was done in a sexual or carnal context; or that A.'s sexual integrity was violated or compromised; or that sexual abuse occurred.

[50] A. complained that Z. assaulted her June 11, 2010. This complaint led to Mr. MacAulay investigating. This complaint (that Z. assaulted A. June 11, 2010) was not pursued by the Minister in this proceeding. Mr. MacAulay stated that A. disclosed (at the end of Mr. MacAulay's interview with her) that Z. had placed his hand on her thigh. That interview on June 23, 2010 concerned her assertion that Z. had assaulted her June 11, 2010. She said (June 23, 2010) it (the placement of Z.'s hand on her thigh) happened "about three months ago". She said the touch was annoying, not repeated, there was no on-going harm.

[51] Z. denies the events alleged occurred.

[52] I am not satisfied that the alleged touchings occurred. There is evidence of threats or what amounts to threats against staff of the NSHCC by J. and A. near the time of their disclosures. A.'s allegation to Mr. MacAulay was made shortly after she said (at the time of the medication closet incident) "I'm going to get him fired" (referring to Z.). There is significant uncertainty as to when it is alleged that M. was touched; and some uncertainty with respect to A.'s assertion. Apart from being in a car there is little context given the allegations.

[53] There is no evidence or suggestion that Z. intended to or attempted to take J., A. or M. anywhere but where they were supposed to go. All of the allegations are vague in some respect. There is no evidence to suggest that Z. was seeking sexual gratification; the evidence alleges his actions caused brief discomfort or annoyance, not sexual interference, assault or abuse. There is no allegation that Z. used words that were sexualized; no allegation of any threat or possible reprisal; no evidence of any specific words.

[54] Even if I concluded that Z. did place his hand on the thigh of one or more of these children (and I do not conclude that the Minister has proven on the balance of probabilities that he did so), no sexual abuse has been proven. There is more innuendo than evidence of sexual abuse.

[55] Whether I examine (the evidence of) these allegations individually or collectively, the evidence falls short of proving on the balance of probabilities that sexual abuse occurred.

[56] It is important to note that this decision does not determine what happened or did not happen, it provides my conclusion as to whether the Minister of Community Services has provided evidence that allows the Court to conclude on the balance of probabilities that sexual abuse occurred. I have concluded that the Minister has failed to do so.

[57] The Minister has not proven on the balance of probabilities that Z. abused or sexually abused a child.

[58] The application to place Z.'s name on the Child Abuse Register is dismissed.

[59] If either counsel wish to be heard on the matter of costs, they may set a date to be heard on that issue through the Court's Scheduling Office.

J. S. C. (F. D.)

Halifax, Nova Scotia