

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Nova Scotia (Community Services) v. C.C.*, 2017 NSSC 312

Date: 2017-12-05

Docket: SFSNCFSA No. 99050 and 104784

Registry: Sydney

Between:

Minister of Community Services

Applicant

v.

C.C. and R.M.

Respondents

LIBRARY HEADING

TO PUBLISHERS OF THIS CASE:

PLEASE TAKE NOTE THAT SECTION 94(1) OF THE CHILDREN AND FAMILY SERVICES ACT APPLIES AND MAY REQUIRE EDITING OF THIS JUDGMENT OR ITS HEADINGS BEFORE PUBLICATION.

SECTION 94(1) PROVIDES:

Prohibition on publication

1. 94 (1) 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 a relative of the child.

Judge: The Honourable Justice Lee Anne MacLeod-Archer

Oral Mid-trial Ruling: October 13, 2017 in Sydney, Nova Scotia

Written Decision: December 5, 2017

Subject: Child Protection Law – Evidence – Admissibility – Hearsay rule

– Exceptions – Business records

Summary:

The Minister sought to admit computerized notes (ICM recordings) of Agency workers as evidence to prove the truth of the contents – portions containing first-hand accounts by workers admitted, second and third-hand hearsay not admitted; opinion evidence embedded in notes not admitted; anonymous referrals not admitted. Entries recording reports of other professionals admitted, exclusive of opinions. Notes admitted were business records; sufficiently reliable and necessary to admit.

Issues:

- (1) Do the ICM notes contain hearsay?
- (2) Are the ICM notes business records, admissible as *prima facie* proof of their contents?
- (3) If the ICM notes constitute business records, are they all admissible as an exception to the rule against admission of hearsay?
- (4) If portions of the notes are *prima facie* admissible, but the Respondents challenge those entries, are the Respondents required to call the author of that entry?
- (5) Do the court's earlier rulings apply to the ICM notes?

Result:

The ICM notes are admissible as a business records exception to the hearsay rule. Statements attributed to persons, other than professionals, who relayed information to workers and workers' own observations and acts, are not admissible. Opinions embedded in notes inadmissible. Respondents not required to call witnesses re: impugned statements. Earlier rulings not applicable.

THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION. QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.