

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Nova Scotia (Community Services) v. M.P., 2014 NSSC 80

Date: 2014-03-12

Docket: 79794

Registry: Sydney

Between:

Minister of Community Services

Applicant

v.

M.P. and T.M.

Respondents

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Judge: The Honourable Justice Kenneth C. Haley

Heard: December 16 and 17, 2013 and January 15, 2014 in Sydney, Nova Scotia

Written Decision: March 12, 2014

Counsel: Ms. Tara MacSween, for the Minister
Ms. Jennie Donnelly-McDonald, for the Respondent, T.M.

Issue: The Applicant sought a Permanent Care Order in relation to the two children of the Respondents.

Summary: The Respondent, M.P. consented to the application. The Respondent, T.M. opposed the application.

The Respondent, T.M. had been incarcerated during the early stages of the proceeding, and did not obtain his release until after the statutory time lines under the *Children and Family Services Act* had been exhausted.

The Court thus extended the statutory time lines to permit the Respondent, T.M. to present his plan of care to the Court in the best interests of the children.

The Court found that the Minister of Community Services, although deficient in not providing reasonable notice to the Respondent, T.M. of its

intention to seek permanent care, it had not breached its duty and/or function under ss. 9 and 13 of the *Act*.

The Court further found that the Respondent T.M. had the opportunity to present his case effectively, and the principles of fundamental justice were not violated.

Keywords: Burden of proof; balance of probabilities; test on statutory review; statutory timelines; extension of statutory timelines; procedural fairness; principles of fundamental justice; Minister's statutory duty/function; best interests of child; permanent care; access.

Result: **Permanent Care Order granted with no provision for access.**

Case Law: **F.H. v. McDougall**, 2008, 3 S.C.R. 41
Catholic Children's Aid Society of Metropolitan Toronto v. C.M., 1994, S.C.J. No. 37 (SCC)
Nova Scotia Minister of Community Services v. L.L.P., 2003 N.S.J. No. 1 (C.A)
D.C. v. Family & Children Services of Lunenburg County and T.M.C. and C.L.C. 2006 249N.S.R. (2d) NSCA.
G.S. v. Nova Scotia (Minister of Community Services) 2006 N.S.J. No. 52 (NSCA)
Nova Scotia (Community Services) v. T.H., 2010 NSCA 63
Mi'kmaw Family and Children's Services v. L.(B)., 2011 NSCA 104
Children & Family Services of Colchester County v. K.T., 2010 N.S.J. No. 474.
N.P. (Re), 2011, OTC 93 (Sup.Ct.)
New Brunswick Minister of Health v. G. 1999 3 S.C.R.
Minister of Community Services v. J.D. and J.H. , 2011, NSSC 113.

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