

IN THE SUPREME COURT OF NOVA SCOTIA  
(FAMILY DIVISION)

**Citation:** Nova Scotia (Health) v. L.K., 2005 NSSC 96

**Date:** 20050426

**Docket:** SFH A10372

**Registry:** Halifax

**Between:**

Minister of Health

Plaintiff

v.

L. K.

(By her Litigation Guardian, N. L.)

Defendant

- and -

M. R.

Third Party

**Editorial Notice**

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

**Judge:** The Honourable Assoc. Chief Justice Robert F. Ferguson

**Heard:** April 25 & 26, 2005, in Halifax, Nova Scotia

**Written Decision:** May 5, 2005

**Counsel:** Jean Webb, for the Plaintiff  
Kathleen Hall, counsel for the Defendant  
David Perlmutter, counsel for the Third Party

**By the Court:**

[1] L. K. is fifty-eight years of age. By court order dated February 10, 2000, she was found to be an adult in need of protective services and the Minister was authorized to provide her with services, including placement in an approved facility. Further, on the same date, a separate order appointed a *guardian ad litem* to act for L. K. in this proceeding. Since that date, twelve review hearings have taken place; the last being January 19, 2005, when Ms. K., represented by her *guardian ad litem*, was found to be in the need of protective services and the Minister once more was authorized to provide her with services, including placement in an approved facility.

[2] M. R. is the mother of L. K. and provided her with care until shortly before the initial order in February of 2000. She has remained interested in her daughter's life and, since the order of October 2004, has been acknowledged as having a party status in this proceeding.

[3] Ms. R., for some period of time, has not been in complete agreement with the Minister's view as to her continued involvement in L. K.'s life. It should be noted that the current order of January 2005 stated that a trial on the issue of L. K.'s status would take place over two days (April 25 and 26, 2005) so it is obvious that M. R. had made the other parties aware, at least as far back as January of 2005, that she intended to challenge the Minister's continued role in her daughter's life.

[4] The Minister seeks an order which continues to find L. K. an adult in need of protection and not mentally competent to decide whether or not to accept the assistance of the Minister and, further, to quote directly from paragraph 9 of the affidavit of D. P. of March 31:

. . .it is in the best interest of L. K. that the existing Order authorizing the Minister of Health to provide her with services be renewed so that L. K. can continue to avail herself of the services and supports she currently has in place, and so she can continue her progress noted since her current placement.

[5] The *guardian ad litem* for L. K. is supportive of the Minister's application for the continuation of the current order. M. R., as previously indicated, takes

issue with the Minister's application from a number of perspectives. First, she questions the necessity for the continuation of an order providing the Minister with authority to provide services to her daughter. Second, if that authority was to be continued, she questions the manner in which the Minister exercises that authority in directing the relationship between she and her daughter.

## RELEVANT LEGISLATION

[6] The *Adult Protection Act*:

**3** In this Act,

( b ) "adult in need of protection" means an adult who, in the premises where he resides,

(i) is a victim of physical abuse, sexual abuse, mental cruelty or a combination thereof, is incapable of protecting himself therefrom by reason of physical disability or mental infirmity, and refuses, delays or is unable to make provision for his protection therefrom, or

(ii) is not receiving adequate care and attention, is incapable of caring adequately for himself by reason of physical disability or mental infirmity, and refuses, delays or is unable to make provision for his adequate care and attention;

...

**9(3)** Where the court finds, upon the hearing of the application, that a person is an adult in need of protection and either

( a ) is not mentally competent to decide whether or not to accept the assistance of the Minister; or

( b ) is refusing the assistance by reason of duress,

the court shall so declare and may, where it appears to the court to be in the best interest of that person,

( c ) make an order authorizing the Minister to provide the adult with services, including placement in a facility approved by the Minister, which will enhance the ability of the adult to care and fend adequately for himself or which will protect the adult from abuse or neglect;

...

(5) An order made pursuant to subsection (3) expires six months after it is made.

(6) An application to vary, renew or terminate an order made pursuant to subsection (3) may be made by the Minister, the adult in need of protection or an interested person on his behalf, or a person named in a protective intervention order upon notice of at least ten days to the parties affected which notice may not be given in respect of a protective intervention order earlier than three months after the date of the order.

(7) An order made pursuant to subsection (3) may be varied, renewed or terminated by the court where the court is satisfied that it is in the best interests of the adult in need of protection.

(8) A renewal order expires six months after it is made.

(9) The determination of all matters by a court pursuant to this Section shall be made on the balance of probabilities.”

## EVIDENCE

[7] The following testified:

- K. H., client care coordinator and supervisor, [...], a small options facility;
- C. D., owner and administrator of [...]
- D. P., adult protection worker
- D. L. J., friend of M. R.
- J. G. C., an associate of M. R.
- M. R., the Third Party and the Defendant’s mother
- N. L., the *guardian ad litem*

[8] An affidavit of D. P. contains an Exhibit “C” which is a document entitled “Department of Health - Adult Protection Services - Medical Observations Form - To Renew an Order.” It was agreed by all parties that this document could be

considered by the court without the cross-examination of its author, Dr. G. S. Richardson.

[9] K. H. and C. D. spend most of their working day at the [...]. They have known L. K. since she came to the home in September of 2000. They testify as to a young woman who arrived on their doorstep smoking three packs of cigarettes a day, had no notion of hygiene, could basically not eat with a knife and fork and had difficulty communicating. Four to five years later, they describe this same woman as someone who bathes regularly; washes her hands after meals, meals incidentally eaten with a knife and fork; is much more communicative, including “signing a little”; performs chores for compensation and holds herself in high esteem. They testified it is their belief L. K. is happy to have her mother visit but does not wish to live with her. They testified, despite her reduced communication skills, she is able to make her wishes known to them.

[10] D. P., as an adult protection worker, became involved with L. K. as an adult in need of protection around the time she moved into the [...]. She had had prior limited involvement with both L. K. and her mother when they resided together. She echoed Mr. H.’s and Ms. D.’s statements as to the vast improvement of L. K. in all facets of her life since coming to the [...]. Ms. P. is the person who deals directly with M. R. and her concerns as to L. K.’s ongoing treatment and relationship with the Minister. She mentioned a gathering, including M. R., her daughter and some interested parties, including Ms. J.. On that occasion, she testified M. R. became so upset during discussions that L. K. left not only the room but the house and she (Ms. P.) had to caution M. R. not to strike her. Ms. P. also believes L. K. can make her views known to her and that she does not wish to relocate in the home of her mother.

[11] D. L. J. testified as to her relationship with M. R. and indicated she is currently helping her with some of the facets of her life. She is willing to help if and when her daughter spends time at her home or in any other place.

[12] J. G. C. filed an affidavit and testified he denies ever assaulting L. K. in spite of pleading guilty to such an occurrence. He is in receipt of assistance and has been for some time. He sees himself as the boyfriend of L. K. and very much

wishes to become closely involved in her life, although indicated that, if he was ordered not to attend when L. K. was visiting with her mother, he would, reluctantly and basically against his wishes and better judgment, live with such admonition.

[13] M. R. filed an affidavit and testified. She believes L. K. can make her own decisions and is advanced to a stage where an order such as the one currently in existence is no longer required.

[14] N. L. filed an affidavit and testified that she, in her capacity, agrees with the submissions of the Minister.

[15] Given the submissions, this is an application to renew, terminate and/or possibly vary an existing order. As previously noted, s. 9(7) of the *Act* stipulates the court has the authority to make such alterations when satisfied it is in the best interests of the adult in need of protection.

[16] In the *Minister of Health (Nova Scotia) v. R.G.*, 2005 NSCA 59, the Nova Scotia Court of Appeal stipulates that, in this type of an application, a conclusion must be reached that a person such as L. K. is, or continues to be, an adult in need of protection prior to proceeding to a further determination as to what are her best interests. Also, in this decision, the court directs, for the purposes of this initial inquiry, the words “in the premises where she resides” in paragraph 3 of the *Act* should be – and I quote Chief Justice MacDonald at paragraph 41: “interpreted broadly to include where the adult lived either before the initial APO or where he may be living, should the APO terminate.”

[17] The only expert testimony as to L. K.’s status comes in the form of the medical observation form signed by Dr. Richardson on March 21, 2005, and previously mentioned as being allowed to come forward without him being available for cross-examination. In this form, the doctor indicates that, in his professional opinion, Ms. K. is an adult in need of protection and further states that twenty-four hour supervision is required.

[18] In an initial hearing prior to making an order, the court, on the finding of need of protection, must proceed to the question as to if the person is mentally competent to decide whether or not to accept the assistance of the Minister. At this time, five years after the original findings and order, I believe the Minister, from the evidence presented, believes that L. K., if it were not for the involvement of her mother, M. R., or Mr. C., would remain in the designated home and accepting of the current services which would negate the need of renewal of this current order. The evidence of M. R. is determinative of this concern. She obviously would be happy to have her daughter return to live with her. She has appropriate intentions. It is probable, if given free access to L. K., that M. R. would counsel her to return to her home. It is probable, given L. K.'s mental capacity or abilities, that, without intervention, she would agree and relocate with her mother. I repeat, I find these conclusions to be probabilities not possibilities.

[19] M. R. is eighty-five years of age. She has been portrayed as feisty and aggressive. She appears before me as someone who is somewhat frail and currently requires help in maintaining her own independent living status.

[20] L. K. has made remarkable progress since relocating to her current surroundings. This continued lifestyle, from the evidence presented, requires the constant application or re-application of the services she is currently receiving. M. R., with no disrespect to her and with all of her best intentions, could not come close to providing such services.

[21] I find L. K. to be an adult in need of protective services and I find it is in her best interests to continue the order that the Minister provide such service.

[22] In her other request that her access be increased and unsupervised, M. R. has brought into question the Minister's ongoing plan of care. I am satisfied the Minister, in addition to seeking an order to provide care, has made it clear that their plan is to continue to have L. K. live in the same surroundings (small options facility) and be offered the same services. In support of this conclusion that the Minister has basically offered a plan of care, I would harken back to my quote of Ms. P. noted earlier in this decision.

[23] The Supreme Court of Canada in *J.J. v. Nova Scotia (Minister of Health)*, 2005 SCC 12, directs that I have the jurisdiction to assess whether the services proposed to be provided are consistent with the best interests and welfare of the adult in need of protective services. In exercising this jurisdiction, I have considered M. R.'s request for more extended, less supervised access with her child. The reasoning I have applied in concluding L. K. is in need of protection is applicable to the issue of increased and unsupervised access. L. K. being in a situation where her current services are not available is contrary to her best interests. The issue of access will remain with the Minister. M. R.'s access to her daughter, L. K., can be varied with the cooperation and intervention of all parties.

J.