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(Winnipeg Centre)
Cited as: M.K. v. Child and Family All Nations Coordinated Response Network
Indexed as: 2020 MBQB 156

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COURT OF QUEEN'S BENCH OF MANITOBA (FAMILY DIVISION)

BETWEEN:

M.K.,	)	For the applicant:
	)	J.G. Fiorino
applicant,	)	
	)	
-and-	)	
	)	
CHILD AND FAMILY ALL NATIONS COORDINATED RESPONSE NETWORK,	)	For the respondent: K.M. Saxberg and A. Cloutier
respondent.	)	
	)	
	)	JUDGMENT DELIVERED: **NOVEMBER 9, 2020**

RESTRICTION ON PUBLICATION: Pursuant to s. 75(2) of ***The Child and Family Services Act***, no press, radio or television report of this proceeding shall disclose the name of any person involved in the proceedings as a party or a witness or disclose any information likely to identify any such person.

THOMSON J.

Introduction

[1] On the evening of May 5, 2016, members of the Winnipeg Police Service ("WPS") stopped a motor vehicle, as it travelled west on Sargent Avenue, in Winnipeg. The applicant, then aged 47 years, was operating the vehicle. WPS officers identified the occupant of the front passenger seat as "M.G.", a 14 year-old girl, who acknowledged to them that she was a sex trade worker.

[2] It is from this incident that an investigation was commenced by Child and Family All Nations Coordinated Response Network ("ANCR") and, later, a referral made to the Child and Family (ANCR) General Authority Child Abuse Committee ("the Abuse Committee"). On December 20, 2017, the Abuse Committee decided that the applicant should be registered on the Child Abuse Registry, and thereafter the applicant was served with the Notice of Intended Entry on the Child Abuse Registry (see: Agreed Facts and Documents (Exhibit No. 1, Tab 1)).

[3] The Notice of Intended Entry on the Child Abuse Registry ("the NIER") states:

> TAKE NOTICE that a report has been received from the Child Abuse Committee of the Child and Family All Nations Coordinated Response Network (ANCR) on the 13 day of May, 2016, stating that the child [M.G.] born on the […] day of […] 2002 was abused.
>
> AND TAKE NOTICE that a report has been received from the Child Abuse committee of the Child and Family All Nations Coordinated Response Network (ANCR) on the 13 day of May 2016, stating that [M.K.] abused this child.
>
> AND TAKE NOTICE that the circumstances surrounding the above as reported by the Child Abuse Committee of the Child and Family All Nations Coordinated Response Network (ANCR) are as follows:
>
> > THAT on or about or between 2014 and May, 2016, you [M.K.] (dob: […], 1969) did sexually exploit [M.G.] (dob: […], 2002) by engaging in inappropriate sexual acts with her including fellatio and sexual intercourse in exchange for money, thereby committing abuse against a child pursuant to the provisions of The Child and Family Services Act and Regulations.
>
> AND TAKE FURTHER NOTICE that [M.K.'s] name and circumstances surrounding the abuse will be entered on the registry unless [M.K.] objects to the placement of his name on the registry
>
> (a) by filing with the Court of Queen's Bench of Manitoba (Family Division) a notice of application for a hearing together with a true copy of this notice given under subsection 19(3.2); and
>
> (b) serves this agency with a true copy of the application;
>
> within 60 days of the date of the giving of this notice.

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> AND FURTHER TAKE NOTICE where no notice of application is received by this agency within 60 days of the date of the giving of this notice, this agency shall report [M.K.'s] name and circumstances of the abuse to the Director of Child and Family Services for entry in the Child Abuse Registry.

[4] The applicant's Notice of Application in Opposition to the Notice of Intended Entry on the Child Abuse Registry was filed on March 23, 2018. It is the disposition of that Application, to which these reasons for decision apply.

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<u>WPS – The May 5, 2016 Incident</u>

[5] Most of the facts surrounding the applicant's interaction with M.G. and with the WPS, specifically on May 5, 2016, are not in dispute.

[6] M.G. was 14 years old on that date, and a permanent ward of Anishinabe Child and Family Services ("ACFS"). She had recently run away from her designated placement, Blue Thunderbird House. She was regarded as a missing person by the WPS.

[7] Two WPS "Occurrence Reports" in connection with these events were entered as business records at trial, and marked as Exhibits Nos. 3 and 4. A member of the WPS "take-down" unit, Constable Dawn McCaskill, also testified. She said that members of the WPS were engaged in an "anti-exploitation project" in the vicinity of Sargent Avenue and Home Street, a street corner known for "prostitution", in an area notorious for sex trade activities.

[8] One unit, tasked to conduct surveillance in an unmarked non-police vehicle, observed an underage female, who had been standing at that street corner, enter the applicant's motor vehicle. It then followed the applicant's vehicle as he drove west with her on Sargent Avenue. That surveillance unit communicated this

information to a second "take-down" unit (its officers, of which Constable McCaskill was one, were in an unmarked police vehicle), which ultimately stopped the applicant, near the intersection with Erin Street. The applicant and M.G. were then identified. M.G. was removed from the applicant's vehicle, and placed in the police vehicle.

[9] Constable McCaskill said that M.G. admitted working as a "prostitute". She denied knowing the applicant. M.G. said that the applicant knew she was 14 years old, but declined to provide any further information regarding her interactions with him, or to answer further questions.

[10] Constable McCaskill also spoke with the applicant, separate from M.G., and gave him a warning about criminal charges he could face for engaging in sexual activities with children. She said the applicant then told her that M.G. was his daughter's friend and that he was giving her a ride. He was allowed to continue on his way, and no charges or WPS investigation ensued.

[11] WPS then transported M.G. to her placement, and were redirected to the Crisis Stabilization Unit ("CSU"), where the child was delivered to staff. She was identified as a high risk victim ("HRV") and remained at the CSU for some time thereafter. The ANCR Abuse Coordinator, Kristen Henry, testified at trial that at any given time only between 10 and 12 youth in Winnipeg are designated as HRV, of which M.G. was then one.

[12] Constable McCaskill estimated that the takedown, including the conversations with M.G. and with the applicant, lasted about 20 minutes. She

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recorded that she left the area of the take-down at 20:03 (8:03 p.m.), and departed the CSU 39 minutes later, at 20:42.

[13] As I will examine in detail later in these reasons, there were several areas in the testimony of Constable McCaskill (and in the evidence disclosed in Exhibits Nos. 3 and 4) which were in conflict, or inconsistent, with the applicant's subsequent statements in an interview with an ANCR abuse investigator, and with his trial testimony.

[14] Those points of divergence in the evidence of the events of the evening of May 5, 2016, obviously touch upon the question of the intentions of the applicant, and the facts from which inferences might or ought to be drawn; whether he intended to engage the child, M.G., in sexual activities in exchange for consideration, monetary or otherwise. There is also a nexus between that evening and other events in the previous approximately two years, as subsequently disclosed by M.G. to a social worker, during which time she says she engaged in sexual activity with the applicant for money, that is, she was sexually exploited by him.

[15] Of course, throughout, it is the respondent who bears the burden of proof on a balance of probabilities that M.G. was sexually exploited by the applicant, as particularized in the NIER (see: s. 19(3.6)(a) of ***The Child and Family Services Act***, C.C.S.M. c. C80 ("***the Act***")), and, as such, called its case first at trial.

<u>The ANCR Abuse Investigation</u>

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[16] After receiving information concerning the events of May 5, 2016, ANCR commenced an abuse investigation as mandated by ***the Act***. The relevant statutory provisions include the following:

Definitions

1(1) In this Act

"abuse" means an act or omission by any person where the act or omission results in

(a) physical injury to the child,
(b) emotional disability of a permanent nature in the child or is likely to result in such a disability, or
(c) sexual exploitation of the child with or without the child's consent;

…..

Child in need of protection

17(1) For purposes of this Act, a child is in need of protection where the life, health or emotional well-being of the child is endangered by the act or omission of a person.

Illustrations of child in need

17(2) Without restricting the generality of subsection (1), a child is in need of protection where the child

(a) is without adequate care, supervision or control;
(b) is in the care, custody, control or charge of a person
  (i) who is unable or unwilling to provide adequate care, supervision or control of the child, or
  (ii) whose conduct endangers or might endanger the life, health or emotional well-being of the child, or
  (iii) who neglects or refuses to provide or obtain proper medical or other remedial care or treatment necessary for the health or well-being of the child or who refuses to permit such care or treatment to be provided to the child when the care or treatment is recommended by a duly qualified medical practitioner;
(c) is abused or is in danger of being abused, including where the child is likely to suffer harm or injury due to child pornography;
(d) is beyond the control of a person who has the care, custody, control or charge of the child;
(e) is likely to suffer harm or injury due to the behaviour, condition, domestic environment or associations of the child or of a person having care, custody, control or charge of the child;

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(f) is subjected to aggression or sexual harassment that endangers the life, health or emotional well-being of the child;

(g) being under the age of 12 years, is left unattended and without reasonable provision being made for the supervision and safety of the child; or

(h) is the subject, or is about to become the subject, of an unlawful adoption under *The Adoption Act* or of a sale under section 84.

.....

Agency to investigate

18.4(1) Where an agency receives information that causes the agency to suspect that a child is in need of protection, the agency shall immediately investigate the matter and where, upon investigation, the agency concludes that the child is in need of protection, the agency shall take such further steps as are required by this Act or are prescribed by regulation or as the agency considers necessary for protection of the child. (emphasis added)

[17] The term "sexual exploitation" as set out in s. 1(1)(c) likely needs no elaboration for purposes of this proceeding, but generally in the child protection context (as opposed to the criminal) I do note "Tracia's Trust: Manitoba's Sexual Exploitation Strategy"[1] which states (Document No. 37, p. 8, para. 12 and Tab E):

> In the child protection context, the definition of sexual exploitation is broader. For the purposes of this Manitoba Strategy on combating sexual exploitation of children, the definition of sexual exploitation is as follows:
>
> > The act of coercing, luring or engaging a child, under the age of 18, into a sexual act, and involvement in the sex trade or pornography, with or without the child's consent, in exchange for money, drugs, shelter, food, protection or other necessities.

[18] I note the implication that engaging or communicating with a child for a sexual purpose is sexual exploitation. This is akin to a situation where an adult, who has an intention to sexually exploit the child, lures that child over the internet. In a criminal prosecution context, police intervention prior to the act being

[1] The Manitoba Strategy Responding to Children and Youth at Risk of, or Survivors of, Sexual Exploitation, was launched in December 2002 – Department of Families ("**Manitoba Strategy**")

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committed does not affect the offender's guilt or sentence. I find the comments of Andre J. in ***R. v. Mermer***, 2015 ONSC 2715 (CanLII), at para. 30, to be persuasive, and the underlying rationale equally applicable to a child abuse registry proceeding such as this:

> [30] That however, does not mean that this is a victimless offence. Social media, a communications vehicle accessed by millions of persons including children, is seriously undermined by predators seeking to lure and exploit underage children. Second, the community is required to devote significant financial and law enforcement resources to curtail this type of depraved behaviour. It is therefore inaccurate to frame a case of child luring where there is no "child" victim as a victimless crime. It would be fundamentally wrong to reward Mr. Mermer with a lenient sentence because the police authorities were successful in apprehending him, thereby thwarting his attempts to sexually exploit an underage child.

(See also: ***R. v. Morrison***, 2019 SCC 15, [2019] 2 SCR 3, at para. 200)

[19] As also required of ANCR by ***the Act***, after concluding its investigation, ANCR made a referral to the child abuse committee, triggering these proceedings:

> **Reference to child abuse committee**
>
> 18.5 Where an agency receives information that causes it to believe that a child is or might be abused, the agency shall, in addition to carrying out its duties under subsection 18.4(1), refer the matter to its child abuse committee established under subsection 19(1).

[20] In these proceedings, the foundational piece of evidence in the respondent's case is the ANCR abuse investigation report (Exhibit No. 2) entered at trial by consent and, more particularly, the portion of the report relating to the interview of M.G. on May 13, 2016, and, to a lesser extent, the interview of the applicant.

[21] The author of that report, Carla Burton, testified at trial. She has been a child welfare social worker for 14 years, and possesses a Master's Degree in Social

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Work (2015). She was, between October 2012 and January 2017, one of two specialized sexual exploitation investigators with ANCR. I found her testimony concerning her written report, and about her interactions with the child and with the applicant, to be cogent and precise.

[22] The interview she conducted of the child took place at the CSU on May 13, 2016. M.G. had been placed there after the May 5. 2016 incident where police stopped her and the applicant. As has been her professional practice for years, she took handwritten notes during the interview, and then wrote a more detailed narrative soon afterwards, which was then included in her written report.

[23] M.G. was described by Ms. Burton as "open" about her involvement in "sexual exploitation" as a sex trade worker. She noted that over the previous two years M.G. "figure[d] she has done it over 100 times". She shared that she is too young to have an actual job, but wanted to make money and found that exchanging sex acts for money worked for her; she considers it her "job".

[24] M.G. told Ms. Burton that she carries a weapon (a wrench) for her safety, as well as a notebook and pen, with which to record vehicle license plate particulars if she goes with someone whom she feels may be "unsafe".

[25] The most salient information provided by the child in that interview, particular to the applicant, includes the following:

- M.G. told her that on May 5, 2016, the applicant had picked her up in the "West End" around Home Street and that she was planning to

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provide him with sexual acts in exchange for money. That did not occur because the police had observed her get into his vehicle and intervened.

- M.G. said she had met the applicant a few times in the past, and had sexual intercourse with him and provided him with oral sex as well. The acts would occur in the applicant's car, she said, and that he would pull over on a side street for this to occur.
- She also said she had no interest in reporting this to police or making a statement regarding other incidents of exploitation.

[26] Ms. Burton also interviewed the applicant as a part of her investigation. A week after her interview of M.G., he attended at her office as requested to meet with her. At that May 20, 2016 meeting, Ms. Burton initially advised the applicant that he had been named in a sexual exploitation investigation. He volunteered that that this must be because of a time when he had given a girl a ride in his vehicle.

[27] In Ms. Burton's testimony about her report and that interview, she indicated that the applicant went on to detail that:

- He had picked the girl up from the corner of Simcoe Street and Ellice Avenue, as she had waved at him and asked for a ride, which he agreed to do.
- He said he did not know the girl's name. He explained that he stopped at a "Subway" on Sargent Avenue so that he could buy the girl a drink, and that the girl sat in the car while he did this. Afterwards, they drove towards Polo Park at the girl's request until pulled over by the police.

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- The applicant told Ms. Burton that he did not really talk to the girl and could not get a good look at her because she had her "hoodie up". He said he did not know the girl's age, until the police told him she was 14 years-old.
- He denied that he picked up the girl with intentions to sexually exploit her. Ms. Burton asked the applicant how he would feel about a stranger picking up his own 14 year-old daughter and giving her a ride, and replied the he would be very angry. When asked what made it okay for him to pick up someone's child, he indicated that what he did was not okay.
- He described that police had pulled him over on Sargent Avenue near the train tracks on his way towards Polo Park. He admitted that at first he lied to police, and told them that he knew the girl because she was his daughter's friend and he was taking her to meet his daughter at Polo Park. When Ms. Burton asked why he would make up a story to police, he said that he was scared because he had picked up the girl in an area where many "working girls" are present.
- The applicant insisted that he had never met the 14 year-old girl before. When advised by Ms. Burton that the girl said he had purchased sex from her before on various occasions in the past, he denied this was true, and denied knowing her name. When then asked by Ms. Burton

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how the girl knew his name, he recalled that they had exchanged names on May 5, 2016, but could not now recall her name.

- He told Ms. Burton that no one will ever see him pick up anyone on the streets again.

The Applicant's Evidence

[28] The applicant responded to the Notice of Opportunity to Provide Information ("NOPI") (Exhibit No. 5, Part B) served upon him by the Abuse Committee, as follows:

> I did not do any of the things that this person is saying. I have never meet her before. The day I meet her she asked for a smoke. Than got in my car for a ride to the end of the block and changed her mind to go towards Polo Park when I said thats the direction I was going.
>
> I am not an abuser. Feeel Ashamed to ever think that. If anything I am over protative of children not only mine. I have gone to (MRC) Programe and willing to do any other programe.

[29] He gave detailed testimony at trial.

[30] He said he was employed at "Go-4 Transport" (now called "Move On Inc. Transport") as a delivery truck driver in the material time, and since. The business premises of his employer were then, as now, located at 1835 Sargent Avenue west of Route 90. Most Thursdays, he said he would typically complete his workday between 7:00 p.m. and 9:00 p.m., depending upon how busy he was with deliveries. May 5, 2016, was a Thursday.

[31] He related that in the same time-period his wife worked at a pharmacy located at 647 Broadway, delivering prescriptions, primarily working weekday afternoons and evenings. The applicant said he would sometimes go to see her

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after he finished work. He would drive east from his place of employment, and turn onto Maryland Avenue, driving south to Broadway, and either help his wife make deliveries, or have a cigarette with her in the pharmacy parking lot. On May 5, 2016, he said he phoned her after finishing work, as he was driving east on Ellice Avenue. There was no answer, but his wife soon after phoned him, and told him she had already left, and that he could go home. At the time, he and his family resided at 14 Huppe Bay, in the south end of the city. His usual route home was via Route 90 south, if he was not visiting his wife at the pharmacy first.

[32] He testified that upon completing that conversation, he decided to "double-back" to Route 90, and began to turn north on Home Street, but had to make a sudden stop when a pedestrian, crossing Home Street from west to east, walked into the path of his vehicle.

[33] The "person" was wearing a "hoodie", with the hood up, largely obscuring their face, he said. The person made a gesture like smoking a cigarette, which he interpreted as a request for a cigarette, and he nodded in assent. The person came to the passenger side of the car, where the window was already partly down, and he leaned across the passenger seat, and handed the person a cigarette. To that point, he said he knew not whether the person was a male or a female.

[34] The person spoke to the applicant through the passenger side window, asking him where he was going. He said he then realized the person was a female, and he pointed west in response. He testified that she asked him for a ride to the end of the block (from the intersection with Ellice Avenue, up Home Street to

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Sargent Avenue), and got into his vehicle. She then asked the applicant for a ride to Polo Park, which he said was on his way. He turned onto Sargent Avenue off Home Street, and drove west with her. He testified that they did not converse, except when he told her after driving about four or five blocks that he was going to grab himself a drink, as he stopped in the parking lot of a "Subway" on Sargent Avenue at Burnell Street.

[35] He left the female in his car while he went inside, and said he spent about 10 minutes in the "Subway" as there was a line of customers. They then continued west on Sargent Avenue in his vehicle and did not converse at all. He testified that he could not tell her age, as she still had her hood up, and that covered part of her face.

[36] The applicant says as he approached Empress Street he was stopped by the police. He told the officer who asked where he was going, that he was going home, and giving his passenger a ride to Polo Park. He said that it was only then that he learned of the female's age, when the officer told him she was 14 years-old. He testified that the officer (Constable McCaskill) was "very aggressive and threatening" towards him, and that out a sense of fear he then told her that the female in his vehicle was his daughter's friend and that he was driving her to Polo Park.

[37] In his testimony, the applicant denied knowing M.G., or that he had ever been with her before. He denied exploiting her sexually. He denied having ever picked up a girl before.

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Analysis of the Evidence in Total

[38] The respondent's case depends principally upon the court's acceptance of the evidence led through Ms. Burton of her abuse investigation, and especially of her interview of the child M.P. on May 13, 2016. For it is in that meeting with the child that Ms. Burton was informed that the applicant's contact with M.G. was not confined to a one-time event on May 5, 2016, but that she had been sexually exploited by him on previous occasions, giving rise to the NIER which spans a timeframe of some two years.

[39] In evaluating the evidence arising from Ms. Burton's interview of the child, I am mindful, as petitioner's counsel repeatedly emphasized, that it is a form of hearsay evidence provided by a child of 14 years of age, who has experienced significant life challenges. That such evidence is admissible is uncontroversial, as our Court of Appeal has confirmed in ***D.L. v. Child and Family All Nations Coordinated Response Network***, 2014 MBCA 86 (CanLII), where Mainella J.A. also made general comments concerning Child Abuse Registry proceedings under ***the Act***:

> [12] The Child Abuse Registry created by the *Act* is a creature of provincial jurisdiction and is not tied to a criminal prosecution, unlike the federal database created by the *Sex Offender Information Registration Act*. The proceeding to object to entry on the Child Abuse Registry is a civil process, commenced and determined in a civil court on the civil burden of the balance of probabilities (ss. 19(3.3), 19(3.6)(a) of the *Act* and *E.G. et al. v. Child and Family Services of Winnipeg*, 2012 MBCA 65 at para. 38, 280 Man.R. (2d) 148).
>
> [13] <u>In an abuse registry hearing the rules of evidence in relation to children are relaxed from those of criminal proceedings, and a child can never be compelled to testify, unlike in a criminal case (s. 19(3.6)(d) of the *Act*).</u> Finally, the judge's criminal prosecution analogy, because of his

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concern about self-incrimination, is flawed because an applicant, unlike an accused person, is a compellable witness for a child and family services agency at an abuse registry hearing (s. 4 of *The Manitoba Evidence Act*, C.C.S.M., c. E150 and *Nova Scotia (Minister of Community Services) v. D.J.M.*, 2002 NSCA 103 at paras. 21-22, 207 N.S.R. (2d) 296).

[14] Further, the judge's distinction between abuse registry cases from child protection cases is not persuasive. Both are purely civil proceedings (*E.G.* at para. 38). Any analogy to criminal law and procedure for such proceedings is an error in principle. Section 36 of the *Act* confirms both types of proceedings are to be conducted as informally as the presiding judge or master may allow. While we agree with the judge that entry on the Child Abuse Registry creates a stigma with consequences to an individual, that does not change the character of the proceeding to something other than a pure civil proceeding (*E.G.* at para. 38). It should be noted that, despite the serious consequences of a judicial finding that a person has abused a child, there is no right to appeal that decision (s. 19(3.7) of the *Act*).

[emphasis added]

[40] Here I find that evidence of the child's comments, and the manner of its professional collection by Ms. Burton, compelling. Moreover, other of the evidence I received at trial, including testimony from other witnesses called by the respondent, and even aspects of the applicant's testimony as well, sustains it in a number of ways.

[41] But first I note those matters about which there is no issue at all:

- M.G. was, on July 5, 2016, a 14 year-old sex trade worker.
- She had been so engaged for about two years.
- Prior to May 5, 2016, she had run away from her designated placement at Blue Thunderbird House and she was regarded as a missing person by the WPS.
- The applicant was then 47 years of age.

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- On May 5, 2016, they were both in an area of Winnipeg known as a locale where the exchange of sex for money or other consideration, occurred frequently.
- She was seen to, and did, enter the respondent's vehicle.
- When the applicant's vehicle was stopped by the WPS, she was in the front passenger seat.

[42] Analyzing the totality of the trial evidence must include, of necessity, the measuring of the evidence of the respondent, who bears the onus, against that of the applicant. However, before that exercise is even undertaken, I shall consider one aspect of the testimony of the applicant, which bears scrutiny, standing alone without initial regard to the evidence called by the respondent.

[43] It is his lie to police when stopped, when he claimed that M.G. was his daughter's friend, or that he thought she was. Of course, in his interview with Ms. Burton shortly after May 5, 2016, he admitted the lie; however, what I emphasize here is the inconsistency between the reasons for lying he offered to Ms. Burton, as opposed to those provided to the court.

[44] In the former case, he told Ms. Burton that he was "scared" because he knew he had picked up the girl in an area where many "working girls" are present. He confirmed this awareness in his testimony at trial. This demonstrates at least his cognizance of the notoriety of the area, and of the highly peculiar appearance of a middle-aged man picking up a 14 year-old girl in his car from a street corner. Depending upon my ultimate assessment of the other evidence, it may do more;

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did he lie to the police to conceal that he was engaged in exploiting a child sexually? Knowing "how it would look", why did he pick her up at all, if not for a sexual purpose?

[45] In contrast, in court, he asserted the lie arose from his specific fear of Constable McCaskill who spoke sharply to him and intimidated him. Of course, all that she did was to warn him about the legal peril to which he might be exposed for sexually exploiting children; there was no threat to his personal well-being.

[46] Leaving that aside, the point is that he has given inconsistent explanations for his "lie", which I shall further assess in the context of the evidence as a whole.

[47] As between other of the WPS evidence at trial, and that of the applicant, there are other striking inconsistencies, not least of which is the location where M.G. entered his vehicle, and the surrounding circumstances. He told the court it was at Ellice Avenue and Home Street, where she abruptly walked in front of his moving vehicle. On the other hand, the WPS surveillance evidence is that he stopped his vehicle and picked up a child who had been standing at the corner of Sargent Avenue and Home Street.

[48] A consideration of other WPS evidence, taken together with the evidence received from Ms. Burton (and even that of the applicant's wife, whom he called as a witness at trial), reveals further notable incongruences and inconsistencies in the applicant's evidence and case. These bear upon his credibility, and upon the wider case of the respondent in the time-period before May 5, 2016, as delineated in the NIER. While no single incongruity or inconsistency immediately commands

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skepticism of the totality of the applicant's evidence, the steady accumulation of them does invite it:

- He told Ms. Burton that M.G. entered his vehicle at the corner of Ellice Avenue and Simcoe Street (not at Ellice Avenue and Home Street as he testified, or at Sargent Avenue and Home Street, as the WPS observed).
- The applicant told Ms. Burton that M.G. had waved at him and asked for a cigarette and a ride; he agreed to give her a ride. His testimony at trial was different (and internally inconsistent); in direct-examination, he said M.G. simply entered his vehicle uninvited, but in cross-examination, he first said he offered her a ride, and then later said she got into the car without his inviting her.
- He said he told police he knew the girl because she was his daughter's friend and he was taking her to meet his daughter at Polo Park.
- Constable McCaskill testified that he said only that the girl in his vehicle was his daughter's friend and he was giving her a ride.
- The information he provided in reply to the NOPI (Exhibit No. 5) was that the girl got in his car "for a ride to the end of the block and changed her mind to go towards Polo Park when he said that's the direction I was going".
- His Notice of Application states;"… [M.G.] asked for a cigarette and a ride to Polo Park if he was headed that way" (Exhibit No. 1, Tab 2).

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- Ms. Burton testified that when she met with the applicant's wife, she shared that the applicant told her that he had picked up a girl at a gas station (not on a street corner). The applicant called his wife as a witness at trial, and she confirmed that was what she was told by him.
- The applicant testified that the WPS pulled his vehicle over near Empress Street. Constable McCaskill said it was at Sargent Avenue and Erin Street.
- She also said that the "take-down" occurred at approximately 7:40 p.m., while the applicant acknowledged in cross-examination he had claimed it was at 6:00 p.m., in the affidavit he deposed in support of his Application.
- He said he had never picked up M.G. or any other girl before. Ms. Burton testified that M.G. had reported knowing the applicant's first name.
- He testified that the drink he purchased at the Subway was for himself; he told Ms. Burton it was for the child.

[49] The applicant's testimony and his counsel's submission, in their essence, asserted that on May 5, 2016, he was a good man doing a good deed, and innocently found himself in the wrong place at the wrong time.

[50] But, the constituent elements of his testimony lack any measure of credibility or believability; as to where he picked up M.G.; that she walked directly in front of his vehicle; that he did not know her, but she knew his name; that he

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left her (a purported stranger) alone in his vehicle for 10 minutes; that he had not exploited her in the past; his knowledge that he was in an area frequented by "working girls"; his lie to the police when stopped.

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[51] His explanation that what happened on May 5, 2016, was essentially an unfortunate fluke is wildly implausible. With each step described in his narrative of the event, the persuasiveness of his testimony (contradicted as it is by other cogent evidence) fades away.

[52] The only way to make sense of the evidence as a whole (really the only reasonable inference that can be drawn from the events on May 5, 2016) is to conclude that the applicant and M.G. knew each other, and that he had previously exploited her sexually. That is why he picked her up, in the area he did. That is why he lied to the police. That is why he told his wife he had picked up a girl at a gas station, and given her a ride. This is the most sensible explanation, and all evidence points to those inescapable inferences of fact.

[53] The child's disclosures are the primary evidence of the respondent's case, and I find that they ought to be believed, supported as they are by the surrounding circumstances, testified to by the WPS, and by Ms. Burton.

[54] I do not believe the applicant's testimony of an innocent intention on May 5, 2016, nor that he had not previously engaged in the sexual exploitation of this child.

[55] Oddly, in my estimation, in cross-examination by applicant's counsel, the respondent's witnesses agreed with the suggestion that M.G. had not been

sexually exploited by the applicant on May 5, 2016. Indeed, it seemed that there was acknowledgment by the respondent that the NEIR was drafted without specific temporal reference to the May 5, 2016 date for that reason.

[56] However, assuming I have accurately set out the respondent's position, I fail to understand it on this issue, especially in light of my earlier observations made at paras. 16 to 18, herein.

[57] I am left in no doubt that, a case has been made out that the applicant sexually exploited a child, M.G., on May 5, 2016, by engaging in contact and communication with her for the purposes of securing sexual services for consideration. Only the timely intervention of the WPS disrupted the applicant's plans.

[58] I am also satisfied, on a balance of probabilities, that the applicant sexually exploited M.G., in the same fashion, by actually engaging in sexual activity with her, in the time-period between 2014 and that date in 2016.

Residual Procedural Issue Raised by the Applicant

[59] The parties are agreed that all requisite timelines and specified procedures pursuant to ***The Child Abuse Regulation***, Regulation 14/99 ("***the Regulation***") and ***the Act*** have been satisfied in this proceeding (see: ss. 9 and 14, in particular), with one exception.

[60] At the commencement of the trial, before any evidence had been called, the applicant made an oral motion in which he effectively sought the summary granting of his application, asserting the respondent's discrete non-compliance

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with ss. 14(4) and (5) of ***the Regulation***, respecting service of the NIER upon the child. Ultimately, the applicant withdrew that motion, on the understanding that it would be renewed, after he closed his case. By then, his submission was also expanded somewhat, to conflate an allied argument alleging the respondent's additional non-compliance with s. 2(2) of ***the Act***.

[61] I will address what I perceive to be the two tranches in the applicant's submission, in reverse order of their reference above.

[62] Section 2(2) of ***the Act*** reads:

> **Child 12 years of age to be advised**
>
> 2(2) In any proceeding under this Act, a child 12 years of age or more is entitled to be advised of the proceedings and of their possible implications for the child and shall be given an opportunity to make his or her views and preferences known to a judge or master making a decision in the proceedings.

[63] The applicant submits that the import of the provision in this case is that notice of this trial ought to have been given to M.G., and was not. His counsel speculated that had service of such notice upon M.G. been effected, she might have attended the trial, and provided information or evidence helpful to the applicant's case.

[64] Leaving aside speculation about what M.G's testimony might have been, I do not read the statutory provision as does applicant's counsel, nor accept the suggested consequences of any supposed non-compliance. In my view, section 2 of ***the Act*** speaks generally to the best interests of children in proceedings under the legislation, including those 12 years of age and older. The broad provision identifies that older children are entitled to be advised of the proceedings and of

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their possible implications, and that they be given an opportunity to express any views or preferences.

[65] However, those general propositions yield to the more specific provisions in the sections of ***the Act*** which follow, depending upon the specific type of proceeding engaged (child protection, child abuse registry, private guardianship, etc.), and to any Regulations which may be applicable.

[66] Here, s. 19(3.2) of ***the Act*** speaks to the requirement to give notice of a child abuse registry proceeding, to certain persons, including an older child:

> **Notice of intent to register**
>
> 19(3.2) On receipt of a report under clause (3)(c) that the committee is of the opinion that a person has abused a child and that the person's name should be entered in the registry, the agency shall give notice in the prescribed manner of the opinions and circumstances reported to it, of its intention to submit the name of the person for entry in the registry, and of the right to object under subsection (3.3), to the following persons:
>
> (a) the person who the committee believes has abused the child, where the person is 12 years of age or older;
> (b) the parent or guardian of the person who the committee believes has abused the child, where the person has not reached the age of majority;
> (c) the parent or guardian of the child;
> (d) the child, where the child is 12 years of age or older; and
> (e) the director.
>
> [emphasis added]

[67] ***The Regulation***, at ss. 14(4) and(5), specifies how that notice is to be provided:

> **Notice to the child and the director**
>
> 14(4) The agency shall give a copy of the Notice of Intended Entry on Child Abuse Registry to
>
> (a) the parent or guardian of the child who was abused;

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(b) the child who was abused, where the child is 12 years of age or older; and

(c) the director.

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Giving notice

14(5) The copy of the Notice of Intended Entry on Child Abuse Registry given to the persons referred to in clauses (4)(a) and (b) shall be given by

(a) leaving a copy of the Notice with the person;
(b) mailing a copy of the Notice by regular lettermail to the last known address of the person;
(c) leaving a copy, in a sealed envelope addressed to the person at the person's place of residence, with anyone who appears to be an adult member of the same household.

[emphasis added]

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[68] The second tranche to the applicant's submission arises from s. 14(5)(b), and to the phrase "last known address of the person", and to where and how M.G. was given notice in this case.

[69] The applicant says that the respondent had a positive legal obligation to mail the NIER directly to M.G., at her "last known address", pursuant to s. 14(5)(b) of the Regulation, and that the failure of the respondent to do so is fatal to its request for registration of the applicant's name on the child abuse registry.

[70] I disagree.

[71] Our Court of Appeal has made clear that the provisions of ***the Regulation*** addressing timelines and the service of notice are directory, not mandatory. Having said that, the Court also emphasized that while "… directory in nature, the agency was obliged, at a minimum, to substantially comply with the requirements" (see: ***B.W. v. Child and Family All Nations Coordinated Response Network***, 2009 MBCA 95 (CanLII), at para. 77).

[72] To determine whether in this case there has been substantial compliance, some contextual analysis is necessary.

[73] M.G. was a permanent ward of ACFS in the material time. A witness called by the respondent (Kristen Henry) – the ANCR Abuse Coordinator - testified that a copy of the NIER, together with a covering letter dated January 19, 2018 (signed by the ANCR Director of Abuse Services), was sent by regular mail to M.G., "care of Naomi Ferland". Ms. Ferland is an ACFS social worker with responsibility for M.G., and the notice was mailed to the Winnipeg offices of ACFS at 56-1313 Border Street (Exhibit No. 6). A second copy was also sent to Naomi Ferland, directly, with a Memorandum to her attention, enclosing a copy of the NIER.

[74] On May 5, 2016, M.G. was a "missing person", having run away from her designated placement. She was delivered to the CSU later that evening, where she remained temporarily. Evidence from ANCR at trial also disclosed that in 2015 she was admitted into HSC for suicidal ideation on a couple of occasions, and was noted to have gone "AWOL" from her placement "over 30 plus times". That "AWOL pattern proceeded to take place into 2016 with the bulk of her contact being AWOL reports".

[75] ACFS was and remained M.G.'s permanent guardian through to April 2020, when she reached the age of majority. Notice was delivered to M.G., consistent with ***the Regulation***, by regular mail "care of" her social worker, at the office of ACFS. I conclude that this was in substantial compliance with the provisions of ***the Regulation***, given the unusual circumstances at play here. This proceeding is unaffected.

Disposition and Costs

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[76] The Application is dismissed.

[77] Costs may be spoken to.

_______________________________J.

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