

# Court of Queen's Bench of Alberta

**Citation:** L.L.S. v. W.M.C., 2009 ABQB 527

**Date:** 20090915  
**Docket:** FL03 18050  
**Registry:** Edmonton

Between:

**L.L.S.**

Applicant

- and -

**W.M.C.**

Respondent

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**Reasons for Judgment  
of the  
Honourable Mr. Justice Donald Lee**

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[1] I initially dealt with this matter on May 14, 2009 at which time there were two matters before me. The first matter involved the confirmation hearing for an Emergency Protection Order that had been issued in the Provincial Court of Alberta on March 11, 2009 that was on my Emergency Protection Orders list. The second matter on the Family Law Chambers list involved the mother's application seeking the appointment of legal counsel for the children, Practice Note 8 Intervention, and an Interim Order for ongoing child support. The mother either did not wish the father to have access to the children because she believed that the father was guilty of inappropriate sexual behaviour while the children have been in his care, or wanted supervised access. Written Reasons were issued now reported at 2009 ABQB 318.

[2] These parties were married in May 1991 and separated in October 2001. There are three children of the marriage - a daughter who is currently 17 years of age who has refused to visit with her father since September 2007; a 13 year old daughter whose complaint to her therapist at the Glenrose Hospital initiated these proceedings; and a 11 year old son.

[3] Throughout the month of March 2009 the mother stayed in contact with Children's Services and applied for the Emergency Protection Order, which was granted in Provincial Court on March 11, 2009. Children's Services then closed their file because there was an Emergency Protection Order in place as they saw no need for further intervention.

[4] The mother then complained on April 16, 2009 to the Executive Director of Zebra Child Protection Centre ("ZCPC"), but they advised her that because the child had not alleged that she had been physically touched there was no sexual assault and no criminal offence to investigate. The mother continued to be unhappy with the outcome of these investigations and felt that her daughter needed to be interviewed about the concerns.

[5] The daughter was brought to the Zebra Centre on April 29, 2009 by her mother and another investigation and interview was conducted into her concerns as it appears that three individuals at the ZCPC were still interested in following up this matter.

[6] On May 14, 2009 I ordered that a full Practice Note 8 Investigation be conducted in this matter, and hearings in that regard are ongoing and are being conducted by my colleague Hillier J. with respect to access issues.

[7] All Counsel who were before me on May 14, 2009 made further representations to me at another hearing on June 24, 2009 in which they sought clarification and confirmation that I would still proceed to deal with the confirmation of the Emergency Protection Order after the receipt of the Practice Note 8 Intervention Report. Given that all Counsel were in agreement with this, and given the fact that my initial involvement in this case was to decide whether or not to confirm the Emergency Protection Order on a long term basis, I agreed that I would deal with the other issue of the Emergency Protection Order after the investigation and Investigative Report was concluded.

[8] This Investigative Report has now been issued, and Counsel have supplied me with a copy for my review. The Report deals with the initial complaint of the now 13 year old daughter that she had been exposed to pornography while at her father's residence and, as well as exposed to the father's masturbation and open nudity. There were never any allegations of direct sexual abuse against the father of any of his children. This disclosure by the now 13 year old daughter took place on March 4, 2009 when the daughter discussed this with her therapist/counsellor in the Glenrose Hospital.

[9] The Practice Note 8 Investigative Report describes the April 29, 2008 45 minute interview in which it was felt that the now 13 year old daughter was able to effectively articulate her thoughts. She again described how her father watched pornography on television, would often walk around his house in a robe or his underwear, describing how she had seen his penis and that this occurred when his robe came undone. She reiterated that she saw her father masturbating (touching his penis) but said that the father did not know that she was watching him at the time. She denied ever being invited to watch any of the pornography, to touch herself or him in any sexual way and indicated that she still wished to see the father, although she wanted him to change his behaviour.

[10] The interviewer concluded that there was no criminal investigation necessary, and advised the mother of the outcome of the interview. At that point, the mother indicated that her now 11 year old son had apparently been invited by the father to watch pornography with him. The son was then interviewed on May 11, 2009 in his home.

[11] The son reported that he missed his father and wanted to see him and was not sure why he could not see him. He expressed frustration that his father's girlfriend were often at the father's place when he was there, as he would like to spend time alone with just his father. Apparently the son did not get along that well with the father's girlfriend and did not like sharing his room with her son who has cancer.

[12] The now 11 year old son did advise that he observed his father watching movies of naked men and women, but he did not believe that his father was aware that he was there. The son reported this made him very uncomfortable but he did not tell his father because he did not want him to get upset. The viewing of pornographic material apparently had happened according to the son "a lot". The son also wanted to have his father stop watching the movies, stop yelling and being angry, not having to go to the hospital as often as he does for the girlfriend's son, and have the father treat him equally with his older sister since apparently the father spends all his money on her, and none on him.

[13] The oldest child in the home who is now over 17 who stopped visiting the father in his home when she was 16 confirmed that the father would generally always watch pornography whenever she visited. She also complained about the father being disrespectful to all of his children using inappropriate language around them and yelling at them.

[14] When the father was interviewed about these allegations he acknowledged that he does have pornographic magazines in his home, however they are in his room placed under clothing in his closet. The youngest son has apparently gotten into his room and found these magazines, and he also managed early one morning to watch one of the adult movies that he had saved. He has since put a code on his television so that this cannot occur again. The father expressed great concern that although he and his wife have joint custody, he has not been allowed to see the children for lengthy periods of time by the mother, who has also allegedly has refused to speak with him since November 2008.

[15] The investigator visited the father's residence and saw the room where the father would watch pornography on television. The investigator felt that it was clear that a child could come into the room and not be heard.

[16] The father has also agreed to put a lock on his bedroom door to prevent further access to his bedroom in addition to placing a four digit code on the television movie channels so that he alone can access these channels. During his girlfriend's visits, they ensure that their bedroom door is closed when the children are visiting.

[17] The father also admits to calling the now 11 year old son a “queer” because he exhibits very feminine tendencies, because he wants him to be a tough boy and not a wimpy one. The father admits that his name calling is inappropriate and realizes that this has to stop.

## **Conclusion**

[18] All three of the children have been interviewed by Children's Services, and they all state that they have seen their father watching pornography at his home, and all said that the father is not aware generally that they had seen his pornography. Given that the father admits to having pornography in his home, and being somewhat lax in keeping children away from the pornography, it is most likely that the children have been inappropriately exposed to pornography while visiting their father.

[19] Fortunately none of the children has indicated that they have been touched inappropriately or have been invited to watch or view the pornography by their father or with their father. If he was aware that the children were in the room, the father appears to have consistently turned off or removed the pornography.

[20] Both the Edmonton Police Service and Children's Services have closed their files. Accordingly there is no criminal investigation in this matter, nor are there any allegations of sexual abuse to be dealt with.

[21] In that regard it is important to note that the *Protection Against Family Violence Act*, R.S.A. 2000, c.P-27 is limited to dealing with acts of “family violence” which is defined in the Act as follows in s. 1(1)(e):–

- (e) “family violence” includes
  - (i) any intentional or reckless act or omission that causes injury or property damage and that intimidates or harms a family member,
  - (ii) any act or threatened act that intimidates a family member by creating a reasonable fear of property damage or injury to a family member,
  - (iii) forced confinement,
  - (iv) sexual abuse, and
  - (v) stalking,

but is not to be construed so as to limit a parent or a person standing in the place of a parent from using force by way of correction toward a child who is under the care of the parent or person if the force does not exceed what is reasonable under the circumstances;

[22] Specifically sexual abuse is the only relevant prohibition from the Act that is relevant here, and thankfully we have no acts of sexual abuse.

[23] What we do have in this case is inappropriate behaviour in the presence of the children, which appears to have been effectively addressed.

[24] Accordingly I conclude that there is no need for an Emergency Protection Order preventing the father from seeing his children.

[25] Whether the father should see his children on an ongoing basis, and the manner and conditions surrounding such visits, if any, will be dealt with by my judicial colleague pursuant to the mother's application to prevent or restrict access by the father.

[26] For my part then, my involvement in this matter is concluded, and the Emergency Protection Order is vacated.

Initially heard on the 14<sup>th</sup> day of May, 2009, further hearings held on the 24<sup>th</sup> day of June, 2009 and the Practice Note 8 Confidential Report received on the 17<sup>th</sup> day of August, 2009.

**Dated** at the City of Edmonton, Alberta this 14<sup>th</sup> day of September, 2009.

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**Donald Lee**  
**J.C.Q.B.A.**

**Appearances:**

Laura Bruyer  
Gordon Zwaenepoel  
for the Applicant

Kevin Livingston  
EPO Counsel  
for the Applicant

Robert J. Tropak  
Attia Reeves Tensfeldt Snow  
for the Respondent