

# Judge slams children's aid society for misleading court

By STEVE MACINNIS

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SYDNEY — The Children's Aid Society of Cape Breton-Victoria has breached the very act it is supposed to uphold by intentionally and deliberately withholding information in a child custody case, a Supreme Court judge has ruled.

In a scathing decision, Justice Theresa Forgeron described the testimony of two agency workers — Marilyn MacNeil and her supervisor John Janega — as incredulous, unconvincing and evasive and both were deemed not to be credible.

“The agency made a decision that the children should be with their father and by their failure to disclose made it impossible for this court to properly assess the best interests of the children,” said Forgeron in her decision which stems from an application by a Cape Breton mother to have her two children returned to her care.

“I find the agency did indeed mislead the court and the mother. It remained silent and provided affidavits and other documents which failed to disclose the true circumstances confronting the children.”

The judge said the agency went to great lengths to ensure negative information concerning its plan would not be reviewed by the court.

“I do not accept that this egregious failure to disclose could be anything other than intentional and deliberate. I find that the only plausible reason for doing so was to ensure the court accepted the agency's plan to have the children placed in their father's care,” said Forgeron.

In accordance with the Children and Family Services Act, the names of the parents and the children cannot be made public. Also, the act provides for mandatory disclosure by the agency except in certain circumstances which Forgeron ruled were not applicable in this particular case.

The local agency apprehended the children in 2005 from their mother and the agency consented to allow the children to move out of Nova Scotia with their father. The decision was also approved by the court. But the mother later learned details of her offsprings' new home life and requested a review of the decision. The court directed full and complete disclosure by the agency to the mother.

In her decision, Forgeron lists nine specific areas in which she felt the agency failed to make prompt and balanced disclosure including failing to disclose the father's new common-law partner had been subject to numerous interventions by another child protection agency. Issues in those cases included domestic violence, neglect and filth in the home, and inappropriate supervision which resulted in one child burning down the home which killed another child. Other information not initially disclosed to the court included allowing one child to live away from the father, which breached an earlier court order, and failing to make reference to protection concerns by the father prior to taking the children out of Nova Scotia.

According to the decision, Janega testified such information was not germane to the agency's decision to allow the father to parent the children. Both he and MacNeil were at a loss to offer an explanation why such information was not initially made available.

Marie Boone, the agency's executive director, said Friday steps have been taken to ensure such information never again goes astray.

She said staff is now receiving additional training to ensure all information is properly documented.

“These cases are never black and white and this is only one in hundreds of cases we deal with,” said Boone, adding any decision on disciplinary action is an internal matter.

She said the agency, the second largest in the province, handles about 1,000 cases annually and that Forgeron's decision should not diminish the dedicated and competent work staff has performed in other cases.

Boone said the decision has been shared with the agency's board of directors and the Department of Community Services which have both urged additional staff training.

A department spokesperson was not immediately available for comment Friday.

Forgeron ruled that both children are to be returned to Cape Breton and into the care of the agency with provisions for counselling. She also awarded costs in the case to the mother who declined it, urging that such money be used for services to families.