IN THE SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION
Citation: Children's Aid Society of Halifax v. C.V. , 2005 NSSC 170

Date: **20050622**
Docket: **S.F.H. No. CFSA-029575**
Registry: **Halifax**

BETWEEN:

CHILDREN'S AID SOCIETY OF HALIFAX

APPLICANT

-and-

C.V. & L.F.

RESPONDENTS

Publishers of this case please take note that s. 94(1) of the *Children and Family Services Act* applies and may require editing of this judgment or its heading before publication.

Section 94(1) provides:

> **"No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding pursuant to this Act, or a parent or guardian, a foster parent or a relative of the child"**

Judge: The Honourable Associate Chief Justice Deborah K. Smith

Heard: in Halifax, Nova Scotia
May 9, 11, 16, 17, 19, 24, 25 & 27, 2005
(Constitutional Issues)
May 30, 31, June 1, 2, 6, 7 & 8, 2005
(Application for Permanent Care and Custody)

Written Decision: June 22, 2005

Revised Decision: The text has been modified to protect the identities of the parties.

Counsel: Elizabeth A.Whelton, for the Children's Aid Society of Halifax
C.V., Self-represented
L.F., Self-represented
Terrance G. Sheppard, *Amicus Curiae*
Glenn R. Anderson, Q.C. and Jacqueline E. Scott for the Attorney General of Nova Scotia (Constitutional Issues Only)

[1] This case is about 18 month old M.C.F..

BACKGROUND AND FACTS

[2] On December [.....], 2003, M.C.F. was born in Halifax, Nova Scotia. M.C.F. is the daughter of the Respondents to this application, C.V. and L.F.

[3] In November of 2003, C.V. and L.F. moved to Nova Scotia from Ontario. At the time, C.V. was pregnant with M.C.F. According to testimony given by L.F. in March of 2004, he and C.V. moved to Nova Scotia because they knew that Children's Aid in Ontario was going to apprehend M.C.F. after her birth and they wanted to insure that this did not occur.

[4] Prior to their move, L.F. and C.V. had been involved in numerous court proceedings in Ontario (see for example: **R. v. F.**, [1996] O.J. No. 3962; **L.R.F. v. D.M.H.**, [1999] O.J. No. 2757; **R. v. L.R.F.** , [2000] O.J. No. 3457; **R. v. L.R.F.,** [2003], O.J. No. 2692 (Ont. C.A.); **C.A.V. v. L.C.M.**, [2003] O.J. No. 812; **R. v. C.A.V.**, [2003] O.J. No. 3247 and **L.C.M. v. C.A.V.**, [2003] O.J. No. 4216). In **L.C.M. v. C.A.V.**,

supra, (which was decided in October of 2003) C.V.'s access to her three children from a previous relationship was terminated.

[5] The Children's Aid Society of Halifax became involved with this family in December of 2003. Shortly thereafter (in January of 2004) the said Society filed a Protection Application with the Nova Scotia Supreme Court (Family Division) seeking a finding that M.C.F. was in need of protective services pursuant to s.22(2) (b) and (g) of the **Children and Family Services Act**.

[6] The evidence that was before the Court at the time of the Interim Hearing (in particular the evidence of the doctor that attended at M.C.F.'s birth) indicated that the child appeared to be well cared for by her parents. However, there were serious concerns about the mental health of both of the Respondents as well as a history of child abduction by both C.V. and L.F..

[7] At the time of the initial hearing, the Children's Aid Society of Halifax requested a Supervision Order. In particular, they asked that M.C.F. be left in the care and custody of her parents but they wanted the ability to periodically visit the parents' home to insure that the child was being properly cared for. The matter would return to Court at various

intervals and services could be offered to both the parents and M.C.F. to assist with any concerns that may exist.

[8] In addition to the ability to supervise C.V. and L.F.'s care of M.C.F., the Children's Aid Society requested an Order that M.C.F. not be removed from the Halifax Regional Municipality without the prior consent of Children's Aid or an Order of the Court allowing for such. In addition, they requested that both of the Respondents be referred for a psychiatric, medical or other examination and assessment as the Court considered appropriate. Finally, the Children's Aid Society requested production of certain documents as set out in their original Protection Application.

[9] C.V. and L.F. were both personally served with notice of the Protection Application. The case first came before the Court on January 15th, 2004. Despite being personally served with notice of this hearing, C.V. did not attend court that day. L.F. did appear. He did not consent to the Supervision Order being requested by Children's Aid. He indicated that he did not want agents of the Children's Aid Society of Halifax in his home, he opposed the request for an Order that M.C.F. not be removed from the Halifax Regional Municipality without the prior consent of the Children's Aid Society or an Order of the Court allowing for such and he indicated that he did not require a psychiatric

assessment. For the reasons set out in my oral decision given on January 15th, 2004, I determined that on an interim basis only (until the hearing could be completed) it was in the best interests of M.C.F. that she be placed in the temporary care and custody of the Children's Aid Society of Halifax.

[10] On that same day (January 15th, 2004) C.V. disappeared with M.C.F. The evidence given during the course of the proceeding established that M.C.F.'s disappearance was orchestrated by L.F. and C.V. prior to the initial hearing taking place. In other words, C.V. and L.F. had decided that they would hide M.C.F. even though, at the time, the Children's Aid Society of Halifax was suggesting that the child would remain in their care and custody subject to the supervision of Children's Aid. In testimony given by L.F. in March of 2004, he stated that C.V. had disappeared with M.C.F. before she became aware of the Court's January 15th, 2004 ruling.

[11] The Interim Hearing was completed in February of 2004. On February 12th, 2004 the Court confirmed that there were reasonable and probable grounds to believe that M.C.F. was a child in need of protective services and granted a further Temporary Care and Custody Order.

[12] On March 22nd, 2004, M.C.F. was found to be a child in need of protective services pursuant to s.22(2)(g) of the **Children and Family Services Act**. C.V. remained in hiding with M.C.F. at this time.

[13] In May of 2004, C.V., L.F. and M.C.F. were involved in an armed standoff with police (L.F.'s elderly mother was also in the home when the standoff occurred). In my decision reported at [2004] NSSF 107, I set out the facts surrounding this standoff at paragraphs 9 - 15 as follows:

> ¶9 M.C.F.'s whereabouts remained unknown to the Children's Aid Society of Halifax and the Court until May of 2004. The evidence establishes that on the evening of May 18th or early morning of May 19th, 2004, the Halifax police learned that M.C.F. was in a residence located at [.....] Street in Halifax, Nova Scotia. This was the home of L.F.'s mother whom I will refer to as M.F., Sr. Upon learning of M.C.F.'s location, the police went to [.....] Street to enforce the terms of the Court's Interim Order placing M.C.F. in the temporary care and custody of the Children's Aid Society of Halifax.
>
> ¶10 A standoff ensued that involved numerous police. C.V., L.F., the infant child M.C.F. and M.F., Sr., were in the [.....] Street residence during the standoff.
>
> ¶11 On the first night of the standoff , the police made numerous attempts to have the occupants of the residence respond to their presence. According to the evidence of Sergeant Lindsey Hernden, police cars were located in front of the [.....] Street property, the police knocked on the front door of the house on numerous occasions and identified themselves as police and phone calls were made into the house in an attempt to get the occupants to respond. The occupants of the home did not answer the door.

¶12 After approximately two and a half hours, the decision was made by police to "breach" or force entry into the front door of the home. Sergeant Hernden used a battering ram to attempt to enter the property. He testified that it appeared that the front door to the [.....] Street residence was firmly secured. After Sergeant Hernden struck the front door of the home with the battering ram approximately three times, a shot was fired from within the residence. Sergeant Hernden testified that the shot was fired very close to the position where the police were located outside the front door of the home. I was not given any evidence as to who fired the shot in question and I make no findings in this regard.

¶13 This standoff continued over a number of days during which time M. F., Sr. died. I have not been given any evidence concerning the cause of this person's death and I make no findings in this regard.

¶14 On May 21st, 2004, the standoff ended. On that day, C.V. and L.F. exited the [.....] Street property. According to the evidence of Constable Wayne Knapman, C.V. came out of the home with M.C.F. strapped to the front of her in a "snuggly". C.V. was holding two handles of a makeshift stretcher which contained the body of M.F., Sr. L.F. was located at the other end of the stretcher. He had one hand holding two handles of the stretcher and in the other hand was holding a cordless telephone that he was using. According to Constable Knapton's testimony, L.F. also had a shotgun in a makeshift sling over his right shoulder with the barrel pointing up towards the sky. C.V. and L.F. exited the home, proceeded down the front steps of the property and continued walking down the street with M.C.F.and the dead body of M.F., Sr.

¶15 Members of the police Emergency Response Team approached C.V. and L.F. According to Constable Knapman's evidence, C.V. had her arms in a crossed position around M.C.F.. The police gave C.V. instructions to let the baby go. C.V. did not comply with the police commands and Constable Knapton applied a pressure point pain technique to the back of C.V.'s neck in an attempt to get her to release the baby. Two other police officers used physical force to get C.V.'s arms apart and a third officer cut the straps of the snuggly with a knife. The officers were then able to take custody of the child. C.V. was then directed to put her arms around her back so that she could be handcuffed, but she refused to comply. A conducted energy weapon (Taser) was then applied to her buttocks. Again, she would not comply with the request to put her arms behind her back. The Taser was then applied a second time, at which time she complied and was handcuffed.

[14] Numerous criminal charges were laid against both C.V. and L.F. as a result of the armed standoff that took place in May of 2004. Thereafter, both Respondents were taken into police custody and were remanded to the Central Nova Scotia Correctional Facility.

[15] Following the standoff, M.C.F. was placed in the physical care and custody of the Children's Aid Society of Halifax where she has remained (in foster care) since that time.

[16] On May 31st, 2004, C.V. and L.F. appeared before me for the purpose of the initial Disposition Hearing. This was the first time that C.V. attended court since the proceedings began on January 15th, 2004. At C.V.'s request, the matter was adjourned and rescheduled to the commence on June 7th, 2004. Both L.F. and C.V. chose not to attend the Disposition Hearing on June 7th, 2004 and accordingly, the matter proceeded in their absence.

[17] On June 9th, 2004, I rendered a decision in which I found that M.C.F. should remain in the temporary care and custody of the Children's Aid Society of Halifax. In light of the fact that both of the Respondents were incarcerated, the Disposition Order did not include an access clause. I indicated that either of the Respondents were free to return to Court to deal with the issue of access and I reserved the right to award such if I was

satisfied that access was appropriate in the circumstances. A copy of my decision was personally served upon both of the Respondents on June 30th, 2004.

[18] On July 8th, 2004, C.V. entered into a written Recognizance, one of the terms of which was that she was to refrain from contacting or attempting to contact M.C.F. at any time unless such contact was authorized by a Court of competent jurisdiction. She was then released from the Central Nova Scotia Correctional Facility.

[19] Over the summer of 2004, C.V. wrote numerous letters to the Children's Aid Society of Halifax seeking access to her daughter. She was reminded by Ms. Whelton (counsel for the Children's Aid Society of Halifax) that the terms of the Recognizance that she had signed prevented her from having contact with M.C.F. unless such was authorized by a Court of competent jurisdiction. Ms. Whelton advised C.V. that the Court had reserved the right to deal with access upon the application of any party and further advised C.V. where she could file such an application with the Court. Despite this information having been given to C.V., she did not apply to the Court during the summer of 2004 for access to M.C.F.

[20] On September 7th, 2004 the Court commenced its initial Disposition Review Hearing. By that time, L.F. had undergone a Court ordered psychiatric assessment by Dr.

Robert A. Pottle (this assessment was ordered by the Provincial Court during the course of the criminal proceedings that arose as a result of the May, 2004 standoff and was admitted into evidence at the initial Disposition Review Hearing). In my decision rendered at the conclusion of that hearing I stated the following:

> ¶29 Dr. Pottle concluded in his report that L.F. is fit to stand trial (in relation to the criminal charges) and that he does not, in Dr. Pottle's opinion, meet the criteria for exemption from criminal responsibility pursuant to s.16(1) of the **Criminal Code**. Of greater significance to this hearing, is the fact that Dr. Pottle also concluded that L.F. has a Delusional Disorder (Persecutory type) as well as a Mixed Cluster B Personality Disorder with narcissistic, antisocial and histrionic personality traits.
>
> ¶30 During the course of Dr. Pottle's assessment, L.F. discussed what I will term his "conspiracy theory". At pages 4 and 5 of Dr. Pottle's June 25th, 2004 report this theory is described as follows:
>
> > 'His lengthy discourses assisted the assessment process. With regard to the alleged offences, the accused insisted on starting at what he described as the beginning: his abduction of his daughter from a previous relationship and subsequent legal difficulties. By his account that experience convinced him that there was a conspiracy in Ontario (and elsewhere in Canada) involving the Children's Aid Society/Child Protection Services, adoption agencies, and lawyers (particularly the Law Society of Upper Canada).
> >
> > The essence of his theory was that those agencies collaborate in seizing children from poor and under privileged families and "selling" them to greedy "yuppies" who had focussed their lives on material gains and careers and delayed having children until they were no longer capable of doing so. He clarified that by "selling" he meant getting money for the apprehended children through "adoption fees" which were then spread out among those involved.

> It is his firm belief that he exposed this conspiracy through his prior trial on child abduction charges, and in subsequent legal actions. In consequence, he believes he is the victim of systemic persecution with active involvement by CSIS, the Minister of justice, and former PM Chretien, in addition to the lower level agencies they allegedly control.'

¶31 The conspiracy theory that L.F. presented to Dr. Pottle in June of 2004 is similar to the conspiracy theories that he has provided to this Court previously. In my Protection Decision given orally on March 22nd, 2004, I stated the following:

> 'During the course of this overall proceeding, L.F. has presented the Court with a variety of conspiracy theories. He suggests that he is being persecuted because of his political opinions. He talks of government cover-ups and suggests that the Government of Canada has conspired to take his infant daughter, M.C.F., as well as his other daughter, C.R.H. During the course of his summation last week, L.F. referred to "the foster care business" and suggested that Children's Aid Societies want "white Anglo-Saxon babies to sell". His conspiracy theories appear to include the Courts.'

¶32 At page 7 of Dr. Pottle's report he states that L.F. suffers from chronic persecutory delusions. Dr. Pottle goes on to state that L.F. lacks insight in relation to his mental illness and that his judgement is impaired in part due to his Personality Disorder. Dr. Pottle concludes that given that L.F. does not accept that he has any form of mental illness, the prognosis for treatment of the Delusional Disorder is poor.

¶33 During the course of Dr. Pottle's testimony he stated that in his opinion, L.F. has a serious psychotic illness (his Delusional Disorder). Dr. Pottle confirmed that *aside from any problems related to strange beliefs* [emphasis added by the Court] an individual who suffers from a Delusional Disorder is still able to function fairly well.

¶34 Dr. Pottle further confirmed that he did not do an assessment of L.F.'s parenting abilities nor was he offering an opinion on L.F.'s abilities to parent.

[21] In that same decision I stated the following in relation to C.V.:

¶36 I did not receive any expert testimony in this hearing concerning C.V.'s mental health. I do note, however, that she herself appears to believe that a conspiracy exists in relation to M.C.F. having been taken into care.

¶37 C.V. is presently facing a criminal re-trial in Ontario on charges of child abduction involving three of her children (other than M.C.F.). During the course of this Review Hearing, C.V. filed an affidavit sworn to on October 19th, 2004. Attached to this affidavit is a copy of a letter dated October 18th, 2004 that C.V. has apparently forwarded to the Prime Minister of Canada. In this letter she states:

> 'In reviewing court files and Crown disclosure it is clear that actions were premeditated and conspired, entrapping my husband and me in an effort to seize our child. I believe activity was directed by the state's fear of another "Not Guilty" verdict at my upcoming re-trial in Ontario on charges for taking my triplet children against a family court order. I was acquitted by a 12 panel jury in October 2001 however the Crown appealed and won. My attendance with my nursing baby would show the insidious and illegal actions by those profiteering within the family law system.'

¶38 At paragraph 49 of that same affidavit C.V. states:

> 'I believe the Canadian government is enacting a holocaust of the Family, destroying the group unit of society. In reviewing transcripts from judicial proceedings relating to the Hitler regime, similarities are too concerning to be disregarded as coincidental.'

¶39 C.V. swore a further affidavit on October 26th, 2004 which was entered into evidence. Attached to this affidavit is a further letter that C.V. apparently sent to the Canadian Prime Minister dated October 25th, 2004. In this letter C.V. states:

> 'Various sources, which includes individuals working for child welfare agencies having first hand knowledge will verify that there are judges, lawyers, and child welfare agents receiving additional gratuitous favours in exchange for babies and children for sale by 'adoption'.

> I demand a PUBLIC INQUIRY into the kidnapping of my infant daughter and the negligent death of my mother in-law.
>
> I am providing this letter as well as other legal documents to the media showing the significant systemic abuse of my family. It can only be speculated that the media is receiving direction from a higher level if it collectively continues to keep this story hidden.'

[22] After reviewing the relevant provisions of the **Children and Family Services Act** as well as the Supreme Court of Canada decision in **Catholic Children's Aid Society of Metropolitan Toronto v. C.M.,** [1994] 2 S.C.R. 165, I concluded as follows in my November 26th, 2004 decision:

> ¶48 I am satisfied that M.C.F. continues to be a child in need of protective services.
>
> ¶49 Serious questions have been raised throughout this proceeding about the mental health of both of the Respondents. I accept Dr. Pottle's opinion that L.F. suffers from a Delusional Disorder (Persecutory type) as well as a Personality Disorder. Dr. Pottle's opinion related to L.F.'s mental health around the time of the armed standoff. There is no evidence before me that L.F.'s mental condition has changed since the time that Dr. Pottle assessed him in June.
>
> ¶50 As indicated previously, Dr. Pottle testified that *aside from any problems related to strange beliefs* [emphasis added by the Court] an individual who suffers from a Delusional Disorder is still able to function fairly well. The matter that the Court must consider is whether the problems that are created by L.F.'s beliefs place M.C.F. at risk.
>
> ¶51 L.F. believes that he is being persecuted and that the Government of Canada has conspired to take M.C.F. from him. His views have resulted in M.C.F., who is less than a year old, being hidden from both child protection authorities and the Court. In addition, they have put M.C.F.in the centre of an armed standoff with

police that took place over a number of days. L.F.'s views have clearly placed M.C.F. at substantial risk of physical and emotional harm.

¶52 As indicated previously, I did not receive any expert testimony in this hearing concerning C.V.'s mental health. At the time of the Interim Hearing (in February of 2004) I referred C.V. for the preparation of a psycho/social history, a psychological/psychiatric examination and assessment, a parental assessment including an examination and assessment of parenting skills and techniques and a home study and assessment (This is actually one global assessment portions of which are conducted by different individuals). To date, C.V. has not participated in this assessment despite arrangements for such having been made by the Children's Aid Society of Halifax.

¶53 While I do not have expert opinion evidence concerning C.V.'s mental health, I have no hesitation in finding that the evidence that has been presented in this hearing, as well as C.V.'s behaviour in Court, raise serious questions and concerns about her mental health.

¶54 I am satisfied that C.V. was actively involved in both the disappearance of M.C.F. (to avoid the said child coming into the supervision or care of the Children's Aid Society of Halifax) and in the armed standoff that occurred in Halifax in May of 2004. In my view, these events and C.V.'s actions in these events put M.C.F. at substantial risk of physical and emotional harm.

¶55 C.V. and L.F. point out that M.C.F. was a healthy and happy baby when taken into care at the time of the armed standoff. This, however, does not detract from the fact that this child was clearly placed at risk when involved in the standoff with police earlier this year. It is well established that a child protection agency or the Court need not (and in fact should not) wait for a child to actually be harmed before finding the child to be in need of protection. If there is a substantial risk of harm as defined by the **Children and Family Services Act** that is sufficient to find a child to be in need of protection. It must be remembered that one of the goals of the **Children and Family Services Act** is to *protect* children from harm. In many cases, protecting a child requires child welfare involvement *before* actual harm occurs.

.....

¶59 In my view, M.C.F. cannot be adequately protected while in the care or custody of C.V. even under the terms of a Supervision Order. C.V. is of the view that M.C.F. has been 'systemically kidnapped' by 'government agents' (see ¶ 1 of C.V.'s affidavit sworn to on October 19th, 2004 - Exhibit # 11). When the Children's Aid Society of Halifax initially filed their Protection Application and requested a Supervision Order, C.V. disappeared with M.C.F. with the result that for a number of months Children's Aid was unable to ascertain this infant child's well being or provide her with any assistance. In my view, there is a substantial risk that C.V. will disappear again with M.C.F. if this child is returned to her mother's care.

¶60 In addition, C.V.'s conduct during these proceedings (including her aggressive verbal assaults against the Children's Aid Society of Halifax, its employees and legal counsel) has convinced me that she is either unwilling or unable to cooperate in any meaningful way with the Children's Aid Society of Halifax in the best interests of her infant daughter. Her inability or unwillingness to cooperate with the Children's Aid Society makes a Supervision Order impractical and places M.C.F. at risk.

¶61 Finally, I am concerned that if M.C.F. was returned to her mother under the terms of a Supervision Order and the decision was made to re-apprehend the child, M.C.F. could once again be involved in a standoff with police. In my view, it is not in M.C.F.'s best interests to expose her to this risk.

[23] By the time of the initial Disposition Review Hearing in the fall of 2004 the Respondents were seeking access to M.C.F. In my decision of November 26th, 2004 I stated the following in relation to access:

¶73 That takes me to the issue of access. The Respondents have advised the Court that if M.C.F. is not returned to her mother's care they want access to be ordered by the Court. It was difficult, during the course of this proceeding, to determine the specific access that the Respondents were seeking. Accordingly, I asked the Respondents to put in writing the specific access that they were requesting including whether they proposed that the access be supervised or unsupervised, where they propose that the access take place and what times they proposed for access. The Respondents declined to set out these specifics in writing as requested by the Court.

> ¶74 The Children's Aid Society of Halifax takes the position that at the present time the Court should not order access between M.C.F. and the Respondents. They say that allowing access would place M.C.F. in a volatile and unstable situation and would not be in her best interests.
>
> .....
>
> ¶76 In my view, it is a rare occasion that a parent is denied access to their child. This is one of those rare occasions.
>
> ¶77 The facts of this case satisfy me that if access was to be awarded it would have to be on a supervised basis. During the course of this proceeding, C.V. has displayed verbally aggressive behaviour towards representatives of the Children's Aid Society of Halifax, their lawyer and the Court. Her behaviour, at times, can best be described as outrageous. C.V.'s antics in the Courtroom including her swearing, shouting and rude and insolent behaviour, all serve to establish that she is either unwilling or unable to control her behaviour. Either way, I have no confidence that she will be able to properly control her actions if she was granted supervised access.
>
> ¶78 In addition, I am not satisfied that at the present time it is appropriate to award access to L.F.. L.F. remains incarcerated. According to Dr. Pottle's evidence, L.F. suffers from a serious psychotic illness as well as chronic persecutory delusions. L.F. has not provided the Court with the specifics of any access that he may be seeking.
>
> ¶79 I am not satisfied that it is in M.C.F.'s best interests to award either C.V. or L.F. access at this time

[24] At the conclusion of that same hearing, I ordered both of the Respondents to participate in an assessment which would include a psycho/social history, a psychological/psychiatric examination and assessment, a parental assessment including an examination and assessment of parental skills and techniques and a home study and

assessment. In light of the Respondents' conspiracy theories, I thought it would be best to allow C.V. and L.F. to determine who would conduct the assessment. I gave both of the Respondents until December 10th, 2004 to advise Ms. Whelton, in writing, of which psychologist and psychiatrist they wished to choose. I indicated that if the Respondents did not select an assessor by that day, the Children's Aid Society of Halifax would be at liberty to select the psychologist and psychiatrist who would conduct the assessment. Neither of the Respondents selected an assessor and accordingly, as per my decision, the choice was made by the Children's Aid Society of Halifax. They arranged for both of the Respondents to be assessed by the Assessment Services Team of the IWK Health Centre. Both of the Respondents refused to participate in that assessment.

[25] The matter returned to Court for a further Review Hearing in February and March of 2005. Following that hearing, I concluded that M.C.F. continued to be a child in need of protective services and I issued another Order keeping her in the temporary care and custody of the Children's Aid Society of Halifax without access to the Respondents.

[26] On May 12th, 2005 C.V. was convicted of numerous criminal charges as a result of the standoff that occurred in May of 2004 including detaining or concealing M.C.F. in contravention of the custody provisions of a Custody Order contrary to s.282(1)(a) of the

Criminal Code of Canada and using a firearm while committing an indictable offence contrary to s.85(1)(a) of the **Criminal Code of Canada**.

[27] That same day, L.F. was convicted of a number of criminal offences arising out of the standoff including detaining or concealing M.C.F. in contravention of the custody provisions of a Custody Order contrary to s.282(1)(a) of the **Criminal Code of Canada.** The convictions of both C.V. and L.F. are presently under appeal.

THE PRESENT PROCEEDING

[28] We are now at the final disposition stage of this child welfare proceeding. C.V. and L.F. seek the dismissal of this matter and the return of their daughter to their care. The Children's Aid Society of Halifax is seeking permanent care and custody of M.C.F. pursuant to s.42(1)(f) of the **Children and Family Services Act**.

[29] C.V. elected not to participate in this final disposition hearing. L.F. actively participated in the proceeding until June 7, 2005 at which time he advised the Court that he, too, was electing not to participate further in the hearing.

STATUTORY CONSIDERATIONS/CASELAW

[30] The **Children and Family Services Act** governs child welfare proceedings in Nova Scotia. Reference is made to the following provisions of the **Act**:

> **Purpose**
>
> **2 (1)** The purpose of this Act is to protect children from harm, promote the integrity of the family and assure the best interests of children.
>
> **Paramount consideration**
>
> **(2)** In all proceedings and matters pursuant to this Act, the paramount consideration is the best interests of the child. 1990, c. 5, s.2.
>
> ....
>
> **Best interests of child**
>
> **3(2)** Where a person is directed pursuant to this Act, except in respect of a proposed adoption, to make an order or determination in the best interests of a child, the person shall consider those of the following circumstances that are relevant:
>
> (a) the importance for the childs development of a positive relationship with a parent or guardian and a secure place as a member of a family;
>
> (b) the childs relationships with relatives;
>
> (c) the importance of continuity in the childs care and the possible effect on the child of the disruption of that continuity;
>
> (d) the bonding that exists between the child and the childs parent or guardian;
>
> (e) the childs physical, mental and emotional needs, and the appropriate care or treatment to meet those needs;
>
> (f) the childs physical, mental and emotional level of development;

(g) the childs cultural, racial and linguistic heritage;

(h) the religious faith, if any, in which the child is being raised;

(i) the merits of a plan for the childs care proposed by an agency, including a proposal that the child be placed for adoption, compared with the merits of the child remaining with or returning to a parent or guardian;

(j) the childs views and wishes, if they can be reasonably ascertained;

(k) the effect on the child of delay in the disposition of the case;

(l) the risk that the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent or guardian;

(m) the degree of risk, if any, that justified the finding that the child is in need of protective services;

(n) any other relevant circumstances.

.....

Disposition hearing

41 (1) Where the court finds the child is in need of protective services, the court shall, not later than ninety days after so finding, hold a disposition hearing and make a disposition order pursuant to Section 42.

.....

Duty of court upon making order

(5) Where the court makes a disposition order, the court shall give

(a) a statement of the plan for the childs care that the court is applying in its decision; and

(b) the reasons for its decision, including

> (i) a statement of the evidence on which the court bases its decision, and
>
> (ii) where the disposition order has the effect of removing or keeping the child from the care or custody of the parent or guardian, a statement of the reasons why the child cannot be adequately protected while in the care or custody of the parent or guardian. 1990, c. 5, s.41.

Disposition order

42 (1) At the conclusion of the disposition hearing, the court shall make one of the following orders, in the child's best interests:

(a) dismiss the matter;

(b) the child shall remain in or be returned to the care and custody of a parent or guardian, subject to the supervision of the agency, for a specified period, in accordance with Section 43;

(c) the child shall remain in or be placed in the care and custody of a person other than a parent or guardian, with the consent of that other person, subject to the supervision of the agency, for a specified period, in accordance with Section 43;

(d) the child shall be placed in the temporary care and custody of the agency for a specified period, in accordance with Sections 44 and 45;

(e) the child shall be placed in the temporary care and custody of the agency pursuant to clause (d) for a specified period and then be returned to a parent or guardian or other person pursuant to clauses (b) or (c) for a specified period, in accordance with Sections 43 to 45;

(f) the child shall be placed in the permanent care and custody of the agency, in accordance with Section 47.

Restriction on removal of child

(2) The court shall not make an order removing the child from the care of a parent or guardian unless the court is satisfied that less intrusive alternatives, including services to promote the integrity of the family pursuant to Section 13,

(a) have been attempted and have failed;

(b) have been refused by the parent or guardian; or

(c) would be inadequate to protect the child.

Placement considerations

(3) Where the court determines that it is necessary to remove the child from the care of a parent or guardian, the court shall, before making an order for temporary or permanent care and custody pursuant to clause (d), (e) or (f) of subsection (1), consider whether it is

possible to place the child with a relative, neighbour or other member of the childs community or extended family pursuant to clause (c) of subsection (1), with the consent of the relative or other person.

Limitation on clause (1)(f)

(4) The court shall not make an order for permanent care and custody pursuant to clause (f) of subsection (1), unless the court is satisfied that the circumstances justifying the order are unlikely to change within a reasonably foreseeable time not exceeding the maximum time limits, based upon the age of the child, set out in subsection (1) of Section 45, so that the child can be returned to the parent or guardian. 1990, c. 5, s 42

.....

Total duration of disposition orders

45 (1) Where the court has made an order for temporary care and custody, the total period of duration of all disposition orders, including any supervision orders, shall not exceed

(a) where the child was under six years of age at the time of the application commencing the proceedings, twelve months; or

(b) where the child was six years of age or more but under twelve years of age at the time of the application commencing the proceedings, eighteen months,

from the date of the initial disposition order

.....

Application for review

46(1) A party may at any time apply for review of a supervision order or an order for temporary care and custody, but in any event the agency shall apply to the court for review prior to the expiry of the order or where the child is taken into care while under a supervision order.

.....

Matters to be considered

(4) Before making an order pursuant to subsection (5), the court shall consider

(a) whether the circumstances have changed since the previous disposition order was made;

(b) whether the plan for the childs care that the court applied in its decision is being carried out;

(c) what is the least intrusive alternative that is in the childs best interests; and

(d) whether the requirements of subsection (6) have been met.

Powers of court on review

(5) On the hearing of an application for review, the court may, in the childs best interests,

(a) vary or terminate the disposition order made pursuant to subsection (1) of Section 42, including any term or condition that is part of that order;

(b) order that the disposition order terminate on a specified future date; or

(c) make a further or another order pursuant to subsection (1) of Section 42, subject to the time limits specified in Section 43 for supervision orders and in Section 45 for orders for temporary care and custody

.....

Consequences of permanent care and custody order

47 (1) Where the court makes an order for permanent care and custody pursuant to clause (f) of subsection (1) of Section 42, the agency is the legal guardian of the child and as such has all the rights, powers and responsibilities of a parent or guardian for the childs care and custody.

Order for access

(2) Where an order for permanent care and custody is made, the court may make an order for access by a parent or guardian or other person, but the court shall not make such an order unless the court is satisfied that

(a) permanent placement in a family setting has not been planned or is not possible and the persons access will not impair the child's future opportunities for such placement;

> (b) the child is at least twelve years of age and wishes to maintain contact with that person;
>
> (c) the child has been or will be placed with a person who does not wish to adopt the child; or
>
> (d) some other special circumstance justifies making an order for access.

[31] In the case of **Catholic Children's Aid Society of Metropolitan Toronto v. C.M.**, *supra,* the Supreme Court of Canada confirmed that on a status Review Hearing the Court must conduct a two-fold examination. First, the Court must determine whether the child continues to be in need of protection and, as a consequence, requires a Court Order for his or her protection. In addition, the Court must consider the best interests of the child which the Supreme Court has confirmed is an important and, in the final analysis, a determining element of the decision as to the need for protection. The Court confirmed that the need for continued protection may arise from the existence or absence of the circumstances that triggered the initial Order for protection or from circumstances which have arisen since that time.

[32] The significance of a child's best interests was dealt with by the Supreme Court of Canada in **C.(G.C.) V. New Brunswick (Minister of Health and Community Services) [G.C.C.]**, [1988] 1 S.C.R. 1073. In that case L'Heureux-Dubé , J. stated at ¶11:

> ....Historically, the best interests of the child was read subject to the right of the natural parents to custody of their child. In that context, it was only when evidence of moral turpitude, abandonment or severe misconduct was proven that parents could see their rights terminated (Hepton v. Maat, [1957] S.C.R. 606; Re Baby Duffell: Martin v. Duffell, [1950] S.C.R.737; In re Agar: McNeilly v. Agar, [1958] S.C.R. 52). In recent years, the legislature and the Courts have considered the welfare of the child as the predominant factor (see amongst others: Re Moores and Feldstein (1973), 12 R.F.L. 273 (Ont. C.A.); Talsky v Talsky, [1976] 2 S.C.R. 292). No longer is it necessary for the court to find abandonment or other severe misconduct on the part of the natural parents to terminate parental rights....

[33] In **Catholic Children's Aid Society of Metropolitan Toronto v. C.M.**, *supra,* the Supreme Court of Canada quoted the following from **King v. Low**, [1985] 1. S.C.R. 87 at ¶ 39:

> ....the dominant consideration to which all other considerations must remain subordinate must be the welfare of the child....The welfare of the child must be decided on a consideration of these and all other relevant factors, including the general psychological, spiritual and emotional welfare of the child. It must be the aim of the Court, when resolving disputes between rival claimants for the custody of a child, to choose the course which will best provide for the healthy growth, development and education of the child so that he will be equipped to face the problems of life as a mature adult. Parental claims must not be lightly set aside, and they are entitled to serious consideration in reaching any conclusion. Where it is clear that the welfare of the child requires it, however, they must be set aside.

[34] In both the **Catholic Children's Aid Society of Metropolitan Toronto v. C. M.**, *supra*, and in **C.(G.C.) V. New Brunswick (Minister of Health and Community Services) [G.C.C.]**, *supra*, the Court confirmed that these principles apply to child protection proceedings.

[35] Section 2(2) of the **Children and Family Services Act** indicates that in all proceedings and matters pursuant to that **Act**, the paramount consideration is the best interests of the child. Clearly, however, a child will not be placed in care unless the Court is satisfied that the child is in need of protection. In this case, the burden rests upon the Children's Aid Society of Halifax to establish that M.C.F. continues to be a child in need of protection and that an Order for Permanent Care would be in her best interests. A Permanent Care and Custody Order is the most intrusive remedy available under the **Act** and accordingly, the burden on the Children's Aid Society is a heavy one.

[36] In the case of **Children's Aid Society of Halifax v. Lake** (1981), 45 N.S.R. (2d) 361 the Court of Appeal dealt with the burden of proof in a child protection proceeding. The Court held that the burden is the same as in civil cases ie: by a preponderance of evidence or on the balance of probabilities.

[37] In **J.L. and R.L. v. Children's Aid Society of Halifax and Attorney General of Nova Scotia** (1985), 44 R.F.L. (2d) 437 (N.S.C.A.) Jones J.A. stated at pp. 449-450:

> "With reference to the burden of proof in the *Lake* case, this court held that the rule in civil cases applied. However, in coming to a conclusion on the evidence, a court must have regard to the gravity

> of the consequences of the finding. I quote from my judgement in *Lake* at p. 377:
>
> > 'In the words of Cartwright, J., in *Hepton et al. v. Maat et al., supra*, 'very serious and important reasons' are required in order to disregard the parental rights. The gravity of the consequences of the finding must be viewed in that sense in the proceedings under the *Act.'* "

[38] As was recognized by the Supreme Court of Canada in the subsequent case of **C.(G.C.) v. New Brunswick (Minister of Health and Community Services) [G.C.C.]**, *supra*, in recent years there has been a shift away from focussing on a parent's "right" to custody - towards the welfare of the child being the predominant consideration. Nevertheless, it is clear that in light of the serious consequences of a Permanent Care Order "very serious and important reasons" are still required before such an Order will be granted.

THE POSITION OF THE CHILDREN'S AID SOCIETY OF HALIFAX

[39] The Children's Aid Society of Halifax takes the position that circumstances have not changed since the granting of the last Order placing M.C.F. in temporary care and that she continues to be a child in need of protective services.

[40] Ms. Whelton, on behalf of Children's Aid, refers to the surreptitious hiding of M.C.F. at the beginning of this proceeding, the mental health concerns surrounding both of the Respondents as well as the parents actions during the armed standoff with police which took place in May of 2004. She submits that all of these issues put M.C.F. at risk.

[41] The Children's Aid Society of Halifax further submits that C.V. and L.F. have shown no insight into the manner in which their decisions or actions have impacted their daughter and suggest that M.C.F.'s parents have focussed instead on pursuing their own agenda and blaming others for the predicament that they now find themselves in. They note the unwillingness of the Respondent parents to acknowledge or deal with the mental health concerns that have been raised or to recognize how these mental health issues have affected M.C.F.

[42] The Children's Aid Society of Halifax suggests that it is in the best interests of M.C.F. that she be placed in their permanent care and custody with no access to C.V. or L.F.

[43] According to the plan of care filed by Children's Aid, they intend to commence a process of permanency planning for M.C.F. that is consistent with her age and stage of development in the event that she is placed in permanent care. During the hearing, Ms.

McPherson (the main social worker involved in this case) confirmed that while the Children's Aid Society does not presently have a mandate to look into the adoption of M.C.F. (since this proceeding has yet to be concluded) adoption would be a plan which is consistent with M.C.F.'s age and stage of development.

THE PARENTS' POSITION

[44] As indicated previously, C.V. elected to not participate in this hearing. L.F. discontinued his participation before the hearing concluded. As a result, I did not receive final submissions from either of M.C.F.'s parents. However, I have had the benefit of reading the brief that was prepared by the *amicus curiae* that has been assisting the Respondents since last fall and I have also had the benefit of listening to the submissions previously given by the Respondents.

[45] The Respondents dispute the suggestion that M.C.F. is a child in need of protective services. They suggest that M.C.F. was well cared for after her birth and note that she was a happy and healthy baby when put into the physical care of the Children's Aid Society of Halifax in May of 2004.

[46] C.V. and L.F. dispute the suggestion that they suffer from any mental health problems and suggest that they are being persecuted because of their strongly held belief that the family justice system is corrupt. They suggest that their actions to date occurred in the context of litigation and that there will be no risk to M.C.F. outside of the litigation process. In addition, they submit that ordering them to participate in a psychiatric and psychological assessment violated their rights under the **Canadian Charter of Rights and Freedoms.**

[47] The Respondents further suggest that the **Children's Aid Society of Halifax** have failed to provide services to them to promote the integrity of their family and they submit that the said Society has failed to meet the heavy burden upon it of showing that M.C.F. should be placed in permanent care.

[48] Neither C.V. nor L.F. filed any affidavit evidence at the time of the hearing and neither parent presented a plan for M.C.F.'s care. It is their position, however, that it is in the best interests of M.C.F. that she be returned to her parents' care.

ANALYSIS AND FINDINGS

[49] I am satisfied that M.C.F. continues to be a child in need of protective services.

[50] Serious mental health concerns have been raised throughout this proceeding about both of M.C.F.'s parents. L.F. has refused to participate in the psychiatric/psychological assessment ordered by this Court in November of 2004, but he was assessed in June of 2004 (following the armed standoff) by Dr. Robert A. Pottle. As indicated previously, Dr. Pottle (a psychiatrist) diagnosed L.F. as having a serious psychotic illness (a Delusional Disorder - Persecutory type) along with a Personality Disorder with narcissistic, antisocial and histrionic personality traits. Dr. Pottle went on to say that L.F. suffers from chronic persecutory delusions and that his judgment is impaired in part due to his Personality Disorder. He concluded that L.F.'s prognosis for treatment of the Delusional Disorder was poor as L.F. does not accept that he has any form of mental illness.

[51] To my knowledge, L.F. has not been re-assessed by a psychiatrist or a psychologist since the time that Dr. Pottle saw him in June of 2004 and there is no evidence before me that L.F.'s mental condition has changed since that time.

[52] C.V. has also refused to be assessed by a psychiatrist or a psychologist as ordered by this Court. Despite this fact, it is clear after seeing C.V. in court on numerous occasions that there are serious and legitimate concerns about her mental health. While C.V. presents in court as an intelligent individual, her conduct is often grossly

inappropriate, aggressive, antagonistic and sometimes bizarre. There have been a number of occasions during the course of these proceedings when she has either been unwilling or unable to control her behaviour.

[53] As a result of C.V. refusing to be assessed by a psychiatrist or a psychologist, the Court does not have a formal medical opinion of her mental condition. Nevertheless, I am fully satisfied that C.V.'s mental health is a relevant concern when it comes to the issue of M.C.F.'s need for protection.

[54] At the time of the initial Review Hearing, I accepted Dr. Pottle's testimony that L.F. suffers from chronic persecutory delusions. As indicated previously, L.F. believes that he is being persecuted by the government and that a conspiracy exists in relation to M.C.F.

[55] As indicated in my decision of November 26th, 2004, C.V. also appears to believe that a conspiracy exists in relation to the apprehension of M.C.F. Throughout this proceeding both C.V. and L.F. have suggested that numerous individuals are involved in this conspiracy including the government, various social workers and the Court.

[56] The fact that L.F. has been diagnosed with a serious psychotic illness; that there are serious concerns about C.V.'s mental health and that both of these individuals appear to subscribe to conspiracy theories in relation to their infant daughter does not, in itself, mean that M.C.F. is in need of protection. The question that the Court has to consider is whether the Respondents' mental health and their actions as a result of their beliefs place M.C.F. at risk.

[57] M.C.F. was being hidden from child welfare authorities before she was even born. At the time of the Protection Hearing in March of 2004, L.F. openly acknowledged that he and C.V. moved to Nova Scotia in the fall of 2003 (prior to M.C.F.'s birth) to insure that she was not apprehended by Children's Aid in Ontario.

[58] When the Children's Aid Society of Halifax made application to supervise the Respondents care of their infant daughter (leaving M.C.F. in the care and custody of her parents) C.V. surreptitiously disappeared with the child, hiding her from the protection of the Children's Aid Society and the Court.

[59] In May of 2004, L.F. and C.V. put their infant daughter in the middle of a multi-day armed standoff with police rather than comply with the Court Order placing M.C.F. in temporary care. Their actions in this regard showed a total lack of judgment concerning

their daughter's safety as well as an inability to put the interests of M.C.F. above their own. Regardless of whether C.V. and L.F. agreed with the Order placing M.C.F. in temporary care, their decisions and actions in May of 2004 were completely inappropriate and clearly placed M.C.F. at significant risk of physical and emotional harm.

[60] Since the armed standoff in May of 2004, the Respondents have done little to deal with the issues that put M.C.F. in temporary care. They refuse or are incapable of recognizing or dealing with the mental health issues that have been raised throughout this proceeding - opting instead to charge ahead in what appears to be a relentless pursuit of fighting "the system". They appear to be consumed with their perception of a corrupt family justice system and seem incapable of recognizing their own role in M.C.F. being placed in care.

[61] I am satisfied that L.F. and C.V. are unable to focus on or act in the best interests of their daughter and that M.C.F. would be at substantial risk of physical and emotional harm if returned to her parents' care.

[62] I do not accept the parents' suggestion that their actions occurred in the context of litigation and that there will be no risk to M.C.F. outside of the litigation process. One would reasonably expect that individuals would attempt to display appropriate behaviour

during litigation and, in particular, while in court. The inability or unwillingness of C.V. and L.F. to control their behaviour during these proceedings does not speak well for their ability to control their behaviour once this matter is concluded.

[63] I have based my decision solely on the evidence before me. Having said that, I note that I am not the first judge to have raised concerns about the Respondents' mental health and how their personalities affect their ability to parent. In the case of **R. v. L.R.F.,** [2000] O.J. No. 3457, Justice Haines of the Ontario Superior Court of Justice stated the following in relation to L.F.:

> ¶21 Mr. L.R.F. has steadfastly maintained that his actions were right and good. He actually stated, when he chose to give evidence on his sentencing, that if given the opportunity again, he would do everything the same way. Mr. L.R.F. has maintained throughout that he was acting out of love and concern for his daughter. Those sentiments are, in my view, impossible to reconcile with his actions and attitude. He appears to have no insight into what he has done and how potentially harmful it was for C.R.H..
>
> ¶22 Mr. L.R.F. seems to relish litigation. He spoke often during these proceedings about litigation he has underway against lawyers, police officers and others, and at the conclusion of the trial, was promising to launch yet another lawsuit. In speaking to his own sentence, Mr. L.R.F. said he did not care how many years he was given, but added 'I just want to be sent to a penitentiary with a law library, so I can keep my litigation going.' It is ironic that Mr. L.R.F. has such a distaste for lawyers, when he appears to get such gratification from attempting to emulate them.
>
> ¶23 Mr. L.R.F. can be an engaging, even charming person, but he is volatile and unpredictable. Unfortunately, he appears to have passed way beyond the pale of someone who marches to the beat of a different drummer. He has, instead, taken on the mantle of the obsessed and seems to have forsaken reason.

[64] Those statements were made by Justice Haines in August of 2000.

[65] In February of 2003 Justice Aston released his decision in **C.A.V. v. L.C.M.** , *supra,* in which he stated the following in relation to C.V.:

> ¶70 The mother's conduct, behaviour and statements since March 2000 have unfortunately confirmed the fears of the trial judge that certain of her personality traits, if not controlled, 'have the potential of destroying the emotional well being of the children'. Ms. C.A.V. is unlikely to accept the truth of that assessment. However, I hope she may come to understand that that has been the consistent perception by judges in this case and that, from the court's perspective, she has just about run out of second chances.

[66] On October 31st, 2003 (less than two months prior to M.C.F.'s birth) Justice G. Campbell of the Ontario Superior Court of Justice said the following concerning C.V. and L.F. in the case of **L.C.M. v. C.A.V.**, *supra*:

> ¶18 ..... That marriage has created a formidable 'team' of like-minded persons who are dedicated to relentlessly attempting to indoctrinate these tree naive, open, innocent minds, to their mother's inflexible and adamant view of reality. It is clear from Ms. C.A.V.'s reactions to simple rulings against her in court that she brooks no dispute with or challenge to her own certain beliefs. She and Mr. L.R.F. have openly and persistently, by the recent escalation of their relentless program to undermine Mr. L.C.M.'s custody of the triplets, modeled an anti-social, antagonistic mind-set for the children. They are clearly committed to a tactic of confrontation of virtually any society institution as exemplified by their various ongoing lawsuits versus the police and the media. Their strategy is also easily identified by their aggressive postures, their outspoken, firmly held beliefs and their outrageous verbally assaultive behaviours in court, in their letters, press releases, web-sites, publications and television interviews. No child of Ms. C.A.V.'s could ever withstand this 'team' of such strong, manipulative and forceful personalities.

[67] As indicated previously, in this latter case, C.V.'s access to her triplets from a previous marriage was terminated.

[68] Seven weeks after Justice Campbell's decision was released in **L.C.M. v. C.A.V.**, *supra*, M.C.F. was born. Unfortunately, it appears that little has changed since that time. C.V. and L.F. are either unwilling or unable to recognize the issues surrounding their mental health and how this affects their ability to parent.

[69] While maintaining and promoting the integrity of the family is clearly one of the main objectives of the **Children and Family Services Act**, the Court's paramount concern must be M.C.F.'s best interests. After carefully considering the evidence presented as well as the factors set out in s.3(2) and s.46(4) of the **Act**, I have concluded that it is in M.C.F.'s best interests that she be placed in the permanent care and custody of the Children's Aid Society of Halifax. In arriving at my decision I have applied the most recent plan of care filed by the Children's Aid Society of Halifax.

[70] In relation to s.42(2) of the **Act**, I am satisfied that less intrusive alternatives including services to promote the integrity of the family have been refused by M.C.F.'s parents. I refer in particular to the original request by the Children's Aid Society to supervise the parents' care of M.C.F. (leaving her in the care and custody of her parents)

and to the assessments that were offered to L.F. and C.V. in the hope that the mental health issues that had been raised could be identified and dealt with. In addition, I refer to the access services that were arranged in the summer of 2004 in case C.V. or L.F. applied for access to M.C.F. As indicated previously, neither of M.C.F.'s parents applied for access with her that summer.

[71] I am also satisfied that less intrusive alternatives would be inadequate to protect M.C.F.

[72] C.V. and L.F. have suggested that the Children's Aid Society of Halifax has failed to provide services to them to promote the integrity of their family. The irony of this position is not lost on the Court. Throughout this proceeding the Respondent parents have rejected the services that were offered by Children's Aid. They have, to put it mildly, fought Children's Aid every step of the way. In my view, it was reasonable for the Children's Aid Society of Halifax to begin by offering to assess the parents and then see what further services would be recommended by the assessors to assist in reuniting the family. In the circumstances of this case, I am fully satisfied that the services offered to C.V. and L.F. were appropriate and I reject the suggestion that the Children's Aid Society of Halifax has somehow failed in this regard.

[73] In relation to s.42(3) of the **Children and Family Services Act,** I refer to the Court of Appeal decision in **Children's Aid Society of Halifax v. TB,** [2001] N.S.J. No. 225 and note that the maximum time lines set out in s 45(1) of the said **Act** have now been reached and accordingly, temporary placement with a relative, neighbour or other extended family member is no longer available.

[74] In relation to s.42(4) of the **Act,** I again note that the maximum time lines under the **Act** have now been reached. We are at the conclusion of the proceeding and as indicated previously, I am satisfied that M.C.F. would be at substantial risk of physical and emotional harm if returned to her parents' care.

[75] Finally, I have considered the provisions of s.47(2) of the **Act** and conclude that in the circumstances of this case, it would not be in M.C.F.'s best interests to award access to C.V. or L.F.

CHARTER ISSUES

[76] During the course of this proceeding, C.V. and L.F. filed documentation with the Court in which they raised a number of constitutional challenges in relation to the

Children and Family Services Act. The Attorney General of Nova Scotia was provided with notice of their application (as required by the **Constitutional Questions Act**) and has participated in that portion of the proceeding that related to the constitution questions raised by the Respondent parents.

[77] For reasons given by the Court during the course of the hearing only one of the constitutional questions raised by C.V. and L.F. went forward for consideration by the Court. That is: Whether psychiatric or psychological assessments of a parent or parents whose offspring are in state care or who are subject to becoming state wards by virtue of s.22(2) (b) and s.22(2)(g) of the **Children and Family Services Act** violate s.2(a), s.2(b), s.7 and s.15 of the **Canadian Charter of Rights and Freedoms**.

[78] In the memorandum prepared by the *amicus curiae* on behalf of the Respondent parents it is stated at page 3:

> ".....In brief, we question whether the Courts' jurisdiction under the C.F.S.A. [**Children and Family Services Act**] to order psychiatric and/or psychological assessments of parents involved in proceedings under the C.F.S.A. violates s.2(a), 2(b), s.7 and s.15 of the *Charter of Rights and Freedoms* (hereinafter the 'Charter')."

[79] At the interim stage of this proceeding (in February of 2004) both of the Respondents were referred for an assessment which was to include a psychiatric and

psychological examination. The terms of that referral are set out in my Interim Order which was issued on February 16th, 2004. Neither of the Respondents were assessed as a result of that referral (C.V. was not participating in the proceeding at that time as she had disappeared with M.C.F. and L.F. was not prepared to be assessed).

[80] As indicated previously, on November 26th, 2004 (following the completion of the initial Review Hearing), I ordered both of the Respondents to participate in a detailed assessment which would include a psychological and psychiatric examination. The specific terms of this assessment were set out in my Disposition Review Order issued November 30th, as follows:

> **IT IS FURTHER ORDERED** pursuant to **s.44(1)(d)** of the **Children and Family Services Act** that the Respondent, C.V., shall participate in an assessment which shall include a psycho/social history, a psychological and psychiatric examination and assessment, a parental assessment including an examination and assessment of parenting skills and techniques and a home study and assessment. The Respondent, C.V., shall, on or before the 10th day of December, 2004 provide to Elizabeth Whelton (counsel for the Children's Aid Society of Halifax) written notification of the psychologist and psychiatrist that she wishes to conduct the said assessment. The psychologist and the psychiatrist must both be individuals who are licensed and registered to practice in the province of Nova Scotia and must be available to undertake the assessment in the Halifax Regional Municipality without significant delay. In the event that the Respondent, C.V., does not provide the above-noted notification to Elizabeth Whelton on or before the 10th day of December, 2004, then the Children's Aid Society of Halifax shall designate the psychologist and psychiatrist who shall conduct the said assessment. The Respondent, C.V., shall attend as and when necessary for the purpose of the said assessment and shall cooperate and comply with all reasonable requests, inquiries and directions of the assessing psychologist and psychiatrist. The psychologist and psychiatrist shall file a copy of their assessment relating to C.V. with this Honourable Court.

[81] The same clause was also included in my November 30th, 2004 Order in relation to L.F.

[82] C.V. had actually asked for an assessment prior to this Order being issued. In an Application for Review and Notice of Hearing filed by C.V. on October 19th, 2004 she stated that the Respondents were seeking:

> "4. An order that the Children's Aid Society of Halifax shall complete all necessary assessments which includes scheduling an assessment for both parents with Dr. Carol Pye in Halifax following the **Children and Family Services Act** and court orders within this file."

[83] In addition, in correspondence filed with the Court dated November 15th, 2004 (directed to a number of individuals including myself) C.V. stated:

> "1. Be advised again, you are deliberately and maliciously negligent in your duties in re-uniting [M.C.F.] with her mother and father.
>
> 2. As repeatedly requested and demanded on numerous occasions, do your job as required by law.
>
> **3. Schedule a home study and parental assessment forthwith.** [Emphasis added by the Court].
>
> 4. Advise of the date and time that we are to meet to discuss [M.C.F.]. Make arrangements for her father's inclusion.

5. If you think you're still not in a position to return the infant, then make arrangements for contact to her mother and father, immediately.

Trusting this is satisfactory.

C.V., MOTHER"

[84] At the hearing of the **Charter** issue (which C.V. participated in, in part), C.V. suggested that her request for an assessment did not include a request for a psychiatric or psychological assessment. No such limitations were given in the documentation that she filed with the Court. In fact, in the Application for Review and Notice of Hearing filed by C.V. on October 19th, 2004 she requested an Order that the Children's Aid Society of Halifax complete "**all** necessary assessments which includes scheduling an assessment for both parents with Dr. Carol Pye....." [Emphasis added by the Court]. The evidence indicates that Dr. Pye is a psychologist.

[85] In the Court of Appeal decision released on June 3rd, 2005 (2005 NSCA 87) the Court found that C.V. had consented to the assessments that were ordered by the Court on November 26th, 2004.

[86] Neither of the Respondents complied with the Court's Order relating to these assessments. They did not select anyone to conduct the assessment nor did they participate

in the assessment once it was arranged by the Children's Aid Society of Halifax. Both of the Respondents have suggested that their refusal to submit to a psychiatric or psychological assessment was justified as these assessments would violate their rights under the said sections of the **Charter**.

[87] Both the Attorney General of Nova Scotia and the Children's Aid Society of Halifax have submitted to the Court that this constitutional challenge is nothing more than an appeal of my decision given on November 26th, 2004 in which I ordered C.V. and L.F. to be assessed. They submit that the Court should refuse to consider the matter as I cannot sit in appeal of my own decisions.

[88] The Attorney General of Nova Scotia points out that the Court of Appeal has recently upheld my decision to order these assessments (see: 2005 NSCA 87). In the Attorney General's brief filed with the Court on June 6th, 2005 it is suggested that this "is the same issue that [C.V. and L.F.] appealed to the Nova Scotia Court of Appeal....".

[89] While I agree that the parents' constitutional challenge on this issue comes very close to an appeal of my November 26th, 2004 decision, I am not satisfied that they are prevented from raising this issue at this stage of the proceeding.

[90] The constitutionality of these types of assessments or of an Order requiring the parents to participate in these assessments was not raised prior to my November 26th, 2004 decision being rendered. L.F. and C.V. subsequently appealed that decision (including that portion of the decision that required them to participate in a psychiatric and psychological examination). Originally, they did not raise this constitutional issue as part of their appeal. They subsequently applied to amend their Notice of Appeal to include this ground of appeal. Their application to amend was denied by the Honourable Justice Fichaud in a decision released on March 17th, 2005 (2005 NSCA 49). This issue, therefore, was not dealt with on its merits in either the Supreme Court or the Court of Appeal.

[91] We are now at the final disposition stage of this proceeding. As part of its case the Children's Aid Society of Halifax has referred to the fact that C.V. and L.F. have refused to participate in the assessments ordered by the Court. In response to that argument, the parents are suggesting that they did not have to participate in these assessments as they violated their rights under the **Charter.** In these circumstances, I do not view the parents' argument as an appeal of my decision but rather a response to the most recent case advanced by the Children's Aid Society of Halifax. In other words, I am not being asked to consider whether I should have ordered these assessments but, rather, whether the Respondent parents had a valid reason not to comply with my Order.

[92] L.F. and C.V. have not satisfied me that in the circumstances of this case, the psychiatric or psychological assessments ordered by the Court violated their rights and freedoms under s.2(a), s.2(b), s.7 or s.15 of the **Canadian Charter of Rights and Freedoms.**

[93] Many of the arguments advanced in support of the parents' position on this issue were difficult to understand. It was difficult to determine the basis upon which the parents claim such assessments would violate their freedom of conscience and religion under s.2(a); their freedom of thought, belief, opinion and expression under s.2(b) or their equality rights under s.15. In the end, the Court was largely left to speculate as to how these freedoms and rights were allegedly being violated.

[94] In relation to the s.7 argument, even if I was satisfied that the ordering of such assessments would violate the parents' right to liberty and security of the person under s.7 of the **Charter**, I am nevertheless satisfied that such infringement would occur in accordance with the principles of fundamental justice (see the Supreme Court of Canada decisions in **B.(R.) v. Children's Aid Society of Metropolitan Toronto**, [1995] 1 S.C.R. 315; **New Brunswick (Minister of Health and Community Services) v. G.(J.),** [1999]

3 S.C.R. 46 and **Winnipeg Child and Family Services v. K.L.W.**, [2000] 2 S.C.R. 519 for a review of the principles of fundamental justice in the context of child welfare legislation).

[95] Individuals who are alleging a **Charter** infringement must establish that their rights or freedoms have been violated. L.F. and C.V. have not fulfilled this burden in the circumstances of this case.

[96] In the pre-hearing memorandum filed on behalf of the Attorney General it was submitted that C.V. and L.F.'s **Charter** challenge should be dismissed summarily for failing to comply with s.10(6) of the **Constitutional Questions Act.** For reasons given on May 11th, 2005, I declined to dismiss the matter summarily. Thereafter, many days were spent trying to clarify the basis of the **Charter** challenge including the particulars of the points that were to be argued, the evidence that was to be relied on and the relief that was being claimed.

[97] A post hearing brief was subsequently filed by the Attorney General. At the conclusion of that brief this issue is re-visited and the suggestion is once again made that the parents' **Charter** challenge should be dismissed due to a lack of particulars. I have

determined that it is unnecessary for me to deal with this issue in light of my conclusion that L.F. and C.V. have failed to satisfy me that any of their **Charter** rights were breached as a result of ordering these assessments.

[98] There is one additional matter that I should raise in this regard. The refusal of L.F. and C.V. to be assessed by a psychiatrist or a psychologist was only one piece of evidence that I have taken into account in coming to my final decision in relation to M.C.F. Regardless of their refusal to participate in these assessments, I am satisfied that M.C.F. continues to be a child in the need of protective services and that it is in her best interests that she be placed in the permanent care and custody of the Children's Aid Society of Halifax.

CONCLUSION

[99] An Order will issue placing M.C.F. in the permanent care and custody of the Children's Aid Society of Halifax with no access to either of the Respondents.

Deborah K. Smith, A.C.J.