SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Nova Scotia (Community Services) v. G.R.*, 2019 NSSC 23

Date: 2019-01-17
Docket: 104721
Registry: Sydney, NS

Between:

Minister of Community Services

Applicant

v.

G.R. and K.C.

Respondents

LIBRARY HEADING

Restriction on Publication

Section 94(1) of the Children and Family Services Act applies to this decision and provides as follows:

> **94(1) No personal shall publish or make public information that has the effects 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.**

Information that would identify the children, parents or foster parents in this proceeding has been anonymized so that this decision can be published.

Judge:	The Honourable Justice Kenneth C. Haley
Heard:	September 4 and 7, October 15, 17, and 18, 2018 in Sydney, Nova Scotia
Written Decision:	January 17, 2018
Summary:	The Minister of Community Services seeks permanent care of the Respondents' children, M., G., K. and I., pursuant to s. 42(1)(f) of the *Children and Family Services Act*. The children were taken into care after the Respondent, G.R.

introduced her children to her father, who was a convicted sex offender.

The Minister also determined the living accommodations for the children were unfit, unhygienic, and unsafe.

The Respondent, G.R. failed or refused to follow the Minister's Plan of Care, insisting she did not require further services given the extensive history of taking services in the past.

The Court determined G.R.'s decision not to take further services lacked insight into the protection concerns and it was not in the best interests of the children to be returned to G.R.

The Court further found that G.R. had maintained a relationship with K.C., which was not in the best interests of the children…it was an "anti-social partnership", and G.R. had been consistently ordered to have no contact with K.C.

G.R. and K.C. had 4, if not 5, children together since they were ordered to have no further contact with one another.

Given G.R.'s inability to understand and/or accept the identified child protection concerns, the Court found it was unsafe to return the children to G.R.'s care.

Issues: Permanent Care and Custody vs. dismissal

Result: Permanent Care and Custody

FAMILY DIVISION

Citation: *Nova Scotia (Community Services) v. G.R.*, 2019 NSSC 23

Date: 2019-01-17
Docket: 104721
Registry: Sydney, NS

Between:

Minister of Community Services

Applicant

v.

G.R. and K.C.

Respondents

Restriction on Publication

Section 94(1) of the Children and Family Services Act applies to this decision and provides as follows:

> 94(1) 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 Justice Kenneth C. Haley
Heard:	September 4 and 7, October 15, 17 and 18, 2018, in Sydney, Nova Scotia
Written Release:	January 17, 2019
Counsel:	Danielle Morrison for the Applicant Alan Stanwick for the Respondent, G.R. K.C., self-represented

By the Court:

[1] This is the Applicant of the Minister of Community Services (hereinafter called the Minister), dated March 22nd, 2017, pursuant to s. 42 (1)(f) of the *Children and Family Services Act*, seeking an Order for Permanent Care for the children M. born July *, 2012; G. born August *, 2014; K. born June *, 2016; and I. born June *, 2016

[2] There was a contested protection hearing held in this matter on June 6, 21, 28, 2017 and July 11, 12, 17, 18 and 19, 2017 wherein the Court heard from the following witnesses:

- Ashley Cote – Intake Social Worker
- Ryan Ellis – Temporary Care Worker
- Sherry MacKinnon (Johnston) – Child Welfare Worker

[3] During the course of the Protection Hearing the Court received the following Exhibits:

- Exhibit 1 – Transcript (170 pages) – Hearing Justice O'Neil on January 15 and 23, 2014

- Exhibit 2 – Transcript (140 pages) – Hearing Justice Forgeron on February 23 and 24, 2011
- Exhibit 3 – Transcript (Volume II) – Hearing Justice Forgeron on July 7 to 17 and September 4, 2008
- Exhibit 4 – Transcript (Volume I) – Hearing Justice Forgeron on July 7 to 17 and September 4, 2008
- Exhibit 5 – Notice of Child Protection Application and attachments
- Exhibit 6 – Affidavit of Ashley Cote
- Exhibit 7 – Four photographs of G.R.'s house
- Exhibit 8 – Affidavit of Ryan Ellis
- Exhibit 9 – Affidavit of Sherry MacKinnon
- Exhibit 10 – Dr. Landry's Resume
- Exhibit 11 – Parental Capacity Assessment
- Exhibit 12 – Psychological Assessment
- Exhibit 13 – C.B. Family Place Resource Center (4 letters)
- Exhibit 14 – Transition House Letter – Domestic Violence
- Exhibit 15 – Transition House Letter dated March 27/14.
- Exhibit 16 – Transition House Letter dated February 24/17.

[4] The Court ruled as follows finding that the children were in need of protective services pursuant to s. 22(2)(b).

My decision is as follows:

The court has scrutinized the evidence with care, and considered the submissions of counsel. The court is satisfied on a balance of probabilities, that G.R. and K. C. pose a substantial risk of harm to their children at this time. An Order pursuant to Section 40 of the Children and Family Services Act will be granted under, under, under Section 22(2)(b).

The court heard evidence that G.R. is on probation for fraud, that the children have head lice and dental issues, that the children missed immunizations. That G.R.'s home was cluttered with garbage and, and personal belongings, and that G.R. visited her father, who is in poor health, and has a criminal record for sexually assaulting one or more of his children, including G.R.

The children were apprehended by the Minister on March 17th, 2017, the morning after G.R. returned from Halifax visiting her father. G.R. provided to the court self-serving excuses and explanations for her behaviour in relation to the above-noted concerns of the Minister. G.R. rationalized her behaviour in decisions at every turn, exampled by in terms of the criminal fraud, "I didn't do it". "Just plead guilty". Head lice, children were trying on hats at the mall. Dental issues, "the children may have a calcium deficiency". Immunizations, "just didn't get a chance to do it" or "the kids were sick or had a cold". I must note for the record, however, that G.R. did present to the court the children's record of immunizations, and it did appear she was very much alive to the importance of the same.

Regarding the clutter and garbage, G.R. said she left suddenly to visit her father in Halifax on the 22nd or 23rd of February, 2017. She did not get a chance to clean it up upon her return late March 16th, 2017. That some of the clutter and garbage was left by her sister, Tanya, in G.R.'s absence. That everything was cleaned up and back in order by March 24th, 2017. Some of G.R.'s explanations may be truthful, but it nonetheless does not diminish her responsibility in terms of properly caring for her children.

The court has clear, convincing and cogent evidence to find that G.R. and K.C. pose a risk to their children, and as a result the protection finding is warranted. The children are in need of protective services at this time.

Historically G.R. and K.C. can be classed as veterans in terms of their long-term involvement with the Minister, dated back to 2005. Two older children have been placed in permanent care. M. born July the 3rd, 2012 was the subject of a permanent care hearing before Justice O'Neil in January 2014. Justice O'Neil dismissed the Minister's application, and returned M. to the care of G.R.

G. was born on August *, 2014. The Minister became involved, and a supervision order was put in place in November of 2014. The Minister terminated its involvement on May the 8th, 2015, stating there were no issues of concerning regarding G.R.'s parenting skills, and were satisfied that K.C. was out of the

picture. A Maintenance and Custody order was granted in favour of G.R. for her two children at that time, M. and G.

G.R. gave birth to twins on June *, 2016, namely K. and I. The Minister responded to a birth alert it had registered with the hospital to follow up with G. R. G R. agreed to engage in services with the Minister, and the Minister was satisfied to close this file in August, 2016. The Minister noted G.R. did not disclose that K.C. was the father, and that she had not always been up front with the Minister on the issue of paternity. Nonetheless Ms. Sherry Johnson…Ms. MacKinnon testified that as of August 2016, G.R. demonstrated she was willing to safeguard the safety and well being of the children.

G.R. obviously had made great strides in improving her personal lifestyle to the extent that she was entrusted with the care of her four children.

In February 2017, G.R. wanted to visit her father to attempt a reconciliation given the circumstances of his health. The evidence is unclear whether or not W.R. was still under a court restriction not to be in the presence of children under 14. G.R. believed any such restriction had lapsed, and was no longer applicable and/or enforceable. Having this belief G.R. visited her father with the four children in Halifax for three weeks. G.R.'s return was propelled by the intervention of Child Welfare Services and Halifax Police. This incident resulted in the intervention of the Minister on March 17th, 2017.

From the court's perspective, whether or not W.R. was formally restricted from being in the presence of children, it does not mitigate the decision and exercise of poor judgment by G.R. to place her children in that environment. This demonstrates to the court lack of insight by G.R. in terms of possible danger W.R. presented to her children as a convicted sex offender. G.R. acknowledges she may have made a mistake, and testified it will never happen again. That said, the court finds that G.R. did not, and perhaps still does not accept her actions from February to March 2017, put the children at substantial risk of harm.

The court understands G.R.'s motives, but that cannot act as an excuse for her to act irresponsibly as a mother. The suggestion that the children were under lock and key at all times, and never left unsupervised in the presence of W.R., is self-serving and unsubstantiated. The court rejects this explanation.

The fact that G.R. and her four children were locked in a room for safety purposes raises another element of poor judgment and lack of insight by G.R. To rationalize such conduct as being in the best interests of the children offends the court's view of parental responsibility. Simply put, the children should not have been there. The Minister was quite justified in apprehending the children for their protection on this basis only, but in addition, there were house cleanliness issues. The court accepts that G.R. may not have contributed to all the clutter and garbage as evidence in exhibit number seven. It is nonetheless the responsibility of G.R. to maintain a clean, safe, and hygienic home for the children. No excuse

can be accepted for exposing the children to these conditions, even for a short period of time.

The head lice and dental issues also confirms the Minister's actions and concerns in this matter.

As earlier stated, an order for protection will thus issue. It is noted that G.R. has undertaken voluntary services, as evidenced by the testimony of Amanda Burke-MacKeigan in Exhibits 14, 15, and 16. The court nonetheless finds that further and additional services are required under the mandate of the Minister to address the risk. This matter will now proceed to disposition, and the Minister will file its case plan in preparation for that hearing. It is anticipated the Minister will recommend services for both respondents in an attempt to reduce risk to the children.

Historically where services have not worked to the benefit of G.R. when K.C. was in G.R.'s life. Many of G.R.'s issues can be traced back to her relationship or relationships, and/or casual contact with K.C. There is an element of dysfunction in their relationship. Justice O'Neil commented in his 2014 decision as follows, at page 160, line 16 of Exhibit 1:

> I am satisfied that a substantial risk of harm to this child would exist if these parents are together. Therefore, I order that G.R. and K.C. are to have absolutely no contact with one another, direct or indirect. Only when the parties realize they are better off apart than together will they have a realistic chance of maintaining a relationship with their children.

G.R. is further to have absolutely no contact with her father, W.R., in the presence of the children. G.R. can pursue reconciliation with her father on her own terms, but the children are not to be part of that process. Both G.R. and K.C. agree to participate in a parental capacity assessment. This assessment will hopefully assist the parties to better understand the dysfunction of their family dynamic, and seek solutions to resolve the same. The report is thus ordered, and the court expects full cooperation and compliance from the parties in the preparation of this report.

K.C.'s request for unsupervised…or supervised access is denied. K.C. must present evidence beyond what the court heard during the course of this proceeding, to be satisfied he does not pose a risk to his children at the present time. The parental capacity assessment may assist in this regard. K.C. admitted to lying and manipulating the truth in the past, and thus it is difficult for the court to accept his evidence with regard to access, absence some empirical data to support his submission that he poses no risk to the children. His evidence may be well intentioned, but not trustworthy or credible.

As mentioned earlier, G.R. requires services and/or education to help her better understand why introducing her children to their grandfather placed them at substantial risk. I reject Mr. Stanwick's submissions to the contrary.

> The court acknowledges that G.R. has made great progress since January 2014. Historically, there have been both failures and successes in terms of parenting. In this particular case the court will prefer to exploit the successes, rather than dismiss them with dated historical evidence.
>
> The court accepts the Minister's submission that historical evidence is relevant, and that essentially G.R. cannot be trusted to follow through with her commitments. The court, nonetheless, believes G.R. should have the opportunity to prove she can be trusted as a mother, but she must commit to process for the return of her children to be an option. G.R. must accept services that are offered, and also cooperate with the Minister's plan of care. She must become less combative, and less judgmental of the players and the process. Although the court does not intend to vary the current temporary care order as requested by Mr. Stanwick, it will recommend to the Minister that supervised access should be increased beyond he present six hours per week. The court would also recommend that the Minister consider transitioning from supervised access to unsupervised access for G.R., eventually to be in her home, once the home is approved as an appropriate and safe venue for the children. In the event progress is made in this regard, consideration should be given to granting unsupervised overnight access.
>
> The court wishes to emphasize that these are recommendations only, and would expect G.R. to demonstrate, to the satisfaction of the Minister, that such proposed change would be in the best interests of the children. The court would expect G. R. to be very motivated to reduce or eliminate the risk in this regard.
>
> I look forward to meeting with the parties and counsel once, once again at the disposition hearing to review the matter.

[5] This matter returned to the court on September 4 and 7, 2018; October 15; 17; and 18, 2018 for Final Disposition.

[6] The court heard evidence from the following witnesses:

- Dr. Reginald Landry – Clinical Psychologist
- Nicole Sheppard – Case Worker Supervision
- Ryan Ellis – Case Worker
- Joanne McCormick – Case Aid

- Sherry Johnston-MacKinnon – Long Term Protection Worker
- Dr. Olive Charlotte Brown – Dentist
- G.R. – Respondent

[7] The following additional exhibits were filed at this time, namely:

- Exhibit 1 – Exhibit Book #1
- Exhibit 2 – Incident Report dated September 30, 2017
- Exhibit 3 – Incident Report dated January 7, 2018
- Exhibit 4 – Affidavit of Sherry MacKinnon, Plan of Care
- Exhibit 5 – Affidavit of Sherry MacKinnon dated January 12, 2018
- Exhibit 6 – Affidavit of Sherry MacKinnon, Plan of Care
- Exhibit 7 – Report of Dr. Charlotte Brown
- Exhibit 8 – Notice of Child Protection re W.
- Exhibit 9 – Proof of Heating Expenses.

[8] It is to be noted that the Respondent, K.C., is no longer participating in this hearing, and thus, this matter only concerns the Respondent G.R.

MINISTER'S EVIDENCE

[9] The matter returned to court on October 16, 2017 for first disposition. The Minister sought continuation of the Temporary Care Order, with G.R. to complete the following services:

- G.R. shall complete programming at the Cape Breton Transition House.
- G.R. will meet with staff from Enhanced Home Visiting Program, and follow any recommendations.
- Registered nurses from Bayshore Home Health will collect urine samples from G.R. for the purpose of drug testing.
- G.R. will attend programming at Family Place Resource.
- G.R. was referred to Dr. Reginald Landry in relation to a parental capacity assessment.

[10] It is stated at paragraph 3 of the Minister's Case Plan dated September 15, 2017 (Exhibit 4):

> The objective of the Agency's intervention is to provide services to remedy/alleviate the risk factors that placed the children in need of protective services.
>
> The goal of this Case Plan is for the Respondent to obtain the necessary knowledge and skills to adequately parent the children and to make the necessary parenting and lifestyle changes to meet the children's needs for security; stability, and nurturing moving forward.

[11] The Agency has identified the following issues of concern for G.R.:

- The impact of domestic violence
- Parent Education
- Parent Substance Abuse
- Parental Capacity.

[12] The Case Plan at this time was to work towards return of the children to the care of G.R.

[13] An Amended Plan of Care was filed on April 27, 2018, wherein the Minister requested that the four children be placed in the "permanent care" of the Minister (Exhibit 6).

[14] The Amended Case Plan states at paragraph 3(b):

> Currently G.R.:
>
> - Has refused to engage in programming through the Cape Breton Transition House. She also advised that she could do this on her own. It is unknown if she actually completed this program as she refused to sign a Release.
> - Has engaged in programming through Family Place Resource Center, but advised that they were no longer able to work with her as her access was on the weekend. G.R. was offered family support services, but she declined this service.
> - Drug testing was put in place, but G.R. did not engage. Has engaged in a Parental Capacity Assessment with Dr. Landry, but was selective with what she would actually complete.

And further at page 5 of said Case Plan, it is stated:

> Given the age of the children, M.; G.; I.; and K., the proceeding with respect to them must be completed by October 2018. Based on the Agency's involvement with G.R. thus far, it is the belief of the Agency that there is unlikely to be any changes with G.R. based on her performance thus far.
>
> G.R. has not actively engaged in the Case Plan.

[15] The final Disposition Review commenced on September 4, 2018. Dr. Landry testified to his report marked as Exhibit 1. Dr. Landry, at page 17 of his report, stipulated that:

> The assessment was complicated by the fact G.R. put up very definite boundaries about what she would disclose.

[16] And further:

> She (G.R.) felt there was no reason for the Department of Community Services – Child Welfare to be involved in her life.

[17] Dr. Landry concluded in his report on page 17:

> There is very little evidence that G.R. would present a risk to the children to the children when she is not in a relationship with an anti-social partner. G.R. would, however, potentially benefit from counselling or psychotherapy to deal with her feelings and relationships. This would not be a barrier to caring for her children, however, it would potentially help her establish more satisfying and supportive relationships, and help her deal with some of her difficulties dealing with interpersonal conflict.

[18] In his evidence Dr. Landry recommended G.R. take "long term" therapy and counselling. He noted that G.R. sees the world as a hostile and threatening place and that people are not to be trusted. Dr. Landry testified that G.R. is not in touch with how poorly she is functioning; referencing the visit with her father as an example of how G.R. believed it to be safe for her children; but it was "an irrational creation of fact in her mind".

[19] Dr. Landry, in reviewing his report, felt that under periods of stress, G.R. may "fall off the rails". He testified that having four children in her care, as opposed to two, would "destabilize her child care abilities".

[20] When asked the question, "can G.R. safely parent", do you believe she can safely parent without therapy? The doctor replied:

> I think without anything there would be a lot of risk. There would be more risk.

[21] In cross examination the following exchange occurred:

> Q. Okay, so basically you're giving a report…and now you're saying today you're not endorsing your report? Is that what you're saying?
>
> A. Well, I'm trying to clarify if what I said was unclear.
>
> Q. There was nothing unclear with what you're saying, you just basically waffled on your report. That's what you did…"This would not be a barrier to caring for her children; however, it would potentially help her establish more satisfying and supportive relationships, and help her deal with some of her difficulties dealing with interpersonal conflict"…that seems to be clear, unambiguous language, you would agree?
>
> A. Yes, but what I should have said more clearly even was that what I meant was if she was doing the psychotherapy that would not be a barrier to the kids coming back into her care
>
> ……..

And later:

> Q. Okay, so what factors did you consider? So you're evidence here today is there is little evidence that G.R. poses a risk to her children, is that correct?
>
> A.…Just refer back to the model that I referred to earlier, we would see G.R. as presenting with some long term mental health issues as a result of the adversity she experienced. We'll call it complex post traumatic stress, which contributed to some of the psychological distress that she's experienced, and some challenges she faced. Given that I don't see her at risk for hurting the children, and I would see, but those mental health issues we talked about could certainly have an impact on the kind of care she would deliver.

……

And later:

> Q. Okay, so is that a fair statement there, "there's little evidence that G.R. would present a risk to the children when she is not in a relationship with an anti-social partner?
>
> A. Yes, however, and this is where I should have been clearer in that last paragraph when I brought up the issue of psychotherapy; that G.R. does have these mental health issues that have, you know, not been addressed, not maybe to any fault of her own; that should be addressed through psychotherapy.

[22] The Minister's evidence established that the:

Child M:

- 6 years old
- Is a wonderful child
- Intelligent and insightful
- Has met all developmental milestones
- Dental issues resolved – extractions
- A healthy child
- Adoption prospects are good

Child G:

- 4 years old
- Adored by all
- Has made substantial gains with speech delays

- Had dental surgery in June 2018 with seven extractions done
- Overall in general good health
- Adoption prospects are good

Child I:

- 2 years old
- Has speech and hearing issues
- Referred to specialist in October, 2018
- Generally meeting other milestones
- Adoption prospects are good

Child K:

- 2 years old
- May have hearing loss
- Humorous
- Playful
- Healthy
- Adoption prospects are good.

[23] G.R. conflicted with the Minister regarding access over a series of issues such as:

- Requirement that bathroom door be left open so the Worker could hear what conversation she was having with the child.

- The way the twins were dressed by the foster parents.
- The proper provision of car seats.
- Food chosen by G.R.
- G.R. would contradict the Minister's direction on proper food and drink during access visits.
- Access was suspended from October 2017 to December 2017 due to G.R. not being compliant with direction.
- G.R. overall interacted with the children appropriately, and never showed aggression towards the children.
- G.R. was very safety conscious with the children.

[24] As stated by Case Aid Joanne McCormick:

> She will parent as she sees.

[25] The evidence further established that G.R.:

- Did not engage with the drug testing ordered by the court.
- Declined Family Support Services which dealt with healthy food, healthy relationships, and general parenting.
- G.R. had continued contact with K.C. which violated the Court Order.
- G.R. refused to acknowledge her pregnancy in April 2018 (alert placed on system)
- G.R. refused DNA testing.
- G.R. advised workers that she had no alcohol or drug issues, and thus refused services.

- G.R. has not received extensive counselling.

RESPONDENT'S EVIDENCE

[26] G.R. testified her daughter, M., was returned to her care on January 23, 2014. That at that time she had completed services of domestic violence at Transition House; urinalysis was negative except for trace amounts of marijuana, and was generally compliant with the requests of the Minister.

[27] G.R. has a duplex home with four bedrooms, and always had sufficient money for the children's needs. She reported she ran out of oil once in March 2017 when the children were taken into care.

[28] G.R. testified she looked after all the children's medical and dental needs, including hearing and speech referrals for G.

[29] G.R. took issue that she had any responsibility for G.'s dental issues, stating that she was consistent with good dental hygiene practice up to the time that the children were taken from her care in March 2017.

[30] G.R. insists that G.'s dental issues arose after he was taken into care.

[31] Dr. Brown testified that G. had no cavities as of August 2016, and that in her opinion G.'s issues started about 1.5 to 2 years prior to June 22, 2018 when he teeth were extracted.

[32] Regarding G.R.'s trip to Halifax to visit her father Ms. R. testified:

> I agree I put my children in harm's way.

[33] G.R.'s reasons for not engaging in services are as follows:

> I've been to groups already between 2006-2014 covering the topics of nutrition; child development; discipline; parenting style; being positive and happy.

[34] G.R. has since had another child W. born July *, 2018, who is the subject of another proceeding before this court. Exhibit 8 can be referenced in this regard.

[35] G.R. maintains she does not require the Minister's assistance to care for her now five children. She testified:

- I feel I don't need services
- I did it in the past

[36] When asked if K.C. is the father of W., G.R. replied:

- I don't know

[37] The Court asked G.R. whether or not she believes she has a better perspective on how to raise her children as compared the workers for the Minister, Ms. R. replied:

> I know how to parent my children and as far as I know
>
> Ms. MacKinnon is not a parent.

[38] The Court questioned G.R. about M.'s dental issues. She replied:

> It could be inherited. Calcium deficiency runs in our family.

MINISTER'S SUBMISSIONS

(a) Historical Background

- That the Minister has had a long history of involvement with the Respondent, dating back to 2002.

- That G.R. had five previous children, K.; H.; and M. who were placed in the permanent care of the Minister on September 4, 2008, given concerns of unfit living conditions and domestic violence.

- That in determining the children K. H. and M. should not be returned to G. R., Justice Forgeron relied upon Dr. Landry's assessment of the parents having "long term psychological issues that will complicate their abilities to

have nurturing relationships with the children in which they were able to invest emotional energy, and set proper limits" (Exhibit Book 1, Tab B, page 26).

- G.R.'s fourth child L. was taken into care shortly after his birth in February 2009. The expressed concerns of the Minister at that time were domestic violence and unfit living conditions.

- The child L. was placed in the permanent care of the Minister in June 2010 (Exhibit 8, Tab A, paragraphs 19 to 23).

- A fifth child, M. was taken into care at birth on May 24, 2010. By decision of Justice T. Forgeron in February 2011, the child M. was placed in the permanent care of the Minister (Exhibit 2, Tab 1, pages 5 to 8).

- That G.R.'s sixth child, M., and subject to this proceeding, was born July *, 2012 and taken into care at birth due to concerns related to domestic violence, unfit living conditions, and substance abuse.

- That the Minister's application for permanent care of the child M. was dismissed by Associate Chief Justice L. O'Neil in January 2014.

- That Associate Chief Justice O'Neil ruled that G.R. and K.C. were no longer a couple and found as a result there was no further risk to the child, M., who was returned to G.R.

- G.R.'s seventh child G. was born in August 2014. The Minister became involved again placing both children G. and M.E. under a Supervision Order, remaining in the care of G.R.

- G.R had her twin children, K. and I. in May 2016.

- Although the Minister had concerns, G.R. denied having any contact with K.C., the biological father of all nine children, and the file was closed in August 2016.

- Referral information was received in February 2017 that G.R. had taken her four children, M, G., K. and I. to visit and live with her father in Halifax.

- G.R.'s father is a registered child sex offender, and the living conditions for the children were deemed unacceptable by the Minister in Halifax (Exhibit 5, paragraphs 96 to 136).

- G.R. returned to Cape Breton, at which time the local child welfare authority found G.R.'s home to be unclean with no heat. The children were sleeping

with G.R. on a mattress in the living room; the twins sleeping together in a playpen. (Exhibit 8, paragraphs 137 to 245).

- At this time G.R. had an outstanding warrant out for her arrest (breach of probation) (Exhibit 5, paragraphs 234-235).

- The four children, M.G., K. and I. were thus taken into care by the Minister.

- At the Protection Hearing the Court found that the four children were at risk, and made a finding under s. 22(2)(b) of the Children and Family Services Act.

- G.R. stated under oath that she would cooperate with the Minister and engage in services.

- Following the Protection Hearing G.R. refused services.

- In late 2017 G.R. made a number of allegations about M.'s foster father.

- M. was temporarily removed from the foster home until the matter was investigated. None of the allegations were substantiated.

- The Minster then determined G.R. would not be left alone with M., in circumstances where the access worker could not observe.

- G.R. objected to not being allowed to take the children to the bathroom and close the door.
- Other options were discussed with G.R., all of which were rejected by her.
- Access was thus put on hold from October 10, 2017 to December 17, 2017.
- Access was again briefly suspended in January 2018 for the same reasons.
- Drug testing was refused by G.R.
- In March 2018 the Minister determined it would seek permanent care of the four children.
- In April 2018 Minister workers were concerned G.R. was again pregnant.
- G.R. denied being pregnant.
- The Minister placed an alert at the hospital in the event G.R. delivered.
- G.R. was again charged with breach of probation in May 2018.
- In July 2018 G.R. gave birth to her tenth child, W. The child was taken into care at birth.

- The Minister believed K.C. was the father. GR. denied same, and at hearing said she did not know who the father was.

MINISTER'S SUBMISSIONS

(b) Evidence

- Historically G.R. had admitted to drinking. She did not remember events regarding the conception of I. and K.

- During the proceeding G.R. denied the allegations of K.C. that she was drinking.

- G.R. refused to take part in urinalysis testing despite being ordered by the court.

- G.R. has a long history of domestic violence.

- G.R. minimized the domestic violence in her relationship with K.C., but did admit it took place.

- G.R. admitted that her father was violent toward her mother in her childhood, and that her mother was emotionally abusive to her.

- G.R. put her mother forward as a placement for the children when she was arrested in Halifax visiting her father in February 2017.

- This placement was declined by the Minister.

- G.R. has engaged in no services to alleviate the risk of exposing the children to their grandparents.

- G.R.'s position is that she has had all the services she needs, and does not require any further services from the Minister.

- This position is unacceptable to the Minister.

- G.R. moved her children into the apartment of her father who sexually assaulted her when she was a child. He also impregnated her sister.

- G.R.'s father was criminally convicted and served prison time.

- G.R's rationale for visiting her father was that she wanted to make memories with her father who was dying.

- G.R. acknowledged introducing her father to the children was a mistake, and it would not happen again. G.R. testified she now recognized the risk of harm to which she subjected her children.

- At the time the children were taken into care the condition of the home was unfit.

- G.R. minimized the state of the home, however the Minister's evidence would suggest otherwise (Exhibit 7 – photos).

- The condition of the home demonstrated a poor level of organization and structure for the children living in the home prior to her departure for Halifax.

- There were no bedrooms set up for the children. Everyone was sleeping in the main downstairs room because G.R. did not have heat.

- G.R. complained about being overwhelmed and having no support network following the birth of the twins.

- G.R. did not reach out to the Minister which could have provided family support to assist Ms. R. in establishing order, routine, and structure.

- G.R. should have been aware of these supports, given her history with the Minister.

- Instead G.R. chose to go live with her father.

- The Minister is of the view that the children's dental and medical needs were not being adequately addressed by G.R.

- Evidence from Dr. Brown indicated that the condition of the teeth of G., who had several teeth removed in June 2018, was cause by neglect to basic oral hygiene 1.5 to 2 years earlier.

- G.R. denies being neglectful of G.'s dental hygiene, and alleges the problem originated while G. was in the Minister's care.

- The Minister references the evidence that M. also had nine teeth removed in October 2016.

- G.R. suggests these dental issues may be caused by a calcium deficiency. The Minister submits there is no evidence to support such a conclusion.

- The only credible explanation for M. and G.'s dental issues is a complete lack of oral hygiene while in G.R.'s care.

- All the risks in relation to G.R's can be traced to poor decision making, poor assessment of risk, and poor impulse control.

- The Minister submits that the parental capacity assessment of Dr. Landry was compromised by G.R.'s level of defensiveness and level of emotional distress.

- Dr. Landry's findings demonstrate how little insight G.R. has into how she is functioning and how little responsibility she accepts for the decisions that led to her children being taken into care.

- Dr. Landry described G.R.'s profile as a pattern of chronic psychological maladjustment which is at the core of all the ways in which G.R. places her children at risk, and her resistance to make changes.

- G.R.'s behavioral issues cannot be changed with medication or support. It requires psychological intervention to alter it.

- G.R. requires dialectical behavior therapy which deals with identifying and changing ongoing patterns of thinking.

- There is no quick fix and G.R. has to be willing to engage.

- Overall the psychological tests administered by Dr. Landry showed lack of personal insight, and describes an individual who is narcissistic, self-

indulgent, suspicious, indulgent, immature and manipulative, with a grandiose conception of her abilities and anti-social beliefs and behaviour.

- The Minister submits G.R. has consistently resisted change and remains to do so. Her unaddressed mental health problems, and the impact on G.R. functioning as represented in her chaotic lifestyle represent a risk to her children.

- The statutory time available has been exceeded with regard to the children M., G. K. and I. No services have been engaged; the risk has not been alleviated.

- The necessary change has not occurred, and there is no remaining time for it to occur.

- The child M. spent the first 17 months of her life in care, then another 10 months subject to a Supervision Order; then another 19 months in care in relation to this proceeding.

- G. has been in care for more than 19 months, and subject to a child protection proceeding for more than 29 months.

- The twins I. and K. are 28 months old, and they have been in care for all but 8 months of their lives.

- The best interests of these children require an Order that they be placed in the permanent care of the Minister with a plan for adoption.

- It is time for these children to have the stability of a home free from substantial risk and Minister's intervention.

- In relation to the child W., the Minister requests a protection finding under ss. 22(2)b) and (ja), with the children W. remaining in the care and custody of the Minister.

RESPONDENT'S SUBMISSIONS

[39] The Respondent, R.C. submissions are as follows:

- It is acknowledged that a Respondent must engage in services to eliminate the risk of harm. The Minister argues that because G.R. did not engage in these services set out in the Plan of Care, the children remain in need of protective services, and the children should be placed in Permanent Care and Custody. G.R. respectfully disagrees.

- It is submitted that two of the services that the Minister wanted G.R. to engage in the Plan of Care; Home Enhanced Visiting and Family Place Resource Centre; G.R. was already participating in. G.R. participated in the Parental Capacity Assessment as requested by the Minister.

- It is submitted that there must be clear, convincing and cogent evidence that there would be a substantial risk of harm to the children at present due to present day issues of domestic violence and substance abuse.

- It was not unreasonable for G.R. to refuse to engage in programming through Transition House or participate in urinalysis. G.R. engaged in programming through Transition House and participated in urinalysis in the past.

- The Court sought an expert opinion to assist in resolving the issues germane to the Permanent Care Hearing; whether the children are in need of protective services and the best interests of the children. The Court expected an objective, impartial expert report from Dr. Landry containing his opinions and conclusions relevant to the outstanding issues.

- It is submitted that contrary to the view of the Minister, Dr. Landry delivered such a report. It is submitted that the Minister's argument that Dr. Landry's

report is deficient, and has been undermined on cross examination, is without merit.

- It is submitted that Dr. Landry's opinions and conclusions are amply supported by the contents of the Assessment. The result was that G.R. was at a low risk of physical abusing or harming a child.

- It is submitted that the Minister is asking the court to draw an inference that the children would be "subject to neglect, emotional abuse or other unspecified risk "if they were placed back in the care of G.R.". It is further submitted that there must be an evidentiary foundation for a court to draw an inference.

- There is no evidence that the children would suffer emotional harm if they were returned to G.R. It is submitted that the following passage from Dr. Landry's Report under the heading Parental Affective Responses (Page 14) negates the conclusion that the children would suffer emotional harm or psychological harm if returned to the care of G.R:

> Parental affective responses are important because they form a critical part of the child's environment. Typically, children are exposed to a range of affective responses, but an overrepresentation of particular responses such as anger or depression can affect the child's attachment and acquisition of interpersonal skills. As noted above, G.R.'s mood was very positive when she was with the children. She noted no recent deterioration in her mood that the

> some dysphoria associated with the children being taken into care and then the visits being suspended. During the access visit, G.R. manifested a great deal of positive affect with the children. This was reported to be very consistent by access facilitators who noted that she was consistently positive with the kids. This was consistent with G.R.'s discussions with the undersigned where she was clearly and very attached to them.

- It is submitted that if the children are returned to the care of G.R., she will ensure that the children's immunizations are up to date.

- It is submitted that the immunizations, which may have been a risk factor, is not in and of itself, justification for a finding that the children remain in need of protective services.

- The Minister argues that G.R. neglected G.'s oral hygiene, resulting in the removal of teeth. G.R. testified that G. brushed his teeth regularly. She noted that G. was sent by Dr. Charlotte Brown in August, 2016. There were no issues with G.'s teeth at that time. It is submitted that the problems with G.'s teeth originated when he was in the care of the Minister.

- It is submitted that given the results of this checkup, it is more probable, than not, that the serious dental decay did not begin in June, 2016.

- It is submitted that it is equally probable that the dental decay happened between March 22, 2017 and June, 2018 than it is that the decay occurred between June, 2016 and March 22, 2017.

- It is submitted that the Minister has not proven, on a balance of probabilities, that G.R. was the cause of the serious dental decay suffered by G.

- The evidence discloses that G.R. has been maintaining a clean, safe and secure residence for her children.

- It is submitted that findings made by Dr. Landry make it clear that G.R. has no mental health problems or substance abuse problems that would pose a risk of harm to her children or would adversely impact upon her ability to appropriately parent her children.

- It is submitted that if G.R. had a substance abuse use or substance abuse disorder, she would not have attended access on a regular basis. She would not have spent her money on healthy foods and snacks for the children, but rather on feeding her substance use or abuse problem.

- The Minister relies upon two cases to support its position that G.R. has mental health problems and substance abuse problems that pose a risk to her children. It is submitted that both cases are distinguishable from this case.

- In **K.B. v. Nova Scotia (Community Services)** 2013 NSCA 32, the Respondent was diagnosed with Borderline Personality Disorder and a

substance abuse problem. In contrast, G.R. has not been diagnosed with a mental health disorder. G.R. does not have a substance abuse problem.

- In **Nova Scotia (Community Services) v. E.U.** 2015 NSSC 4, the Respondent mother had a whole host of mental health issues. The evidence of Dr. Neil Christians was that E.U. "has significant undiagnosed and untreated psychiatric conditions". The Court in E.U. concluded that the mental health issues had not been addressed, and it would be 3 to 6 months to address the concerns through medication. In this case, there is no evidence that G.R. has undiagnosed and untreated psychiatric conditions that pose a risk to her children.

- It is submitted that the Minister has not proven, on a balance of probabilities, that G.R. has a substance use or substance abuse disorder that poses a risk to her children.

- It is submitted that the Minister has not proven, on a balance of probabilities, that G.R. has mental health issues that pose a risk to her children.

- It is submitted that the best indicator of whether programming had eliminated the risk of harm posed by family (domestic) violence is whether G.R. has been involved in a relationship with a violent partner since the

programming is complete. The evidence is that G.R. has not been involved in any such a relationship, including a relationship with K.C. At page 17 of his Assessment, Dr. Landry states:

> There is little evidence that G.R. would present a risk to the children if she is not in a relationship with an anti-social partner.

- It is submitted that the Minister has not proven, on a balance of probabilities, that family (domestic) violence would pose a substantial risk of harm to the children if they were returned to the care of their mother.

- It is acknowledged that G.R. did take her children to Halifax to visit her ill father, a convicted sex offender. It is submitted that the Court should find, on a balance of probabilities that G.R. would never take her children around her father again. It is further submitted that the Court should conclude, on a balance of probabilities, that there would be no risk of sexual harm to the children if they were returned to the care of G.R.

- It is submitted that Dr. Landry concluded that G.R. did not need to engage in services before she could safely and without risk, care for her children. The Doctor states at page 17 of his Assessment:

> G.R. would, however, potentially benefit from counseling or psychotherapy to deal with her feelings and relationships. This would not be a barrier to caring for her children.

- It is submitted that Dr. Landry's "flip flop" that occurred on cross examination, did not constitute a qualification of his opinion but rather a reckless disregard of the truth. His findings and conclusion in the assessment are clear and unambiguous.

- It is submitted that this evidence together with all other evidence establishes, on a balance of probabilities, that the children are not children in need of protective services.

- It is submitted that based upon the evidence of G.R., the information of the collateral contacts, and the finding and conclusions of Dr. Landry on G.R. as a parent, it would be in the best interests of the children to be returned to the care and custody of their mother.

- The Respondent, G.R., seeks the following relief:

  (i) An Order dismissing the Minister's Application for Permanent Care and Custody;

  (ii) An Order returning the five children to the care and custody of G.R. forthwith.

LAW

[40] In **F.H. v. McDougall**, 2008 SCC 53, the trial judge stated that in cases involving serious allegations and grave consequences, a civil standard of proof "commensurate with the occasion" must be applied. The Supreme Court of Canada overturned this decision, holding that there is one standard of proof in civil cases, and that is proof upon the balance of probabilities. It is not heightened or raised by the nature of the proceeding.

[41] At paragraphs 40, 45 and 46 of **F.H.** the Court said:

> [40] Like the House of Lords, I think it is time to say, once and for all in Canada, that there is only one civil standard of proof at common law and that is proof on a balance of probabilities. Of course, context is all important and a judge should not be unmindful, where appropriate, of inherent probabilities or improbabilities or the seriousness of the allegations or consequences. However, these considerations do not change the standard of proof. I am of the respectful opinion that the alternatives I have listed above be rejected for the reasons that follow:
>
> [45] To suggest that depending upon the seriousness, the evidence in the civil case must be scrutinized with greater care implies that in less serious cases the evidence need not be scrutinized with such care. I think it is inappropriate to say that there are legally recognized different levels of scrutiny of the evidence depending upon the seriousness of the case. There is only one legal rule and that is in all cases, evidence must be scrutinized with care by the trial judge.
>
> [46] Similarly, evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency. In serious cases, like the present, judges may be faced with evidence of events that are alleged to have occurred many years before, where there is little other evidence than that of the plaintiff and defendant. As difficult as the task may be the judge must make a decision.

> If a responsible judge finds for the plaintiff, it must be accepted that the evidence was sufficiently clear, convincing and cogent to that judge that the plaintiff satisfied the balance of probabilities test.

[42] As noted by the Court of Appeal in **M.J.B. v. Family and Children's Services of Kings County** 2008, NSCA No. 64 at paragraph 77:

> [77] The Act defines "substantial risk" to mean a real chance of danger that is apparent on the evidence (s.22(1)). In the context here, it is the real chance of sexual abuse that must be proved to the civil standard. That future sexual abuse will actually occur need not be established on a balance of probabilities. (*B.S. v. British Columbia (Director of Child, Family and Community Services)* (1998), 160 D.L.R. (4th) 264 [1998] B.C.J. No. 1085 (Q.L.) (C.A.) at paras 26 to 30.

[43] The Supreme Court of Canada set out the test to be applied on statutory review hearings in child protection proceedings in the **Catholic Children's Aid Society of Metropolitan Toronto v. M.C.** [1994] S.C.J. No. 37, where the Court held that at a status review hearing, it is not the court's function to retry to original protection finding, but rather, the court must determine whether the child continues to be in need of protective services. Writing for the majority, L'Heureux-Dube, J. stated as follows, starting at paragraph 35:

> [35] It is clear that it is not the function of the status review hearing to retry to original need for protection order. The order is set in time and it must be assumed that it has been properly made at the time. In fact, it has been executed and the child has been taken into protection by the respondent society. The question to be evaluated by the courts on status review is whether there is a need for a continued order for protection.
>
> [36] The question as to whether the grounds which prompted the original order still exist and whether the child continues to be in need

> of state protection must be canvassed at the status review hearing. Since the Act provides for such review, it cannot have been its intention that such a hearing is simply a rubber stamp of the original decision. Equal competition between parents and the Children's Aid Society is not supported by construction of the Ontario legislation. Essentially, the fact that the Act has as one of its objectives the preservation of the autonomy and integrity of the family unit and that the child protection services should operate in the least restrictive and disruptive manner, while at the same time recognizing the paramount objective of protecting the best interests of children, leads me to believe that consideration for integrity of the family unit and the continuing need of protection of a child must be undertaken.
>
> [37] The examination that must be undertaken on a status review is a two-fold examination. The first one is concerned with whether the child continues to be in need of protection and, as a consequence, requires a court order for his or her protection. The second consideration is of the best interests of the child, an important and, in the final analysis, a determining element of the decision as to the need of protection. The need for continued protection may arise from the existence or absence of the circumstances that triggered the first order for protection, or from circumstances which have arisen since that time.

[44] In reaching a decision regarding the future care of the child, this Court must be guided by the child's best interests. Section 2(2) of the *Children and Family Services Act* provides:

> 2(2) In all proceedings and matters pursuant to this Act, the paramount consideration is the best interests of the child.

[45] Factors to be considered when making a decision in a child's best interests are enumerated in s. 3(2) of the *Act.*

> 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 child's development of a positive relationship with a parent or guardian and a secure place as a member of a family;

(b) The child's relationship with relatives;

(c) The importance of continuity in the child's care and the possible effect on the child of the disruption of that continuity;

(d) The bonding that exists between the child and the child's parent or guardian;

(e) The child's physical, mental, and emotional level of development;

(f) The child's physical, mental, and emotional needs, and the appropriate care or treatment to meet those needs;

(g) The child's cultural, racial, and linguistic heritage;

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

The merits of a plan for the child's care proposed by the 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;

(i) The child's views and wishes, if they can be reasonably ascertained;

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

(k) 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;

(l) The degree of risk, if any, that justified the finding that the child is in

need of protective services;

(m) Any other relevant circumstances.

[46] Section 45 of the *Children and Family Services Act* sets out the total duration of all disposition orders. Section 45(2)(a) provides:

> 45(2) Where the court has made an order for temporary care and custody, the total period of all disposition orders, including supervision orders, shall not exceed:
>
> (a) Where the child was under fourteen years of age at the time of the application commencing the proceedings, twelve months;

[47] Upon the expiration of the maximum time limit prescribed by s. 45, there are only two possible dispositions orders available to the court: dismissal of the proceedings, or an order for permanent care and custody.

[48] As noted by the **Nova Scotia Court of Appeal in G.S. v. Nova Scotia (Minister of Community Services** [2006] N.S.J. No. 52 (C.A.) at paragraph 20:

> If the children are still in need of protective services, the matter cannot be dismissed.

[49] The principle behind the statutory time limits can be found in the preamble of the *Children and Family Services Act*, which states:

> AND WHEREAS children have a sense of time that is different from that of adults and services provided pursuant to this Act and proceedings taken pursuant to it must respect the child's sense of time.

[50] Commenting on this principle, the Court in **B.M. v. Children's Aid Society of Cape Breton-Victoria** [1998] N.S.J. No. 288 (C.A.) stated at paragraph 37:

> [37] The strict time limits for proceedings to be taken under the Act are undoubtedly designed to respect the child's sense of time and to avoid protracted litigation becoming a dominant or central event in a child's upbringing.

[51] Prior to the Court granting an order for removal of a child from the custody of a parent, the requirements of s. 42(2)(3) and (4) of the *Children and Family Services Act* must be met.

[52] Section 42(2) provides:

> 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 failed;
>
> (b) have been refused by the parent or guardian; or
>
> (c) would be inadequate to protect the child.

[53] The obligation to provide services is not without limit. In **Children's Aid Society of Shelburne County v. S.L.S.** [2001] N.S.J. No. 138 (C.A.), the Court of Appeal held at paragraphs 35-37:

> [35] The trial judge was well aware of this issue which the appellant now raises. It was put to the trial judge, but trial counsel, in terms of giving the appellant "another chance". The trial judge noted in his decision that "any further services would be inadequate to protect the child."
>
> [36] In any event the obligation of the Agency to provide integrated services to the appellant is not unlimited. Section 31(1) of the Act obligates the Agency to take "reasonable matters" in this regard.
>
> [37] I agree with the submission of counsel for the Agency that the main limitation on the provision of services in this case was the appellant herself.

[54] Section 42(3) of the *Children and Family Services Act* provides:

> 42(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), of (f) of subsection (1), consider whether it is possible to place the child with a relative, neighbour, or other member of the child's community or extended family pursuant to clause (c) of subsection (1), with the consent of the relative or other person.

[55] At the end of the time limit, the Court may consider existing relationships with family and the availability of family alternatives; but not because s. 42(3) requires it; rather, this is just one aspect of the child's best interest as defined under s. 3(2) of the Act, which must be weighed along with other factors to determine the child's best interest. There is an onus on a potential family placement to put before the Court a reasonable plan for the care of the child **Children's Aid Society of Halifax v. T.B.**, [2001] N.S.J. No. 225 (C.A.)).

[56] Section 42(4) of the *Children and Family Services Act* provides the court with the authority to make a permanent care order, if the circumstances are unlikely to change within the reasonably foreseeable time. Section 42(4) states as follows:

> 42(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.

[57] Section 46(6) provides of the Act provides as follows:

> 46(6) Where the court reviews an order for temporary care and custody, the court may make a further order for temporary care and custody unless the court is satisfied that the circumstances justifying the earlier order for temporary care and custody are unlikely to change within a reasonably foreseeable time not exceeding the remainder of the applicable time period pursuant to subsection (1) of Section 45, so that the child can be returned to the parent or guardian.

[58] Courts in Nova Scotia have established that evidence of past parenting is a relevant consideration in determining the probability of an event reoccurring. In **Nova Scotia (Minister of Community Services) v. G.R**., 2011 NSCC 88, this Honourable Court summarized the law in Nova Scotia with respect to past parenting, stating as follows at paragraph 22:

> [22] Past parenting history is also relevant. Past parenting history may be used in assessing present circumstances. An examination of past circumstances helps the court determine the probability of the event reoccurring. The court is concerned with probabilities, not possibilities. Therefore, where past history aids in the determination of future probabilities, it is admissible, germane, and relevant. *In Nova Scotia (Minister of Community Services) v. Z.(S.)* (1999), 18 N.S.R. (2d) 99 (C.A.) Chipman, J.A., confirmed the relevance of past history at para 13 wherein he states:
>
> > 13. I am unable to conclude that the trial judge placed undue emphasis on the applicant's past parenting. It was, of course, the primary evidence on which he would be entitled to rely in judging the appellant's ability to parent B.Z. In *Children's Aid Society of Winnipeg (City) v. F.* (1978), J.R.F.L. 2(d) 46 (Man. Prov. Ct.) at p. 51, Carr, Prov. J., (as he then was), said at p. 51:
> >
> > …in deciding whether a child's environment is injurious to himself, whether the parents are competent, whether a child's physical or mental health is endangered, surely evidence of past experience is invaluable to the court in assessing the present situation. But for the

> admissibility of this type of evidence children still in the custody of chronic child abusers may be beyond the protection of the court…

[59] Under the current *Children and Family Services Act*, the court has no authority to grant access under an Order for Permanent Care and Custody. Any access under an Order for Permanent Care and Custody is at the sole discretion of the Agency. Specifically, s. 47 of the Act provides as follows:

> 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 child's care and custody.
>
> 47(2) Where the court makes an order for permanent care and custody, the court shall not make any order for access by a parent, guardian or other person.
>
> 47(3) Where a child is the subject of an order for permanent care and custody and the agency considers it to be in the child's best interests, the agency shall, where possible, facilitate communication or contact between the child and
>
> (a) a relative of the child; or
>
> (b) a person who has an established relationship with the child.

[60] In **Baker-Warren v. Denault** 2009 NSSC 59, which was cited with approval by the Court of Appeal in **Hurst v. Gill**, 2011 NSCA 100, the Court reviewed factors to be considered when making credibility determinations. Justice Forgeron stated at paragraphs 18 to 20:

> [18] For the benefit of the parties, I will review some of the factors which I have considered when making credibility determinations. It is important to note, however, that credibility assessment is not a

science. It is not always possible to "articulate with precision the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events." R. v. Gagnon, 2006 SCC 17 (S.C.C.), para. 20. I further note that "assessing credibility is a difficult and delicate matter that does not always lend itself to precise and complete verbalization." R. v. M. (R.E.), 2008 SCC 51 (S.C.C.), para. 49.

[19] With these caveats in mind, the following are some of the factors which were balanced when the court assessed credibility:

> What were the inconsistencies and weaknesses in the witnesses evidence, which include internal inconsistencies, prior inconsistent statements, inconsistencies between witness' testimony, and documentary evidence, and the testimony of other witnesses:
>
> Novak Estate, Rc, 2008 NSSC 283 (N.S.S.C.);
>
> Did the witness have an interest in the outcome or was he/she personally connected to either party;
>
> a) Did the witness have a motive to deceive;
>
> b) Did the witness have the ability to observe the factual matters about which he/she testified;
>
> c) Did the witness have sufficient power of recollection to provide the court with an accurate account;
>
> d) Is the testimony in harmony with the preponderance of probabilities which a practical or informed person would find
>
> reasonable given the particular place and conditions. Faryna v. Chorney [1952] 2 D.L.R. 354;
>
> e) Was there an internal consistency and logical flow to the evidence;
>
> f) Was the evidence provided in a candid and straight forward manner, or was the witness evasive, strategic, hesitant, or biased;
>
> and

> g) Where appropriate, was the witness capable of making an admission against interest, or was the witness self-serving?
>
> [20] I have placed little weight on the demeanor of the witness because demeanor is often not a good indicator of credibility: R. v. Norman (1993), 16 O.R. (3d) 295 (Ont. C.A.) at para. 55. In addition, I have adopted the following rule, succinctly paraphrased by Warner, J. In Novak Estate, Re, supra, at para 37:
>
> > There is no principle of law that requires a trier of fact to believe or disbelieve a witness's testimony in its entirety. On the contrary, a trier may believe none, part, or all of the witness's evidence, and may attach different weight to different parts of a witness's evidence. (See R. v. D.R. [1966] 2 S.C.R. 291 at 93 and R. v. J.H., (supra).

[61] In **Jacques Home Town Dry Cleaners v. Nova Scotia (Attorney General),** 2013 NSCA 4, the Court of Appeal commented on the use of inferences and their importance in the decision making process. Saunders, J.A., stated as follows at paragraph 31:

> [31] An inference may be described as a conclusion that is logical. An inference is not a hunch. A hunch is little more than a guess, a 50/50 chance at best, that may turn out to be right or wrong, once all the facts are brought to light. Whereas an inference is a conclusion reached when the probability of its likelihood is confirmed by surrounding, established facts. When engaged in the process of reasoning we are often called upon to draw an inference which acts as a kind or cognitive tool or buckle used to cinch together two potentially related, but still separated propositions. In the context of judicial decision-making, drawing an inference is the intellectual process by which we assimilate and test the evidence in order to satisfy ourselves that the link between the two propositions is strong enough to establish the probability of the ultimate conclusion. We do that based on our powers of observation, life's experience and common sense. In matters such as this, reasonableness is the gauge by which we evaluate the strength of the conclusion reached through our reasoning.

ANALYSIS/DECISION

[62] The Respondent, G.R., has a significant history with the Minister. Of her ten children, five are the subject of two current and separate proceedings, and five have previously been placed in the permanent care of the Minister.

[63] It is G.R.'s perspective that she "has benefited from her previous involvement(s) with the Minister, including services, so that it would be safe to return her five children to her". G.R. refused or did not complete services subsequent to the Protection Hearing in this matter.

[64] The Court gave an extensive decision at the protection stage of this proceeding and stated as follows:

> The court nonetheless finds that further and additional services are required under the mandate of the Minister to address risk.

[65] G.R. stipulated under oath at the Protection Hearing that she would cooperate with the Minister's plan and complete services. The evidence in this regard is as follows:

> Questions by the Court:
>
> Q….are you prepared to take services and work with the Agency?
>
> A. Yeah, um, yeah.

> Q. Well you roll your eyes and kind of go yeah?
>
> A. Yeah, I will. I am just picturing them not being at home.
>
> Q. Like, this is thing Ms. R., you know, I need to know that you know, that if I find that things aren't right now, the right time for the children to go back to you. I need to know that you will make a commitment to resolve the apparent deficiencies…
>
> A. Yeah, I will.
>
> And later:
>
> A. I will work with them, yeah. (Emphasis added)

[66] This Court subsequently concluded at the Protection Hearing as follows:

> The Court nonetheless finds that further and additional services are required under the mandate of the Minister to address risk.
>
> And further:
>
> …Ms. R. cannot be trusted to follow through with her commitments, the court, nonetheless, believes Ms. R. should have the opportunity to prove she can be trusted as a mother, but she must commit to the process for the return of the children to be an option. (emphasis added). Ms. R. must accept services that are offered and also cooperate with the Minister's Plan of Care. She must become less combative and less judgmental of the players and the process.

[67] It is the opinion of the Court that G.R. has failed to commit to the undertaking she made to this Court. G.R. has done so at her peril, and has severely disadvantaged her bid to have the children returned to her care because of her entrenched and combative attitude.

[68] G.R. has fought the Minister and the Court every step of the way. Her decision that she does not need any further services and that she has learned all that is required to properly parent her children is flawed. Her decision lacks insight into the protection concerns, and is not in the best interests of the children.

[69] G.R. has accepted that introducing her children to her father was a mistake and confirmed it would not happen again; but she still remains illusive regarding who the father of W. is, and has testified she did not know who the father is. This perplexing and evasive behavior is not new. G.R. has withheld this type of information before. It, thus, continues to be of great concern to the Court when assessing G.R.'s commitment to have the children returned to her care.

[70] The Court fails to understand what advantage G.R. hopes to gain by lying about her pregnancy and failure to disclose who is the baby's father. This speaks to Dr. Landry's evidence where he stated G.R. is "not in touch with how poorly she is functioning"; that "she can create irrational creation of fact in her mind".

[71] Dr. Landry testified at page 17 of his report:

> There is very little evidence that G.R. would present a risk to the children <u>when she is not in a relationship with an anti-social partner</u>. (Emphasis added)

[72] Justice O'Neil concluded at page 160, line 16 of Exhibit 1 (2014 permanent care hearing).

> I am satisfied that a substantial risk of harm to this child would exist if the parents are together. (Emphasis added)

[73] Justice Forgeron concluded in 2011 at paragraph 27 of her decision (Protection – Exhibit 2, Tab B, page 5:

> (a) G.R. lacks meaningful insight into the serious problems associated with violent relationships. G.R., despite past services, continues to minimize the abusive nature of the relationship which she had, and likely will have; with K.C. (emphasis added)….Given this lack of insight, M.E. remains at substantial risk of physical harm while in the care of her mother.
>
> (b) G.R.'s assertion that she and K.C. are no longer a couple after parting company in December 2010 is not credible, given G.R.'s past history, her lack of insight into domestic violence, her attempts to minimize the past violence and protect K.C. while giving evidence. G.R. continues to be heavily invested in her relationship with K.C., and will in all likelihood, resume the relationship in the future… (emphasis added)
>
> (c) G.R. lacks meaningful insight into the nature of the protection concerns. G.R. was unable to identify the changes that she had made in her lifestyle to ensure a safe environment for M.E. G.R. cannot make lasting lifestyle changes when she does not even recognize her problems. (emphasis added)
>
> This is underscored by G.R.'s testimony that she didn't need the anger management course, and is only taking the course to "show I did it".
>
> (g) … I find that G.R. will continue, on a balance of probabilities, to engage in poor parental decision making in the future, as she has done in the past. As a result, there is substantial risk, which is apparent on the evidence, that M.E. will suffer if returned to her care.

[74] It appears Justice Forgeron was quite correct in her prediction for the future of G.R. and K.C. G.R. has failed to correct her parenting deficiencies which were clearly a concern for Justice Forgeron in 2011, and still a concern for the Court today.

[75] The evidence is clear, convincing and cogent that K.C. is the father of M.; G.; K.; and I., the logical conclusion of fact is that K.C. is, on a balance of probabilities, the father of W. In the absence of direct evidence in this regard, the Court can and will make an inference that G.R. is still maintaining an "anti-social" relationship with K.C.

[76] If I am not correct in finding K.C. is the father of W., then there is, nonetheless, sufficient evidence to safely conclude, on a balance of probabilities, that G.R. is still maintaining "anti-social relationships" in the general sense. Her wilful failure to disclose the paternity of W. clearly supports this conclusion.

[77] Regarding the controversy about Dr. Landry's report, and evidence the Court accepts, Dr. Landry's evidence and his explanation/clarification regarding G.R.'s ability or inability to parent. Counsel for the Minister asked:

> Q: Can G.R. safely parent, do you believe she can safely parent without therapy?
>
> The doctor replied:

> A: I think without anything there would be a lot of risk. There would be more risk.
>
> And further during cross examination the doctor said:
>
> Given that I don't see her at risk of hurting the children, and I would see, but those mental health issues we talked about certainly would have an impact on the kind of care she would deliver.

[78] Dr. Landry's conclusion is further supported by this Court's finding that G.R. was maintaining an "anti-social" relationship sometime prior to the conception of W., be it with K.C. or some unknown person.

[79] I have reviewed and considered the evidence, together with the plan of the Minister, the plan of G.R., and the respective submissions of counsel. Although I may not have specifically commented on all of the evidence in this decision, I have nonetheless, considered the totality of the evidence in reaching this decision.

[80] I have applied the burden of proof to the Minister. There is only one standard of proof and this proof is on a balance of probabilities, a burden which must be discharged by the Minister.

[81] I have considered the applicable law and the legislative provisions of the *Children and Family Services Act*.

[82] According to the legislation, which I must follow, the Court has only two stark options available at this time:

(1) Order permanent care, or

(2) Dismiss the proceeding and return the children to the Respondent mother, G.R.

[83] There is no middle ground. As noted in **G.S. v. Nova Scotia (Minister of Community Services)** [2003] N.S.J. No. 52 (NSCA) at paragraph 20:

> If the children are still in need of protective services the matter cannot be dismissed.

[84] The law is also clear that should a trial judge conclude that the circumstances are unlikely to change, that the judge has no option but to order permanent care. **Nova Scotia (Minister of Community Services) v. L.L.P.** [2003] NSJ No. 1 (NSCA).

[85] The need for protection may arise from the existence or absence of the circumstances that triggered the first Order from protection, or from circumstances which have arisen since that time. **G.S. v. Nova Scotia (Minister of Community Services)** supra.

[86] It is not the Court's function to retry the original protection finding, but rather the Court must determine whether or not the child, S. continues to be in need of protective services.

[87] I have scrutinized the evidence with care. I am satisfied that the evidence of the Minister is sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. The contention that the Respondent, G.R. poses a substantial risk of harm or real chance of danger to her children has been proven to the Court's satisfaction on a balance of probabilities.

[88] I reject the plan put forth by G.R. Her plan does not address the short term and long term needs of M., G., K. and I. Some progress was made by G.R.; but the events of February 2017 and beyond clearly establish that G.R. has no meaningful insight into the child protection concerns described herein.

[89] G.R.'s decision to visit her father lacked insight and placed her children at risk. G.R. has expressed contrition for her actions; however past history suggests she cannot be trusted and her credibility is suspect.

[90] The Court does not intend to resolve who may be responsible for G.'s dental issues, suffice to say his sister M. had similar issues while in the care of G.R.

[91] The birth of W. in July 2018 confirms earlier fears that G.R. would reunite with the father of her previous nine children. G.R. was well aware that there was essentially a "zero tolerance" policy in effect with regard to her having a relationship with K.C. To have a tenth child with K.C. under these circumstances

is highly unconscionable and shows blatant and total disregard for the best interests of her children.

[92] Any suggestion that the father of W. is some person other than K.C. does not assist G.R. in her bid to have the children returned to her. Not to disclose the identity of the father, or participate in DNA testing, only establishes that G.R. attempted to manipulate the reality of her situation by being evasive and uncooperative. Such conduct cannot be condoned, nor be seen to be in the best interests of her children to any extent.

[93] G.R. testified that K.C. was out of her life. G.R. has not established a base of credibility upon which the Court can safely conclude that K.C. is completely out of her life. To this point, the history of the relationship with K.C. betrays G.R.'s evidence to the contrary. Justice Forgeron predicted this outcome in her decision. Since that time G.R. has had four, if not five, children fathered by K.C. G.R. has clearly not been listening to, nor understanding, the child protection concerns associated with K.C. Had G.R. accepted services, this concern had the potential to be addressed, but G.R. has chosen her path; a path which prohibits the safe return of the children to her.

[94] The Court finds that it is not safe to put G.R. in a child caring role at this time. The evidence is clear, convincing, and cogent that G.R. cannot be entrusted with her children M., G., K. and I. Past history and present events make it clear that it would be too dangerous to put G.R. in a child caring role at this time.

[95] The Court further concludes that the children M., G., K. and I. remain in need of protective services. The children cannot be returned to G.R. This matter, thus, cannot be dismissed.

[96] The outstanding child protection concerns remain unchanged. G.R. made no progress to address the child protection concerns since the protection stage of this proceedings. It seems this was her defined strategy; to resist and be non-compliant. The legislative timelines have been exhausted. Nothing more can be done to reliably address the child welfare concerns about the Respondent, G.R. The statutory requirements of S. 42(2); (3); and (4) have been met.

[97] The Court finds the Order requested by the Minister is the appropriate one, having considered the totality of the evidence and applicable law. The Court agrees with and accepts the Minister's submissions. It is in the best interest of M., G., K. and I. to be placed in the permanent care and custody of the Minister,

pursuant to s. 42(1)(f) and s. 47 of the *Act.* The circumstances justifying this conclusion are unlikely to change within a reasonable foreseeable time.

[98] An Order for permanent care in favour of the Minister will thus issue, with no provision for access.

[99] Order Accordingly,

Haley, J.