IN THE SUPREME COURT OF NOVA SCOTIA
**Citation:** Children's Aid Society of Halifax v. V. and F., 2004 NSSF 107

**Date:** 2004 11 26

**Docket:** CFSA-029575
**Registry:** Halifax

**Between:**

Children's Aid Society of Halifax

Applicant

v.

C.V. and L.F.

Respondents

Revised Decision: The text of the original decision has been revised to remove personal identifying information of the parties on November 13, 2008.

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 relative of the child."

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| **Judge:** | The Honourable Justice Deborah K. Smith |
| **Heard:** | September 7, 8, 9, 10,17, 23, 2004<br>October 14, 19, 20, 27, 28, 29, 2004<br>November 3, 16, 17 and 18, 2004, in Halifax, Nova Scotia |
| **Counsel:** | Elizabeth Whelton, for the Children's Aid Society<br>C.V. Self-represented |

L.F., Self-represented
Terrance Sheppard, Amicus curiae

By the Court:

[1] This matter involves a Review Hearing under s. 46 of the **Children and Family Services Act**. The parties to the application are the Children's Aid Society of Halifax, C.V. and L.F.. C.V. and L.F. are the parents of [...] month old M.C.F. who was born [in 2003].

## BACKGROUND AND FACTS

[2] The application before the Court has a long and involved history which I do not intend to repeat here. A review of the Court's previous decisions will provide an historical account of the facts surrounding this case. I will, however, provide a brief overview of the situation.

[3] On January 14th, 2004, the Children's Aid Society of Halifax applied for a finding that M.C.F. was a child in need of protective services pursuant to sections 22(2)(b) and (g) of the **Children and Family Services Act**. In addition, they were seeking a Supervision Order in relation to the said child and other relief as set out in the Protection Application.

[4] The matter first came before the Court on January 15th, 2004. Both of the Respondents had been personally served with Notice of the proceeding; however, C.V. did not attend Court that day.

[5] On January 15th, 2004, the Court found (for the purpose of section 39(3) of the **Children and Family Services Act**) that there were reasonable and probable grounds to believe that M.C.F. was a child in need of protective services. For reasons set out in the Court's initial decision, a Temporary Care and Custody Order was issued and the matter was then adjourned for the completion of the Interim Hearing.

[6] On that same day (January 15th, 2004), C.V. disappeared with M.C.F.. The evidence given during the course of the proceeding establishes that M.C.F.'s disappearance was orchestrated by L.F. and C.V. prior to the initial hearing taking place.

[7] 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.

[8] On March 22nd, 2004, the Court found that M.C.F. was a child in need of protective services as defined by s. 22(2)(g) of the **Children and Family Services Act**. In particular, it was held that the intentional disappearance of M.C.F., as orchestrated by her parents to avoid the child coming into the care of a child protection agency, placed the child in need of protective services.

[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.

[16] M.C.F. was then placed in the physical custody of the Children's Aid Society of Halifax. Following the standoff, she was taken to the I.W.K. Health Centre for assessment and observation. In a May, 2004 report prepared by Dr. D. Chowdhury, M.C.F. is described as a "playful, well looking baby who was happy and smiling." Dr. Chowdhury also described M.C.F. as a "well grown and well developed baby with no clinical signs of any illness at the present time." The doctor did find evidence of a cardiac murmur but suggested that it appeared to be an "innocent" murmur and suggested that if M.C.F. continued to have the murmur around one-year of age, she should be referred to a cardiologist for further evaluation.

[17] Dr. Chowdhury's report relating to M.C.F. was attached to the plan of care submitted by the Children's Aid Society of Halifax. During the course of this hearing, C.V. and L.F. objected to the Court relying on any hearsay evidence that was filed by the Children's Aid Society of Halifax. In response to that suggestion, Ms. Whelton advised the Court that any documents filed by her client that would be considered hearsay and would not be admitted under the business records exception to the hearsay rule were not being put before the Court to prove the truth of their content, but only to show that the statements were made. I allowed the admission of this evidence for that very limited purpose.

[18] Dr. Chowdhury's report is hearsay. Accordingly, I cannot rely on this report for the truth of its contents. Nevertheless, I am satisfied from the other evidence filed in this proceeding that M.C.F. was a healthy, happy and well developed baby at the time that she was placed in the physical care of the Children's Aid Society of Halifax in May of 2004.

[19] M.C.F. was released from the hospital on May 23rd, 2004, at which time she was placed in a foster home by the Children's Aid Society of Halifax. According to the case worker's notes, M.C.F. has been doing well while in foster care.

[20] Numerous criminal charges were laid against both C.V. and L.F. as a result of the standoff that took place at Street Name Changed in May of 2004. These charges include unlawful confinement of M.C.F. contrary to s. 279(2) of the **Criminal Code of Canada**; detaining and concealing M.C.F. in contravention of the custody provisions of a Custody Order contrary to s. 282(1)(a) of the **Criminal Code** and using a firearm while detaining and concealing M.C.F. in contravention of a Custody Order contrary to s.85(1)(a) of the **Criminal Code**. The criminal charges against both C.V. and L.F. have yet to be heard. Both of the Respondents are, of course, presumed to be innocent of these charges until such time as the criminal trial is completed.

[21] At the conclusion of the standoff in May, both C.V. and L.F. were taken into police custody and were then remanded to the Central Nova Scotia Correctional Facility.

[22] On May 31st, 2004, C.V. and L.F. appeared before me for the purpose of the initial Disposition Hearing. At the request of C.V., the matter was adjourned and was rescheduled to commence on June 7th, 2004. Neither C.V., nor L.F. appeared

in Court on June 7th, 2004 despite the fact that they were aware that the hearing had been rescheduled to that date and despite the fact that a Pick-Up Order had been issued for them. For reasons given by the Court on June 7th, 2004, the initial Disposition Hearing proceeded in their absence.

[23] On June 9th, 2004, I gave an oral decision in which I held that M.C.F. shall remain placed in the temporary care and custody of the Children's Aid Society of Halifax until further Order of the Court. I indicated that in light of the fact that both of the Respondents were then incarcerated, the Disposition Order would not include an access clause. I indicated that either of the Respondents were free to return to Court, upon the filing of a proper application, 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 transcript of my oral decision was personally served on both of the Respondents on June 30th, 2004.

[24] 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 at any time M.C.F. unless such contact was authorized by a Court of competent

jurisdiction. She was then released from the Central Nova Scotia Correctional facility.

[25] Since C.V.'s release she has written numerous letters to the Children's Aid Society of Halifax seeking access to her daughter, M.C.F.. Ms. Whelton, on behalf of the Children's Aid Society of Halifax, has responded to these letters, pointing out to C.V. that the terms of the Recognizance that she signed on July 8th, 2004 require C.V. to refrain from contacting or attempting to contact M.C.F. unless such contact is authorized by a Court of competent jurisdiction. In addition, Ms. Whelton advised C.V. that the Disposition Order (which was silent in relation to access) could be reviewed upon the application of any party and further, Ms. Whelton advised C.V. where she could file such an application. Despite C.V. having been given this information by Ms. Whelton, she did not apply to the Court during the summer of 2004 for access to M.C.F..

[26] On September 7th, 2004, the Court commenced this Disposition Review Hearing. The Hearing could not be completed before the expiry of my original Disposition Order and accordingly, pursuant to Civil Procedure Rule 69.12 (4), the

Court issued a further Disposition Order which was to remain in effect until my decision was rendered in relation to this hearing.

[27] Since the time of the initial Disposition Hearing, L.F. has undergone a Court ordered psychiatric assessment. 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. The assessment was undertaken in order to determine whether L.F. was fit to stand trial on the criminal charges and whether he suffered from a mental disorder so as to exempt him from criminal responsibility by virtue of s.16(1) of the **Criminal Code of Canada**.

[28] As a result of this assessment a report was prepared by Dr. Robert A. Pottle dated June 25th, 2004. This report is being relied on by the Children's Aid Society in this proceeding. During the course of this Review Hearing, Dr. Pottle was qualified by the Court as an expert entitled to give opinion evidence in the field of psychiatry.

[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.

[35] L.F. did not file an expert's report in response to Dr. Pottle's opinion, however, both he and C.V. thoroughly cross-examined Dr. Pottle.

[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."

**RELIEF REQUESTED**

[40] The Children's Aid Society of Halifax has asked for an Order pursuant to s.42(1)(d) of the **Children and Family Services Act** that the child, M.C.F. (born [in 2003]) remain in the temporary care and custody of the Children's Aid Society of Halifax. In addition, they are requesting an Order that the Respondents, C.V. and L.F., obtain 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. Further, the Children's Aid Society of Halifax is seeking an Order that they offer rehabilitative or supportive services to the Respondents as agreed upon between the parties as well as an Order with respect to rehabilitative or supportive services for M.C.F. as are deemed to be in her best interests.

[41] On September 8th, 2004 (after the Review Hearing began) C.V. filed a document with the Court entitled "Mothers Plan for Child's Care" (L.F. has not filed

a plan of care with the Court relating to M.C.F.). In this document, C.V. requests the following relief:

> "1) An order pursuant to S42(1)(a) of the CFSA, dismissing the matter or and that the child, M.C.F., born [in 2003] be returned to her mothers care or alternatively;
>
> 2) An order following S42(1)(b), S43(1)(a), and S45(2)(a) of the CFSA returning the child to the care of her mother subject to live-in service provider by the agency with a hearing returnable in one month's time to update and determine matters;
>
> 3) An order for the Children's Aid Society to pay for supportive services for the mother with Dr. Carol Pye in Halifax and as agreed upon by the parties."

[42] In addition, C.V. indicated that her brother and his wife, P.V. and K.V., have an interest in adopting M.C.F. in the event the child is not returned to C.V.. C.V. went on to state that she is also seeking:

> "4) An order pursuant to S42(3) of the CFSA placing M.C.F. in the temporary custody of her maternal uncle and aunt, P.V. and K.V. on consent by the parties until such time as an adoption can be finalised;
>
> 5) An order amending the Minister of Community Services into proceedings and following S67-68 of the CFSA respecting adoption to effect an order on consent and upon agreement that M.C.F. shall be adopted to her maternal uncle and aunt, P.V. and K.V.."

[43] In addition, on October 19th, 2004, C.V. filed an Application for Review and Notice of Hearing in which she indicated that the Respondents are seeking the following:

> "1. A writ of Habeas Corpus respecting their infant child, M.C.F., born [in 2003] following the **Liberty of the Subject Act**, C.253,R.S. 1989, **R. V. Miller** 1985 49 C.R. (3rd), the **Judicature Act** R.S. c.240, s.13:s.32(1), (2) and s.43(10),(11), and in **the best interest of the child** or alternatively;

2. An order pursuant to S42(1) of the **Children and Family Services Act** dismissing the matter returning M.C.F. to the care of her parents or alternatively;

3. An order following S42(1)(b), S43(1)(a), and S45(2)(a) of the **Children and Family Services Act** returning M.C.F. to the care of her mother with a live-in services provider/supervisor as determined and paid for by the Children's Aid Society and until such time as matters can be returned to the court for review and;

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 courts orders within this file."

In this document, C.V. indicates that both of the Respondents are seeking the relief stated above although the application is only signed by C.V..

[44] During the course of this proceeding, I advised the Respondents that the application for *habeas corpus* is not properly before the Court and that if they wish to pursue such an application they will have to file an Originating Notice (Application Inter-Parties) along with a supporting affidavit.

## STATUTORY CONSIDERATIONS/CASE LAW

[45] As indicated previously, the matter presently before the Court involves a Review Hearing under s.46 of the **Children and Family Services Act**. Sections 46 (4) and (5) of the said **Act** read as follows:

> **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.

[46] In the case of **Catholic Children's Aid Society of Metropolitan Toronto v. C.M., [1994] 2 S.C.R. 165** the Supreme Court of Canada stated the following at ¶ 35, 36 and 37 in relation to Review Hearings:

"The Test

It is clear that it is not the function of the status review hearing to retry the original need for protection order. That order is set in time and it must be assumed that it has been properly made at that 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 courts on status review is whether there is a need for a continued order for protection**. This is why I cannot agree with the respondent society and the Official Guardian that, once a finding of the need for

protection has originally been made, there is no requirement, upon a status review, to consider whether the child is or is no longer in need of future protection. Children's needs are continually evolving as they are governed by occurrences in the lives of children and their families which cannot be held still in time. These ever-changing circumstances must be taken into account. In this regard, just as it is important to allow in new evidence in order that the court may have accurate and up-to-date knowledge of the situation at hand, similarly courts must continually evaluate the need for state intervention in order to insure that the objectives of the Act are being met.....

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 simply be a rubber stamp of the original decision. Equal competition between parents and the Children's Aid Society is not supported by the 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 the integrity of the family unit and the continuing need of protection of a child must be undertaken.

**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 is a consideration 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 the absence of the circumstances that triggered the first order for protection or from circumstances which have arisen since that time.** As the Court of Appeal said:

> We agree that a children's aid society, as the representative of the state, must continue to justify its intervention by showing that a court order is necessary to protect the child in the future.
>
> Regardless of the conclusion reached at this first stage, the need for continued protection encompasses more than the examination of the events that triggered the intervention of the state in the first place....."
>
> [Emphasis added by the Court]

**[47]** Accordingly, the first question that the Court must answer in this Review Hearing is whether M.C.F. continues to be a child in need of protection. In answering this question, the Court must take into consideration the child's best interests. In addition, the Court must take into consideration the matters referred to in s.46(4) of the **Children and Family Services Act.** The burden remains on the Children's Aid Society of Halifax to show that there is a continued need for protection and to satisfy the Court that a Temporary Care and Custody Order is appropriate in the circumstances.

**THE COURT'S FINDINGS**

[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.

[56] While there have been changes in circumstances since the time of the initial Disposition Hearing (including the fact that C.V. has been released from custody) I am not satisfied that circumstances have changed to such an extent that M.C.F. is no longer in need of protection.

[57] The next issue that the Court must determine is the appropriate Order that should issue as a result of this hearing. I have considered each of the possible dispositions referred to in s.42(1) of the **Act** and have concluded that a further Order granting the Children's Aid Society of Halifax temporary care and custody of M.C.F. is in the child's best interests. In coming to this decision I have

considered all of the factors set out in s.46(4) of the **Children and Family Services Act.**

[58] I am satisfied that a Temporary Care and Custody Order is the least intrusive alternative that is in the child's best interests and I am also satisfied that less intrusive alternatives, including services to promote the integrity of the family, would be inadequate to protect M.C.F..

[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.

[62] I am satisfied that it is in M.C.F.'s best interests for the Court to issue a further Order keeping the said child in the temporary care and custody of the Children's Aid Society of Halifax until further Order of the Court and, in any event,

for a period not to exceed three months. In arriving at this decision, I am applying the Agency's plan for the child's care dated June 24th, 2004.

[63] Section 42(3) of the **Children and Family Services Act** stipulates that where the Court determines that it is necessary to remove a child from the care of a parent or guardian the Court shall, prior to making a temporary or permanent care and custody order pursuant to sections 42(1)(d), (e) or (f) of the **Children and Family Services Act**, 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 s.42(1)(c) of the said **Act** with the consent of the relative or other person.

[64] Ms. Barbara McPherson is the social worker assigned to this case. The file notes attached to Ms. McPherson's affidavits filed in relation to this hearing show that some of M.C.F.'s relatives have expressed an interest in caring for her. It is unclear from the evidence the extent of their interest, whether they are still interested in having M.C.F. placed with them (there is an indication that two of these individuals may not wish to pursue the matter at this time) or the particulars of

their plan (if any). None of these individuals have come to Court indicating a desire to participate in these proceedings nor have they put a plan of care before the Court or formally consented to having M.C.F. placed with them.

[65] As I indicated at the time of my initial Disposition decision, in the case of the **Children's Aid Society of Halifax v. T.B., [2001] N.S.J. No. 225** the Nova Scotia Court of Appeal stated at ¶ 51:

> ".....the court and the agency share a responsibility to see that reasonable family or community options are considered. But the burden of establishing the merits of the alternative proposed are squarely upon the proponent. It is the proponent who must satisfy what I will term a burden of persuasion. Only when specific arrangements have been conceived and put in place by the proponent can the viability of that proposal be assessed."

[66] At ¶ 54 of the same decision the Court stated:

> "There is an obligation upon the person advocating a completing plan to present some cogent evidence with respect to it. In that way, the

> merits and viability of the proposal will have some foundation in fact which might then be adequately assessed by the trial judge....."

[67] In C.V.'s plan for the child's care filed with the Court on September 8th, 2004, she indicates that her brother and his wife, P.V. and K.V., have an interest in adopting M.C.F. in the event the Court does not return the infant to C.V.. She further indicates that if the proceeding is not dismissed or the child is not placed with her subject to supervision, she is seeking an Order pursuant to s.42(3) of the **Children and Family Services Act** placing M.C.F. in the temporary custody of P.V. and K.V. until such time as an adoption can be finalized.

[68] While C.V. has included this proposal in her plan of care, she has not provided the Court with sufficient evidence upon which an assessment can be made concerning the merits and viability of this plan. In addition, neither P.V. nor K.V. have come to Court indicating their consent to this plan of care. Accordingly, at the present time, the Court is not in a position to consider placing the child with them.

[69] The **Act** does mandate the Court to consider reasonable family or community options. I want to ensure that anyone who is seriously interested in advancing such a plan is given the opportunity to do so. Accordingly, pursuant to s.44(1)(f) of the **Children and Family Services Act,** I will include in my Order a provision which will require the Children's Aid Society of Halifax to personally serve anyone who expresses an interest in having M.C.F. placed in their care with notice of the time, date and place that the matter is next scheduled to come before the Court as well as a copy of s.42(3) of the **Children and Family Services Act.**

[70] Earlier this week, I scheduled the next Court date in this matter for January 10th, 2005 commencing at 10:00 am (at the Devonshire Courthouse). The Children's Aid Society of Halifax shall personally serve both A.F. and J.F. and both P.V. and K.V. with notice of the time, date and place of this next appearance as well as a copy of s.42(3) of the **Children and Family Services Act**. According to the worker's notes, these individuals have, at one time, expressed an interest in having M.C.F. placed in their care.

[71] In addition, the Children's Aid Society of Halifax shall personally serve any other individual that expresses such an interest with notice of the time, date and place that the matter is next scheduled to come before the Court and with a copy of s.42(3) of the said **Act**.

[72] During the course of these proceedings, the suggestion has been made by the Respondents that their family members cannot afford a lawyer to represent them in relation to this matter. While in my view, it is preferable that individuals be represented by counsel when they come before the Court, it is not necessary that they have legal representation and I want to make it clear that they are able to come before the Court without being represented by a lawyer.

[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.

[75] Section 44(1) of the **Children and Family Services Act** reads as follows:

> **"44(1)** Where the court makes an order for temporary care and custody pursuant to clauses (d) or (e) of subsection (1) of Section 42, the court may impose reasonable terms and conditions, including
>
> (a) access by a parent or guardian to the child, unless the court is satisfied that continued contact with the parent or guardian would not be in the best interests of the child;"

[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.

[80] Section 44(1) of the **Children and Family Services Act** permits the Court, when making an Order for temporary care and custody, to impose reasonable terms and conditions to that Order including the assessment, treatment or services to be obtained by a parent or guardian or other person residing with the child.

[81] As indicated previously, the Children's Aid Society of Halifax has requested that the Respondents participate in an assessment which will 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. It appears, from the materials filed, that C.V. consents to at least a portion of this assessment. In the Application for Review and Notice of Hearing filed by C.V. on October 19th, 2004 she states that the Respondents seek:

"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."

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

"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.**

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"

[83] Regardless of C.V.'s consent, I am satisfied that it is appropriate to order the assessment requested by the Children's Aid Society of Halifax and I am prepared to grant the relief requested in this regard.

[84] I am hopeful that this assessment will be beneficial to all of the parties to this proceeding. As I have indicated previously, in light of the Respondents' conspiracy theories, I am of the view that the assessment process will be much more beneficial to C.V. and L.F. if they have a say in who actually conducts the assessment. In order to assist in this regard, I am going to give both of the Respondents until December 10th, 2004 (two weeks from the date of this decision) to advise the Agency's counsel, Elizabeth Whelton, in writing, of which psychologist and psychiatrist they wish to conduct the assessment. The psychologist and 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 Respondents do not provide the above-noted notification to Ms. Whelton, in writing, on or before the 10th day of December,

2004, the Children's Aid Society of Halifax shall be at liberty to select the psychologist and the psychiatrist who will conduct the assessment. If any difficulties arise in relation to this assessment (including the issue of payment of the psychologist or psychiatrist), I hereby reserve the right to deal with the matter further.

[85] In addition, I am satisfied that it is appropriate to grant an Order which will state that the Children's Aid Society of Halifax shall offer rehabilitative or supportive services to C.V. and L.F. as agreed upon between the parties and they shall also offer rehabilitative or supportive services for M.C.F. as are deemed to be in her best interests.

[86] During the course of the proceeding, C.V. asked the Court to order counselling services for her. In addition, in C.V.'s documentation entitled "Mothers Plan For Child's Care" she requests an Order requiring the Children's Aid Society to pay for "supportive services for the mother with Dr. Carol Pye in Halifax and as agreed upon by the parties." C.V.'s requests in this regard are capable of being covered by that portion of my Order which will state that the Children's Aid

Society of Halifax shall offer rehabilitative or supportive services to C.V. and L.F. as agreed upon between the parties.

[87] If there is any specific counselling that C.V. is seeking, she shall provide complete particulars of this counselling in writing to Ms. Whelton (including the name of the proposed counsellor, the area in which the counsellor practices, and the nature of the counselling that she is seeking.) If the parties are unable to agree on whether this service should be provided by the Children's Aid Society of Halifax, I reserve the right to deal with the matter further upon application by any party.

[88] There is one final matter that I wish to deal with. The **Children and Family Services Act** contains a number of statutory time lines. Section 45(1) of the said **Act** indicates that where a child was under six years of age at the time of the application commencing the proceedings and where the Court has made an Order for temporary care and custody, the total period of duration of all Disposition Orders including Supervision Orders shall not exceed twelve months from the date of the initial Disposition Order.

[89] My initial Disposition Order was granted on June 9th, 2004. Accordingly, we have approximately six months before the statutory deadline set out in s.45(1) of the **Act** is reached. That is not a significant period of time.

[90] There have been occasions during the course of this proceeding that the Respondents' primary goal appeared to be to criticize the Children's Aid Society of Halifax rather than work towards obtaining the return of their child. I will give an example. During the course of C.V.'s summation last week, I asked her why she had not applied to the Court for access to M.C.F. this past summer once she was released from the Correctional Facility. The following exchange took place between C.V. and the Court:

> "C.V.:
>
> I did what I was supposed to do which was to try and contact the Children's Aid Society and work with the worker in care, Barbara McPherson. That didn't happen. I did not put a formal application before the Court until September.
>
> COURT:

> And I guess my question is why not? During the summer. Why.....once you received a letter from Children's Aid or Ms. Whelton saying if you want to have access make an application to the Court.....why didn't you apply?
>
> C.V.:
>
> *Well, why should I?* [Emphasis added by the Court] Barbara McPherson has a job. Her job is to work with the parents. Her job is not to give it to the lawyer, to get the lawyer to do a little money grab in a Court. What for? What purpose would that have served for M.C.F.? The Children's Aid Society had a responsibility. They're the ones that have my baby. They're the ones that are supposed to work with me. I am not the one to go back and write letters constantly, ongoing and have no response. That's not working with the family. That's taking a baby and keeping it for its own means....."

[91] I should begin by indicating that the evidence clearly establishes that C.V.'s numerous letters were indeed responded to by counsel for the Children's Aid Society of Halifax. C.V. was advised that if she wanted access to her daughter she

should bring a Court application in light of the fact that her Recognizance prevented her from contacting or attempting to contact M.C.F. at any time unless such contact was authorized by a Court of competent jurisdiction. C.V. did not file an application requesting access to her daughter and the issue was not brought before the Court prior to the Review Hearing which commenced on September 7th, 2004.

[92] Even if C.V. believed that the obligation was on the Children's Aid Society of Halifax to come to Court and ask for her to be given access, one would reasonably expect that once she realized that they were not going to do that, she would make such an application herself. Her decision in the summer not to file an application requesting access to M.C.F. calls into question her ability to focus on her child rather than the actions of the Children's Aid Society.

[93] I raise this issue as I am concerned about the limited time that is available under the **Children and Family Services Act** for the Respondents to refocus their energies and take constructive steps to work towards having M.C.F. returned to their care. While it has undoubtedly been very difficult for the Respondents to have their child put into the temporary care and custody of the Children's Aid

Society of Halifax the time has come for C.V. and L.F. to focus on the mental health issues that have been raised in this proceeding and to obtain professional assistance in dealing with these issues so that hopefully, the time will come that M.C.F. can be returned to them.

Smith, J.