SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Nova Scotia (Community Services) v. C.H.*, 2019 NSSC 346

Date: 20191120
Docket: 108454
Registry: Sydney, NS

Between:

Minister of Community Services

Applicant

v.

C.H. and G.F.

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 person 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:	June 11, 12, 13, 14, 17, 19, 25, July 23, 25,26, and September 18, 19 and 20, 2019 in Sydney, Nova Scotia
Final Written Submissions:	October 17, 2019 and November 5, 2019
Written Decision:	November 20, 2019

Summary: The Minister of Community Services seeks permanent care of the Respondents' child, O.F.., pursuant to s. 42(1)(f) of the *Children and Family Services Act*.

The child was taken into care after the Respondents, C.H. and G.F. removed the newborn child, O.F., from the hospital against medical advice.

The initial protection concerns evolved into additional protection concerns of which the Minister was not aware of at the time of apprehension.

The conduct of the Respondents opened the door to an investigation by the Minister to ensure the child, O.F. was not at risk of harm.

There was a major disconnect between the Minister and the Respondents, despite the Minister's best efforts to provide access and remedial services to the Respondents.

The Respondents' consistent pattern of aggression; misleading; intimidation; profane behaviour; and, lack of insight exist currently as protection concerns.

The Respondents made no progress to address the child protection concerns since the protection stage of this proceeding.

Issues: Permanent Care and Custody vs. dismissal

Result: Permanent Care and Custody

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Citation: *Nova Scotia (Community Services) v. C.H. and G.F.*, 2019 NSSC 346

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Applicant

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Final Written Submissions:	October 17, 2019 and November 5, 2019
Counsel:	Tara MacSween, for the Applicant Douglas MacKinlay and Paul Chudnovsky, for the Respondent, C.H. Alan Stanwick, for the Respondent, G.F.

By the Court:

INTRODUCTION/BACKGROUND:

[1] This is the application of the Minister of Community Services (hereinafter called "the Minister") dated January 15, 2018, pursuant to section 42(1)(f) of the *Children and Family Services Act*, seeking an order for the child, O.F., born January 6, 2018, to be placed in the permanent care of the Minister.

[2] This was a contested hearing which was heard by the Court on June 11, 12, 13, 14, 17, 19 and 25, 2019, July 23, 25 and 26, 2019, September 18, 19 and 20, 2019, wherein the Court heard from the following witnesses:

(a) Police:

(i) Cst. Eoin Hussey – Cape Breton Regional Police Services
(ii) Cst. Richard Spencer – Cape Breton Regional Police Services
(iii) Cst. Colin White – Cape Breton Regional Police Services
(iv) Cst. Erick Latwaitis – Baddeck RCMP
(v) Cst. Paul Ratchford – Cape Breton Regional Police Services
(vi) Cst. Jim Taylor – Cape Breton Regional Police Services

(b) Minister of Community Services

(i) Paul Mugford – Social Worker
(ii) Corrie Fagnan – Case Aide
(iii) Ashley Wilson – Case Aide
(iv) Judy Petite – Case Aide
(v) Renee Wilson – Social Worker
(vi) Ainslie Eligibeily – Social Worker
(vii) Cindy Pearo – Department of Community Services
(viii) Sandi Virick – Caseworker Supervisor
(ix) Stanley Brown – Access Team Leader
(x) Shelley Smith – Family Support Worker
(xi) Noelle Holloway MacDonald – Social Worker

(xii) Krista Morrison – Social Worker

(c) Remedial Services

(i) Jessica Roper – Addiction Services
(ii) Chantalle Anderson – Addiction Services
(iii) Kim Sadler – CornerStone Social Worker

(d) Urinalysis

(i) Frances Hopkins – Bayshore

(e) Psychological

(i) Dr. Reginald Landry – Psychological Assessment

(f) Medical

(i) Darlene Nymark – NS Health Authority (Records)
(ii) Emily White, RN – Cape Breton Regional Hospital
(iii) Dr. Stephen Craig Hall – Medical Doctor

(g) Respondents

(i) G.F.
(ii) C.H.

(h) Other

(i) S.J.F. – niece of Respondent, G.F.
(ii) G.M.D. – sister of Respondent, G.F.
(iii) Jill Perry, QC – Neighbour of Respondents

[3] During the course of the hearing, the Court received into evidence the following exhibits:

EXHIBIT #	WITNESS	DESCRIPTION
1	Cst. Eoin Hussey	Case File Synopsis re: C.H. dated Dec. 1, 2017
2	Cst. Eoin Hussey	Information re: G.F. dated Dec. 1, 2017
3	Cst. Richard Spencer	Arrest Report re: C.H. dated Dec. 2, 2017
4	Cst. Colin White	Case File Synopsis re: C.H. dated June 2, 2018
5	S.J.F.	DVD recording of voicemail message
6	S.J.F.	Record of Conviction re: G.F. dated April 1, 2019
7	S.J.F.	Probation Order re: G.F. dated April 1, 2019
8	Cst. Paul Ratchford	General Occurrence Report dated March 18, 2018
9	Paul Mugford	Minister's Book of Pleadings
10	Chantelle Anderson	Addiction Services file re: C.H.
11	Emily White	Nova Scotia Health Authority file re: O.M.F
12	Emily White	Cape Breton Healthcare Complex Maternal & Newborn Progress Notes
13	Corrie Fagnan	Community Services Incident Report dated March 11, 2018
14	Cst. Eric Latwaitis	Prosecutor's Information Sheet dated Oct. 7, 2017
15	Cst. Eric Latwaitis	Information re: G.F. dated Sept. 13, 2017
16	Jessica Roper	Addiction Services file re: G.F.
17	Frances Hopkins	Urine Specimen Collection note re: C.H.

EXHIBIT #	WITNESS	DESCRIPTION
18	Ashley Wilson	Community Services Incident Report dated April 25, 2019
19	Paul Mugford	Photo – pill bottle belonging to G.F.
20	Paul Mugford	Photo – contents of pill bottle belonging to G.F.
21	Dr. Reginald Landry	CV of Dr. Landy
22	Dr. Reginald Landry	Psychological Assessment re: C.H.
23	Dr. Reginald Landry	Psychological Assessment re: G.F.
24	Dr. Steven Hall	Complete file of Dr. Hall re: C.H.
25	N/A – by consent	Health Records from Interior Health, Kelowna, BC re: C.H
26	N/A – by consent	Kelowna, BC Hospital Discharge Summary re: C.H.
27	N/A – by consent	Campbell River RCMP Information re: C.H. and G.F.
28	N/A – by consent	Ontario RCMP Information re: C.H.
29	Judy Petite	Community Services Incident Report dated Aug. 27, 2018
30	N/A – by consent	BC Child Welfare Records
31	G.F.	Kamloops Child & Family Services Record
32	G.F.	BC Child Welfare Intake Record
33	C.H.	Medical Marijuana Prescription

EXHIBIT #	WITNESS	DESCRIPTION
34	C.H.	Confirmation of Completing Parenting Program
35	C.H.	Photograph of diaper rash
36	C.H.	Community Services Note re: New Apartment
37	C. H.	Shoppers Drug Mart Patient Medical History re: C.H.

[4] The Respondents are the biological parents of O.F., born January 6, 2018. On January 8, 2018, the Minister received a referral from the Cape Breton Regional Hospital indicating that C.H. had given birth, and had left the hospital with the baby against medical advice. The referral source reported C.H. as being loud and aggressive when the nurse attempted to explain the discharge procedure to C.H. C.H. had a caesarean section and required approximately 60 stitches.

[5] The hospital had initiated a dual discharge procedure, whereby C.H. was discharged by her doctor, but the baby, O.F., had to be checked by a different doctor to investigate the concern about a possible heart murmur, before the hospital could formally discharge O.F. The Respondents did not agree with this procedure and were very upset about not being able to take their baby home.

[6] It appeared that the Respondents were not informed by nursing staff of the specific heart murmur concern when they decided to take the baby home against

medical advice. Nurse White was not authorized to disclose this information until O.F. was assessed by her doctor. The Respondents decided against waiting for O.F.'s doctor to attend the hospital.

[7] The Minister acted upon the referral from the hospital, and, on January 11, 2018, workers attended the residence of the Respondents along with members of the Cape Breton Regional Police Services. The workers knocked on the door with no answer. A smell of marijuana was detected coming from the apartment, which is denied by the Respondents. The worker called G.F.'s cell phone number. A male answered and said he was a friend and that G.F. was in Sydney Mines. The Worker noticed a car in the driveway, at which time the police took the door off its hinges.

[8] Upon entry, G.F. was found hiding in the closet; C.H. was lying on the bed with the baby and said she did not hear anyone at the door. The apartment was full of smoke, again denied by the Respondents. Both Respondents denied smoking marijuana. Baby O.F. was taken into care; G.F. was arrested on an outstanding warrant.

[9] The parents were permitted to see their baby while in the hospital but received no information about the well-being of their daughter until February 2018.

[10] Baby O.F. was thus placed in foster care in Port Hawkesbury, N.S.. On April 13, 2018, baby O.F. was found to be in need of protective services pursuant to section 22(2)(b) of the *Children and Family Services Act*. The Respondents were represented by counsel at this time and their consent was given with regard to the court finding at that time,

[11] On June 28, 2018, the Disposition Hearing was held. The Respondents each had a breakdown in their relationships with their respective lawyers; however, on that date, they did consent to the child, O.F., remaining in the temporary care and custody of the Minister.

[12] The Respondents agreed to the remedial services as outlined in the Agency Plan of Care for the child, dated June 5, 2018 (Exhibit #9 – Tab #3), which states at page 3:

> The Agency has identified the following issues of concern:
>
> 1. Substance abuse concerns for both Respondents
> 2. Inadequate parenting for both Respondents
> 3. Anger management and mental health issues for (G.F.) and mental health issues for (C.H.)

[13] At this time, the Respondents had supervised access with baby O.F. increased from two to three times per week (two hour visits).

[14] The case plan further states, on page 9, paragraph (g):

> The plan of care will be reviewed and, if necessary, revised on an ongoing basis by the Applicant as it continues to measure the Respondents' progress with remedial services. The measured risk present on this file will also be assessed on an ongoing basis which will impact future case planning and ultimately whether or not the Applicant can support the eventual return of this child to the care of the Respondents.

[15] In June 2018, the Respondents' supervised access was moved to Baddeck, N.S., as it was considered to be a half way point between the child's foster placement and the Respondents' home in Sydney, N.S.

[16] In September 2018, the Minister learned that the Respondents had a significant history of child welfare involvement in British Columbia, and that their older children were placed in permanent care. The Respondents' son, D., age 6, was also in the care of G.F.'s sister in Ontario.

[17] On September 12, 2018, the Respondents' access was placed on hold as a result of the parking lot encounter G.F. had with Access Team Leader, Stanley Brown, who had called the police fearing for his safety, due to the verbal aggression exhibited by G.F.

[18] Access was scheduled to resume on October 9, 2018 at the rate of two times per week (two hour visits) at the Minister's North Sydney Office, but the Respondents failed to attend.

[19] On October 12, 2018, a Bayshore Collection nurse attended the home of the Respondents, but the nurse left abruptly due to the aggressive nature of the Respondents. As a result, urine testing for C.H. was suspended.

[20] On October 24, 2018 access was placed on hold as the Respondents failed to attend two visits in a row. The Respondents were unhappy that their access had to be supervised. The Respondents repeatedly requested unsupervised access in their home but such requests were denied by the Minister.

[21] On November 6, 2018, the Minister made the decision to seek an order for permanent care and custody of the child O.F. (Exhibit #9 – Tab #5). The amended Plan of Care, at page 3, states as follows:

> The Agency had identified the following issues of concern:
>
> 1. Substance abuse concerns for both Respondents.
> 2. Anger management issues for (G.F.).
>
> Services were put in place to attempt to address these issues
>
> Although (G.F.) did attend and complete a 10 week Respectful Relationships program through Cornerstone Cape Breton, he does not appear to have benefitted fully from such as he continues to evidence issues with his anger. Not only did (G.F.) receive a mixed review from that program's providers, he has shown in several instances that anger continues to be an issue for him. He has acted in a verbal and physical manner towards a number of Department workers, from supervisors to case aides to support staff, but also a number of other service providers including a nurse from Bayshore Home Health as well as with Dr. Reginal Landry's office. (G.F.) seems unable to apply anything he may have learned from his Cornerstone program in the way of constructively expressing his frustration or anger.
>
> In terms of his substance abuse concerns that have been identified by the Applicant, (G.F.) has reported to his worker at Addiction Services that he does not

have any issues with substance abuse or mental health concerns and he has failed to provide any documentation from that service provider which may indicate otherwise. (G.F.) has only provided one urine sample in two collection attempts before that service had to be placed on hold due to (G.F.) acting aggressively toward the nurse from Bayshore. In that sample, (G.F.) did test positive for cannabis (THC) among other substances.

(G.F.) did cooperate with the completion of the mental health assessment with Dr. Landry and the Applicant expects to receive that assessment this coming week.

As for (C.H.), in terms of the identified substance abuse concerns for her, she also met with her worker from Addiction Services and reported having no substance abuse or mental health concerns and so no follow up was deemed necessary with that service provider. (C.H.) signed a release of information for child welfare that was limited only to her attendance with that service provider and nothing beyond that. (C.H.) was to participate in random drug testing as well through Bayshore Home Health but in two collection attempts (C.H.) did not provide any samples for testing. This service had to be placed on hold after (C.H.), along with (G.F.), acted aggressively toward the nurse from Bayshore. In addition to this, (C.H.) is known to have engaged in drug seeking behaviour from Dr. Steven Hall.

b) Services that have been attempted and their current status

Currently, G.F.:

1. Is not attending access, which remains fully supported, with this child, O.

2. Is not receiving random drug testing through Bayshore Home Health.

3. Has completed his Cornerstone Cape Breton "Respectful Relationships" program.

4. Has completed his involvement with Dr. Reginald Landry for his mental health assessment.

Currently, C.H.:

1. Is not attending access, which remains fully supported, with her child, O.

2. Is not receiving random drug testing through Bayshore Home Health.

3. Has completed her involvement with Dr. Reginald Landry for her mental health assessment.

Services that have been refused by the parent or guardian

Currently, the Respondents are choosing not to attend access with their child as they object to the level of supervision being implemented by the Applicant. Access has been placed on hold since October 23, 2018.

Services that have been considered, but would be inadequate to protect the child

There are no services identified beyond those in place.

Possible placements with a relative, neighbour or other member of the child's community or extended family that have been considered and rejected and the reasons for the rejection

The Applicant had given previous consideration of the child (O.F.) being placed in the care of (G.F.)'s parents and they had been assessed for such by the Applicant, but that placement option was not approved. The Applicant is unaware of any other possible placements for this child with a relative, neighbour or other member of her community or extended family and as such, will be proposing a plan for her adoption should she be placed in the Applicant's permanent care and custody.

What efforts, if any, are planned to maintain the child's contact with the parent or guardian

The Applicant currently has an access schedule in place to allow the Respondents to have supervised access with (O.F.) at the rate of two days per week, two hours per visit. Access has been placed on hold, however, since October 23 as the Respondents object to the level of supervision being implemented in the access visits; specifically, they do not want for the access case aide to be present in the room where access occurs. The Applicant will reinstate access once the Respondents can agree to the level of supervision that the Applicant feels is required for the best interests of the child.

4. If the Agency proposed that the child be placed in permanent care and custody of the Agency:

Why the circumstances justifying the proposal are unlikely to change within a reasonably foreseeable time not exceeding the maximum time limits

Given the age of the child, O.F., the child protection application with respect to her must be completed by June 2019. This allows for seven more months at a maximum to achieve the initial goal of the Applicant's involvement which was to return this child to the care of the Respondents. The Applicant has been working with the Respondents since early January of this year and based on these past eleven months, the Applicant feels strongly that the Respondents have not been able to successfully and adequately reduce the protection concerns nor will they be able to do so in the time remaining. Notwithstanding the chronicity of these protection concerns based on what is now known in terms of the Respondent's

> child welfare involvement in other provinces, the Respondents have shown an inability to benefit from the remedial services that have been provided to them. Access has had to be placed on hold several times to date and is currently on hold as is the drug testing. (G.F.) continues to present as an angry and volatile individual as does (C.H.). The Applicant does not feel that the Respondents will be able to demonstrate, in the time remaining, that they can reduce these protection concerns. The Applicant must be mindful of the best interest of the child as well as a child's unique sense of time which is further reason why the Applicant will be seeking to have this child placed in its permanent care and custody with a plan for her adoption.
>
> **Description of the arrangements made or being made for the child's long term stable placement**
>
> The Agency is aware of a possible long term, stable adoptive placement option for (O.F.) that it will be exploring more fully should this child be placed in permanent care and custody. Generally speaking, the adoption prospects for this child would be favourable given her young age and good health.
>
> **Access, if any, proposed for the child and any terms and conditions to be included in such access arrangements**
>
> The Applicant is currently willing to reinstate access between this child and the Respondents. However, should this child be placed in permanent care and custody, the Applicant would be requesting that there be no order for access as such an order would hinder adoption.
>
> **An explanation of how the placement is with a family of the child's own religious faith, culture, race and language**
>
> Given her young age, (O.F.) would not yet have an identified religious faith. There would be no anticipated difficulty in locating an adoptive home that would reflect (O.F.)'s own cultural, racial and linguistic background.
>
> On November 28, 2018 access resumed.

[22] In February 2019, the Respondents declined stress management counselling and family support worker services.

[23] In February 2019, the Respondents' supervised access visits were moved from the North Sydney office to Clifford House in North Sydney.

[24] The legislative deadline in this matter expired on June 28, 2019. Written submissions were received from the Minister on October 17, 2019 and from the respective Respondents on November 5, 2019.

ISSUES:

[25] Does the child, O.F., born January 6, 2018, remain in need of protective services?

[26] Is it in the best interests of the child, O.F., to be placed in the permanent care and custody of the Minister, or alternatively returned to the care of the Respondents?

MINISTER'S EVIDENCE/SUBMISSIONS:

[27] The Minister submits as follows:

- That the child, O.F., remains in need of protective services;
- That circumstances have not changed such that the risk to the child has been reduced;
- That the conduct of the Respondents on the night of the apprehension causes the Minister to have protection concerns for the child, O.F.;

- That the conduct of the Respondents in removing the child, O.F., from the hospital without the doctor's clearance is a protection concern for the Minister;

- That Nurse Emily White advised the Respondents several times of the double discharge process and that the child, O.F., needed to be medically cleared for discharge;

- That the Respondents ought to have been familiar with the double discharge process as they experienced the same in 2011, following the birth of their daughter, S.F., in British Columbia (See: Exhibit #30 – Tab #1 – Page #3)

- That whether or not the Respondents were advised of the concerns about the heart murmur, it is still a concern that the Respondents left the hospital against medical advice;

- That G.F. became extremely aggressive toward Nurse Emily White;

- That Cst. Jim Taylor testified that on January 11, 2018, he heard C.H. tell the worker it was her child, and therefore should be her decision whether the child should leave the hospital, not the doctor's;

- That the Respondents' conduct indicates that they continue to lack insight into the risk presented by removing their pre-mature infant from the hospital before she could be medically cleared for discharge;

- That in their eagerness to leave the hospital, the Respondents were not considering the best interests of the child; rather, they were thinking about their own needs;

- That although denied by the Respondents, it is clear from the evidence of Paul Mugford, Ainslie Eligibeily and Cst. Jim Taylor that the smell of marijuana and lingering smoke was inside the Respondents' apartment the day the child, O.F., was taken into care;

- That regardless of any medical prescription for marijuana, consuming marijuana while in a child caring role presents a risk, particularly for a newborn, pre-mature infant;

- That the evidence is clear that C.H. has a lengthy history of substance abuse. This issue, along with mental health issues and other lifestyle choices, resulted in five of her older children being removed from her care in British Columbia;

- That C.H. maintains her substance abuse issues are in the past and now uses marijuana for pain management only;

- That C.H.'s attempts to pressure Dr. Hall and Dr. Pollett to prescribe her Percocet, the Court can infer she still has substance abuse issues;

- That it is clear from Dr. Hall's evidence that C.H. fraudulently misrepresented facts as she told Dr. Hall that Dr. Pollett wanted Dr. Hall to prescribe her 4 Percocet per day;

- That when Dr. Hall refused, C.H. became angry and belligerent and caused a scene in the doctor's office (see Exhibit #24, pg. #83). The letter from Dr. Hall to C.H. dated August 29, 2018 as follows:

> The purpose of this letter is to inform you that I am withdrawing my services to you as your family physician, effective immediately.
>
> The reasons for my withdrawal are two-fold; and they stem from your behavior at your most recent visit to my office on August 9th, 2018.
>
> The first reason is that you fraudulently misrepresented facts related to Dr. Pollett's alleged authorization for me to provide you with a prescription for one Percocet tablet four times per day. A letter from Dr. Pollett indicates that he intended for you to take Naloxone for your fibromyalgia, not Percocet.
>
> The second reason is that during your visit with me, after it became pretty apparent that I did not intend to supply you with Percocet, nor did I intend to honour your request to double your biphentin prescription to 40mg twice daily, you became angry and belligerent. I explained that your low back xray was reported as normal, so I had no objective evidence that there was a back injury that would warrant the use of daily Percocets, as per the most recent guidelines for non-cancer pain. Without my permission, you had called your boyfriend, (G.F.), and included him via speaker phone in our conversation. After (G.F.) angrily made some vulgar and profane remarks about me, I asked that you hang up the phone to exclude him from the conversation since his abusive comments were not helpful. We agreed that I would refer you to the pain clinic at CBRH, and I wrote the referral letter to Dr. MacNeil. After you refused several non-opiate alternative treatments for fibromyalgia that I offered, and after I made it clear that the visit was ended, you followed me into the hallway while continuing to loudly complain that I would not give you Percocet "as Dr. Pollet wants you to do". I informed you that I could no longer discuss patient care in the hallway, as

it was not a private area. You continued to rant for sometime, but I did not join in the conversation due to confidentiality constraints. When I asked you to leave the premises, you did not, until I threatened to call the police for assistance in removing you form the premises. At that time, you loudly threatened to "summon me to court" while passing through my waiting area in front of several patients, on the way out of the building.

The belligerent and threatening behavior of you and your boyfriend, G.F., in the context of demanding opiates will not be tolerated by me. The misrepresentation of Dr. Pollett's care plan by you, which falsely included the prescribing of four Percocet per day, constitutes an attempt at obtaining opiates through fraudulent means.

- That past parenting is a relevant consideration in determining the probability of an event recurring;

- That the Respondents have a history of child welfare involvement in British Columbia, which they failed to disclose or attempted to hide from agency workers and service providers;

- That G.F. testified that he raised his older children, D. and J.;

- That G.F. could not provide a coherent time line for his care of his older children;

- That G.F.'s evidence is inconsistent with business records from British Columbia, which indicate G.F. was not a stable fixture in the older children's lives;

- That the Respondents do not have the care of their son, D., age 6;

- That D. has been in the care of G.F.'s sister, G.M.D., since D. has been approximately a year and a half old;
- That G.M.D. was willing to work towards returning D. to G.F.'s care, but was concerned about the length of time G.F. had been absent from D.'s life;
- That G.M.D. encouraged G.F. to return to Ontario and visit so D. could get to know him;
- That in June 2017, G.F. arrived at G.M.D.'s home at 7:00 a.m., banging on the door demanding the return of D.;
- That G.M.D. called the police;
- That G.F.'s actions as described by G.M.D. and G.F.'s own evidence demonstrate a lack of insight into his child's need for stability and security;
- That G.M.D. testified that G.F. threatened her and threatened to drive his truck through her window;
- That such conduct by G.F. in this circumstance was parent focused and not in the best interests of the child;
- That C.H. had made no attempt to contact D. in the years before O.F. was born;

- That there are similarities in what protection workers in British Columbia noted in March 2011, exampled by G.F. being banned from the hospital for being verbally aggressive towards a social worker and other staff (See Exhibit #30/Tab#1/Page#10);

- That it is clear from the evidence that G.F. has a long history of violence and aggression (reference criminal record);

- That on March 12, 2018 G.F. was verbally abusive to a Department of Child Welfare administrative assistant, Cindy Pearo, upon learning access was cancelled;

- That Ms. Pearo testified G.F. was yelling and swearing and referred to her as a "fucking cunt" (see Exhibit #9/Tab#2/Page#17/Para.#79);

- That on March 12, 2018 G.F. was verbally and physically aggressive towards Supervisor Sandi Virick;

- That Ms. Virick testified that G.F. cursed and yelled at her and called her a "piece of shit", stating, "This is fucking bullshit";

- That Ms. Virick testified that G.F. was very angry and pointed his finger in her face;

- That Ms. Virick testified that in her 19 years of working child welfare, G.F. was the most concerning client she had ever had a meeting with;

- That in March 2018 G.F. threatened his niece, S.J.F., who testified that G.F. became upset with her after she convinced G.F.'s mother to withdraw from consideration as a possible placement for O.F.;

- That G.F. was convicted of uttering threats to cause bodily harm and was sentenced to house arrest in relation to the incident(s) involving his niece;

- That in spite of his conviction, G.F., in his evidence, denied he threatened his niece;

- That G.F. is simply not credible on this issue;

- That this incident involving G.F.'s niece is an indication of G.F.'s temperament and his aggressiveness, and therefore, further indication of the risk he presents to his child;

- That G.F.'s abusive behaviour is further exampled by Dr. Pollett's letter to C.H. in Exhibit #24, page 82:

> … I hope you understand that I am under no obligation to continue your Percocet or provide any medication just because you wish me to do it. I had tried other means of controlling your pain and you did not permit me to complete these treatments. I do not see any evidence that any of the treatments we gave you in the past caused any harm although they may not have been helpful.

> Because of the abusive behaviour, particularly by your husband, neither you nor your husband will be allowed to visit the Pain Clinic in the future. I would appreciate it if you stay away from the Pain Clinic and preferably stay away from the Northside General Hospital and you will not be given any more appointments in the future.
>
> …
>
> Please do not contact the Pain Clinic again.

- That on September 12, 2018 G.F. was verbally and physically aggressive towards Access Team Leader, Stan Brown, in the Provincial Building parking lot;

- That Mr. Brown testified that G.F. got very close, in his personal space, and continued to scream and curse at him;

- That Mr. Brown testified he felt a little unsafe;

- That Mr. Brown testified that in his 15 years of experience, he usually had good success in calming people down, but he was not able to calm down either of the Respondents on that day;

- That Bayshore Nurse Frances Hopkins also provided evidence regarding G.F.'s aggressive behaviour;

- That G.F. was yelling at her to get the specimen and get out;

- That G.F. slammed his fist on the table in front of her. As Nurse Hopkins was leaving G.F. screamed, "you fucking bitch";

- That Nurse Hopkins had never experienced anything like this before in 32 years of service and was very scared;
- That Bayshore suspended further testing because they felt it was not safe to return to the Respondents' home;
- That neighbour, Jill Perry, also provided evidence of G.F.'s anger and aggression;
- That Ms. Perry heard her neighbour yelling at a woman saying such things as "you fucking whore", "you fucking slut", "you fucking cunt, get out of my fucking house";
- That Ms. Perry identified G.F. as the person making these derogatory statements to C.H.;
- That Ms. Perry also witnessed G.F.'s aggressive and abusive behaviour towards international students who lived in the apartment below the Respondents;
- That G.F. made such comments as "you fucking rats" and complaining about their "smelly fucking food";
- That Ms. Perry described G.F. as having episodes of extreme and prolonged anger, sometimes lasting up to a ½ hour;

- That G.F. denied that he was aggressive and abusive towards his sister, G.M.D.; Nurse Emily White; his niece, S.J.F.; Cindy Pearo; Sandi Virick; Dr. Hall; Dr. Pollett; Stan Brown; Nurse Frances Hopkins; and his downstairs neighbour;
- That G.F. testified all of the above-mentioned witnesses were lying;
- That C.H. made the same denial;
- That agency workers, as well as other professionals, had good reason to be concerned about their safety and the safety of baby O.F. if she was returned to the care of the Respondents;
- That the Respondents' evidence would suggest Ms. Perry was lying;
- That the relationship between C.H. and G.F. poses a substantial risk to O.F.;
- That it would be a risk for the child as young as O.F., with no ability to self-protect, to be exposed to the behaviour as exhibited by the Respondents;
- That the Respondents, although they attended addiction services and mental health assessments, failed to participate in these assessments in an

honest and meaningful way, by withholding information, thus compromising the ability of the assessor to complete a meaningful diagnostic impression;

- That, while it appears C.H. is not abusing substances to the extent that she had in the past, the fact that she was seeking opiates from Dr. Hall and Dr. Pollett, combined with her lack of honesty to assessor Chantelle Anderson and her unwillingness to complete the addictions assessment, indicates that substance abuse remains an issue;

- That G.F. was not forthcoming during his addiction assessment with Jessica Roper of Addiction Services;

- That Ms. Roper testified G.F. left her office stating profanities and slamming her office door;

- That G.F. subsequently completed the assessment with Ms. Roper on August 8, 2018, but G.F. withheld information regarding his numerous encounters with the law since his release from jail in 1997;

- That Exhibit #6 and #7 demonstrate G.F.'s criminal history from the year 2000 through to 2018;

- That Ms. Roper testified about the importance of clients being honest with her, noting that she cannot treat what she does not know about;

- That by declining Ms. Roper's offer to refer G.F. for further services, G.F. demonstrates either a lack of insight into his own functioning, a lack of honesty with service providers and the Court, or some combination thereof;

- That both Respondents participated in mental health assessments with Dr. Reginald Landry, however they were not forthcoming and honest with Dr. Landry about their respective behaviours;

- That Dr. Landry testified about the importance of people who engage in mental health assessments be honest about their social history;

- That Dr. Landry testified that he was not informed about C.H.'s history of child welfare involvement in British Columbia, nor her substance abuse history;

- That having reliable information is very important to the assessor so that a valid assessment can be made;

- That Dr. Landry found that both Respondents had significantly elevated scores on the "lie scale" for the MMPI II;

- That Dr. Landry noted that someone with C.H.'s personality profile may tend to rely on their own feelings or judgments and do not tend to put

much stock in the feelings or judgments of other people, which can result in conflict;

- That Dr. Landry found G.F.'s MMPI II testing results were uninterpretable because G.F. responded in a manner to create a positive impression, and also reported in a very defensive manner;
- That the MMPI II is the cornerstone of mental health assessment and would tell whether G.F. is suffering from a psychological disorder;
- That G.F.'s results of the MCMI test were also not reliable as G.F. was responding to create a positive impression;
- That because G.F. responded in such a manner, the mental health assessment did not accomplish what was intended, as it did not provide a complete and accurate picture of G.F.'s psychological functioning;
- That the Minister has taken reasonable steps to provide the Respondents remedial services;
- That the Respondents were not compliant with the Minister's case plan;
- That services aimed at reducing the risk to the child have been attempted and have failed;

- That subsequent to making the decision to seek permanent care on November 28, 2018, the Minister continued to offer the Respondents additional services;
- That such services included stress management counselling and family support services;
- That the Respondents declined these additional services;
- That the Minister is not expected to "walk a parent through" all the stages of the services;
- That there is a responsibility on the part of the parents to engage in "out of house" services;
- That the Respondents deny that there is anything wrong with their lifestyle, their parenting and their coping mechanisms;
- That the Respondents have blamed the Minister for intervening in their lives unnecessarily; they have accused workers of acting inappropriately and not listening to them;
- That an objective view of the evidence indicates otherwise;

- That the Minister has attempted to work with the Respondents and has taken reasonable measures to offer and recommend services, despite the Respondents obfuscation and transigence;

- That as the Court weighs the evidence, it should view the Respondents' evidence with caution, as the Respondents have a long standing pattern of dishonesty and they have been dishonest with not only professionals associated with this proceeding, but also with police and medical professionals;

- That the Respondents present a continued risk to the child, O.F., as they continue to lack insight into the reasons for the Minister's intervention and they have failed to meaningfully engage in services as to reduce the risk;

- That it is O.F.'s best interests to be placed in the permanent care and custody of the Minister. There is no time left on the statutory clock and only two options are available to this Court, dismissal or permanent care;

- That if the Court concludes the child, O.F., remains in need of protective services, it must make an order for permanent care and custody with no provision for access; and

- That the Respondents' plan to have O.F. returned to their care is not in the best interests of O.F. when compared to the merits of the Minister's plan to place O.F. for adoption.

C.H.'S EVIDENCE:

[28] C.H testified as follows:

- That she and G.F. were told nothing about O.F. having a heart murmur at the time of discharge;
- That she and G.F. signed a release and left the hospital;
- That on January 11, 2018, she was not "high". She testified, "I was not under the influence of anything";
- That there was no smoke in the apartment;
- That she did admit to smoking marijuana on January 10, 2018;
- That the Respondents' home was ready to receive and care for a baby;
- That access in Port Hawkesbury was difficult and intrusive. C.H. testified, "We worked with it";
- That the Respondents complained about the safety and cleanliness of the venue for the Baddeck access;

- That the Respondents brought all of O.F.'s toys and supplies to the access visits;
- That the room in Baddeck smelled like a brewery; gas cans and lawn equipment;
- That home visits were refused;
- That she would have done drug tests if given the opportunity;
- That she did not have a good history of past parenting;
- That she did not want to tell the Minister of her past involvement with child welfare. "My past is my past"; "I'm not the same person as I was in the past"; "I'm different now";
- That she did not feel it was necessary for the Minister to re-open past child welfare involvement;
- That the Respondents' arranged for a worker through the Family Resource Centre to assist with home visits;
- That the Minister refused to engage that service because it did not involve the Minster's staff;
- That the Respondents have less access now than when this all started;
- That there is no clarity or consistency from the Minister;

- That she had a crack cocaine addiction in British Columbia;
- That crack cocaine was C.H.'s drug of choice;
- That C.H. had abandoned the drug lifestyle in 2011;
- That C.H. has been clean for nine years, except for marijuana;
- That the Minister does not listen to the Respondents' concerns;
- That the Respondents were quite oppositional to the Minister;
- That Nurse White was lying; G.F. was not aggressive;
- That C.H. agreed the Respondents could have handled the hospital discharge procedure better;
- That C.H. did not agree with the dual discharge process. "I had no information to believe that we were acting irresponsibly by leaving";
- That C.H. believes the hospital acted inappropriately;
- That G.F. was being assertive but was not aggressive or yelling;
- That regarding the car accident of September 27, 2017, C.H. denied she lied to police about who was driving;
- That C.H. denied there was domestic violence in the Respondents' home;

- That G.F. was not abusive on the phone to Cindy Pearo;
- That Cindy Pearo was lying;
- That G.F. was not abusive to Sandi Virick; “He was not calling her names;
- That Krista Morrison was lying about not throwing a pen at C.H.;
- That Stan Brown was lying;
- That Nurse Hopkins had “attitude” and was “quite rude”;
- That Nurse Hopkins was lying;
- That C.H. had conversations with G.F., not arguments;
- That G.F. did not call her a “fucking whore”; “fucking cunt”; or, “fucking bitch”;
- That anyone who says so is lying;
- That G.F. never yelled at the international students in the apartment below; and
- That C.H. acknowledged she declined services; “I was working on my issues on my own”.

C.H.'S SUBMISSIONS:

- That it is settled law that there is only one standard of proof to be applied to civil proceedings, that is a balance of probabilities.

- That the Minister bears the burden of proof;

- That the Court must, in its role as the final arbiter of best interests, review such intervention through the prism of the best interests of the child (**Family and Children's Services of Yarmouth County v. R.S.**, [2006] N.S.J. No. 92; and **Nova Scotia (Minister of Community Services) v. C.C.**, [2010] N.S.J. No. 178);

- In **King v. Low**, [1985] 1. S.C.R. 87, the Supreme Court of Canada discussed the balance between the welfare of the child and parental rights. The Court stated at pg. 101:

> [27] … the dominant consideration to which all other considerations must remain subordinate must be the welfare of the child. This is not to say that the question of custody will be determined by weighing the economic circumstances of the contending parties. The matter will not be determined solely on the basis of the physical comfort and material advantages that may be available in the home of one contender or the other. The welfare of the child must be decided on a consideration of these and all other relevant factors, including the general psychological, spiritual and emotional welfare of the child. It must be the aim of the Court, when resolving disputes between rival claimants for the custody of a child, to choose the course which will best provide for the healthy growth, development and education of the child so that he will be equipped to face the problems of life as a mature adult. Parental claims must not be lightly set aside, and they are entitled to serious consideration in reaching any conclusion. Where it is clear that the welfare of the child requires it, however, they must be set aside.

- That the Court independently evaluates what is in the best interests of the child. The Court is not bound by what the Minister or any person believes to be in the child's best interest;

- That the Court is not "rubber stamping" the Minister's decision. The Court must examine all actions and decisions from the perspective of the best interests of the child;

- That s. 9 and s. 13 of the *Children and Family Services Act* outline the role and function of the Minister;

- That the Respondent agrees that now that the final legislative deadline has passed, the only two options available to the Court are (1) dismissal; or (2) return the child to the Respondents;

- That the legislation is clear that this Court shall not make an order for permanent care and custody in favour of the Minister unless the Court is satisfied less intrusive alternatives would be inadequate to protect the child, O.F.;

- That in **Children's Aid Society of Halifax v. T.B.**, [2001] N.S.J. 225, at paragraph 51, the Court of Appeal discusses the statutory duty of the

Minister and the Court's jurisdiction over the Minister's decisions. At paragraph 51, the Court held:

> [51] The agency has a statutory duty to take reasonable measures to provide services to families and children that promote the integrity of the family (**s. 13 CFSA**). The court has its own responsibility to take into account such measures and alternatives as are applicable in the circumstances of the case, before removing the child from the care of a parent or guardian (s. 42(2) **CFSA**). Thus the court and the agency share a responsibility to see that reasonable family or community options are considered. …

- That at paragraph 54 of **Children's Aid Society of Halifax v. R.J.**, [2005] N.S.J. No. 124, the Court comments about the three purposes of s. 2(1) as follows:

> [54] Subsection 2(1) of the Children and Family Services Act provides that the purpose of the Act is to protect children from harm, promote the integrity of the family and assure the best interests of children. Professor D. A. Roley Thompson in his publication The Annotated Children and Family Services Act, August 1991 stated:
>
> > "This subsection provides a succinct statement of the three inter-related purposes of the new Act, in order of priority. Consistent with the role of a purpose clause, the subsection is intended to provide guidance to courts and agencies charged with interpreting the Act. The first purpose is to protect children from harm, the over-riding concern of child protection legislation. Second, the promotion of the integrity of the family is recognized to be the first and best means of protecting children in a society like ours, which places the primary responsibility for the care and upbringing of children upon the child's parents. But, in a modern society, it is accepted that the state has an obligation, not just to enforce laws protecting children, but also to offer services to strengthen and maintain the family ....
> >
> > The third purpose stated in the subsection identifies the ultimate goal of the family, family legislation and public services to families and children, namely to assure the best interests of the child."

- That in **Family and Children Services of Yarmouth v. T.S.**, [2003] N.S.J. No. 262, Comeau, C.J., states at page 19:

[11] …

C.A.S. (Halifax) v. Emmerson (1991), F.H. CFSA/CAS, (Levy, J.F.C.) (Unreported), p. 19:

> "The very obvious **thrust** and philosophy of the Act is to assure that parents and children are allowed to stay together unless for clear and important reasons such a course is antithical to the child's best interests. Integral to the legislation is the reasonable provision of the services (section 13) that are not necessary to accomplish this task."
>
> The Act makes clear in a host of ways, not least in 42(2) ... that the severing of parental rights is to be a last step when all reasonable steps to provide services have failed, been refused, or are clearly inadequate to protect the child.'

- That by all accounts, C.H. received excellent care prior to giving birth;

- That C.H. testified she was not told of any medical issues regarding her child, O.F., prior to her decision to leave the hospital;

- That C.H. testified it was her understanding that the only reason to stay was because O.F.'s doctor was not available to attend the hospital at that time;

- That C.H. now acknowledges she made a mistake, and under like circumstances she would not make the same mistake;

- That C.H. took O.F. to see her family doctor the next day, on January 9, 2018, and that no heart murmur was detected;
- That C.H. had her home ready to receive and take care of her new baby;
- That the Minister's worker believed that the Respondents were aware of a suspected heart murmur on the day they left the hospital;
- That this belief, (although later unsubstantiated), became a chronic pattern on the part of the Minister and polluted the Minister's relationship with the Respondents going forward;
- That the Minister did not believe they were not smoking marijuana on the date of the apprehension, although another possible source was from the apartment below;
- That disbelieved communication created a gulf between the Minister and the Respondents, which caused the Minister to see them as unfit parents;
- That it was this chronic pattern that led the Minister to decide as early as November 2018 to seek permanent care and custody of the child, O.F.;
- That the Minister made the decision to seek permanent care and custody despite evidence showing that the access visits were going well;

- That Krista Morrison testified she did not think that either Respondent would put O.F. at risk in a direct manner. Nonetheless, the Respondents' access was repeatedly put on hold;

- That case aides for the Minister did not record positive observations during access, only negative, in relation to the Respondents as per the Minister's policy;

- That Case Aide, Ms. Fagnan, did acknowledge that the Respondents were engaging during the visits and that everything was fine;

- That the legislative focus of the *Children and Family Services Act* is on preserving the family unit. As stated in **Children and Family Services of Colchester County v. K.T.**, 2010 N.S.C.A. 72, at paragraph 37:

> [37] Before the issuance of a permanent care order, the legislative focus is on preserving the family unit. This would understandably mean that when the children are in temporary Agency care, parental access is to be encouraged so as to hopefully rehabilitate the family. …

- That if the Minister identified that services are necessary to improve parenting skills under s. 13 2(c) and (d), then placing children in foster care in distant communities, and, consequently, limiting access can be contrary to the legislative purpose of promoting the integrity of the family and the over arching principle of best interests of the child;

- That restrictions imposed on access, such as costs, limited recourses, availability of foster homes, the convenience or schedule of foster families, supervised access in Minister controlled environments may be policy driven, but should not be presumed to be in the best interest, or consistent with the best interest, of a child;

- That to demonstrate that the Respondents are unfit parents, the Minister relies heavily on historical information observed from British Columbia;

- That these records are outdated and do not reflect the current lifestyles or parenting abilities of the Respondents;

- That past evidence must not suffocate evidence of the Respondents' current situation;

- That C.H. now functions exclusively on prescribed marijuana and never in a child caring role;

- That C.H. is able to cope with her pain without pain blocks or anti-inflammatories;

- That the respective evidence of the Respondents demonstrates significant improvement in character and ability to parent;

- That this Court must determine whether the evidence supporting a rejection of the Respondents' plan is clear, convincing and cogent, or whether it is based on a best parenting option versus an adequate parenting option;

- That the Minister's plan is to put O.F. up for adoption, which would result in her living with strangers with whom she has no bond;

- That the alternative would be to return O.F. to her parents with whom she has a strong bond;

- That the Respondents have demonstrated their ability to care for O.F. effectively and appropriately;

- That the Minister acknowledges that access has been consistently appropriate;

- That Krista Morrison's evidence was that she had no concerns with O.F. being directly at risk;

- That C.H. is no longer dependent on illegal drugs and has successfully limited her use of prescribed medication to medical marijuana;

- That C.H. now has a strong support network, including G.F., her parents and his sister;

- That permanent care orders are a marked departure from the overall focus of the *Children and Family Services Act*, being the reunification of the family;

- That permanent care orders abandon the biological family as the presumed best interests option for children;

- That permanent care orders should only be granted in cases where there is clear, convincing and cogent evidence supporting the conclusion that all reasonable measures have been exhausted;

- That the evidence demonstrates that it is likely that C.H. will continue to improve and make progress;

- That the evidence is not clear, convincing and cogent that C.H.'s plan is inadequate to protect O.F.;

- That the Respondents have a suitable home environment which the Minister finds to be appropriate with no issues;

- That the Respondent, C.H., seeks return of her daughter, O.F., to her care, custody and control; and

- That the Minister's application should be dismissed.

G.F.'S EVIDENCE:

[29] G.F. testified as follows:

- That the Minister's reference to previous child welfare involvement in British Columbia was, "all new to me";
- That G.F. met C.H. in 2007;
- That the Respondents had a child, S., born in 2011 and who was placed in the permanent care of the Minister;
- That G.F. had some concerns about C.H.;
- That C.H. used drugs during that pregnancy, in particular, her drug of choice, crack cocaine;
- That the Respondents have a son, D., who now lives with G.F.'s sister in Ontario;
- That G.F. never broke up with C.H.; "We just took time apart";
- That G.F.'s sister refused to return D. to him as they previously agreed;
- That G.F.'s sister violated their agreement by not returning D.;
- That G.F. denied threatening G.M.D. and her family;

- That on January 6, 2018, G.F. was not advised about the heart murmur; “I would not have left the hospital had I known”;
- That the dual discharge procedure was not explained to G.F.;
- That G.F. denied being upset; “I get loud”; “People take me the wrong way”: “people take me wrong”; “people think I am aggressive”;
- That Nurse White was lying;
- That regarding the hospital, G.F. testified, “It’s a mess up there”;
- That there was no reason to wait for O.F.’s doctor;
- That the next day, Dr. Hall confirmed there was no heart murmur;
- That G.F. acknowledged he did not react well to the news that O.F. was not being discharged;
- That on January 11, 2018, G.F. believed the marijuana smell/smoke was coming from the neighbours; “I do not smoke anything in the house”; “not even an ash tray in my house”;
- That G .F. eats his marijuana and C.H. takes oil by legal prescription;
- That the Respondents’ apartment was fully set up and well equipped for O.F.; “This was a wrongful removal in my opinion”.

- That G .F. acknowledged he was angry and frustrated about the situation; “It’s my child… I got angry”; “I’m just a dad, man”;
- That G.F. dd not believe he required the services of Addiction Services;
- That G.F. believes he is a good parent;
- That Stan Brown cancelled G.F.’s access for no reason; “I got a little loud”;
- That G.F. cooperated fully with Dr. Landry, but acknowledged, “we got off on the wrong foot”;
- That G.F. admitted, “I flew off the handle a few times because they were not right”;
- That G.F. admitted his conduct with Nurse Hopkins was “inappropriate”; “That was wrong”; “It’s a lot of pressure”;
- That G.F. was frustrated with continued denial of home visits; “Access was moved around so much… here, there, and anywhere”;
- That access facilities were not clean nor appropriate;
- That G.F. denied threatening his niece; “I did not make that call”;

- That G.F. testified his niece had lied at his criminal trial and also at this proceeding;
- That G.F. admitted being inappropriate with Cindy Pearo on the phone;
- That G.F. denied being abusive to Sandi Virick; denied calling her names; denied pointing his finger in her face;
- That G.F. testified Sandi Virick was lying; "I was there to find out why our visits were cancelled… they were wrong";
- That Krista Morrison lied about not throwing a pen at C.H.;
- That G.F. denies he was on the phone call with Dr. Hall;
- That G.F. admits being upset with Dr. Pollett, but did not swear at him;
- That G.F. testified Stan Brown lied, "You lie to me and I have no use for that person"; "I did not threaten Stan Brown in no way"; "They just concentrate on the bad";
- That G.F. denied threatening or swearing at international students; "I was never upset with them":
- That G.F. denied calling C.H. a "stupid whore, cunt, whore";

- That G.F. testified anyone who testified as such would be lying;
- That G.F. testified that Paul Mugford lied;
- That G.F. now acknowledges the Respondents should not have held back on their past; "being open and honest would have been a preferable approach"; "we should have fully disclosed"; and
- That G.F. testified, "I'm aggressive because you are not listening".

G.F.'S SUBMISSIONS:

[30] The Respondent, G.F., submits the following:

- That the Court must make a finding as to whether O.F. remains a child in need of protective services before making a disposition order under s. 42 of the *Children and Family Services Act*;
- That the Minister must prove, on a balance of probabilities, that O.F. is in need of protective services at the present time;
- That the evidence does not establish, on a balance of probabilities, that there would be a substantial risk that O.F. would suffer physical harm if she were returned to her parents; and

- That the Respondent, G.F., submits it would be in the best interests of O.F. for the proceeding to be dismissed and O.F. returned to the care and custody of her parents.

LAW:

[31] 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.

[32] 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.

[33] 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.

[34] 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.

[35] 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.

[36] 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.

[37] 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;

[38] 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.

[39] 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.

[40] 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.

[41] 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.

[42] 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.

[43] 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.

[44] 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.

[45] In **Family and Children's Services of Kings County v. D.A.B.** [2000] N.S.J., No. 61, the Nova Scotia Court of Appeal stated at paragraph 51:

> [51] **The starting point for the Agency's provision of appropriate services is the identification of areas of concern.** The assessments by Melissa Keddie and Dr. Hastey were critical to this process. The fact that DB refused to fully cooperate with Dr. Hastey spoke volumes both as to his commitment to the process and his lack of insight into the difficulties confronting him. It also bore upon the likelihood that DB would avail himself of services if offered. **The Agency's obligation to offer services is limited to "reasonable measures"**. In view of DB's refusal to fully cooperate with Dr. Hastey, his failure to accept the areas of concern identified by Melissa Keddie and his revealed inability to recognize himself as contributing to the problem, it is difficult to imagine what further services could reasonably have been offered by the Agency.
>
> [Emphasis Added]

[46] In **Nova Scotia (Minister of Community Services) v. L.L.P.** [2003] N.S.J. No. 1 (C.A.), the Court of Appeal adopted, with some caution due to the factual context of the case, the principles articulated by Neidermeyer, J.F.C. I **Nova Scotia (Minister of Community Services) v. L.S.** (1994), 130 N.S.R. (2d) 193 (Fam. Ct.), at paragraphs 15, 17, 18 and 19, in which he stated:

> [15] I interpret the phrase "provided by the agency or provided by others with the assistance of the agency" as follows. **An agency is required to directly provide only those services it is capable of providing. With respect to all other services, the agency is to render assistance to the parent in having the service provided by others. This would include giving the parent the names and locations of these "out of house" services; payment for the cost of transportation to and from the services, if such was necessary; making referrals and setting up initial appointments where appropriate; and, advising the parent of alternatives, when needed. The agency is not expected to step by step "walk the parent through" all the stages of the service. There is a responsibility on the part of the parent to engage the "out of house" services. Not only does this indicate a willingness by the parent to improve, but it also demonstrates to others that the parent is capable of improvement as well as the degree to which positive change can be prognosticated….**
>
> [17] Before any meaningful consideration can be given to the duty of an agency to be found wanting with respect to the services as enumerated in Section 13(2) **the client has to be willing or be able to engage in such services**. The offers for

> services can be presented. **In order for them to be looked at they must be accepted and acted upon by the client.**
>
> [18] As counsel for the Minister has pointed out, it is not mandatory for the Minister to provide all of the services enumerated in Section 13 but "shall take reasonable measures" to provide services. "Reasonable measures", in this context, means the agency must identify, provide or refer to the services and there has to be a reasonable probability of success in the provision of service. L.'s current and past history of frustrating the socio-medical professions in providing services such as therapy and parent education is not the fault of the professionals. It may not be L.'s fault either. Her emotional condition may be such that she is simply unable to bring herself to participate. However, I am satisfied that the Minister carried out its duties as mandated. by Section 13.
>
> [19] Notwithstanding the failings in the provision of services, the important issue to remember is that the person who is most affected by L.'s lack of engagement is her son, who requires a parent who is capable of parenting. The test is not the hopelessness of the mother or the failure of the public agency to place all its resources at the disposition of the mother. This court, as well as others, has often repeated that the only test is what is in the best interests of the children. (*Children's Aid Society of Winnipeg v. M. and S.* (1980) 13 R.F.L. (2d) 65 (Man.C.A.) at p.66.)
>
> [Emphasis Added]

[47] 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.

[48] 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.)).

[49] 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.

[50] 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.

[51] 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…

[52] 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 Minister. 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.
>
> 7(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.

[53] 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, Re*, 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).*

[54] 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:

[55] The Minister carries the burden to establish to the Court that there is sufficiently clear, convincing and cogent evidence for the Court to find that it is in the best interests of O.F., on a balance of probabilities, to be placed in the permanent care and custody of the Minister.

[56] The Court heard from 31 witnesses over a 13-day period. Much of the Minister's evidence is contested by the Respondents, who question the motives of the Minister and whether or not the Minister has complied with its statutory obligation under the *Children and Family Services Act*.

[57] This is a matter which the Court takes seriously and the evidence must be scrutinized with care to ensure any decision is in the best interests of the child, O.F.

[58] The issue of credibility will be seriously assessed by the Court as the Respondents have stood firm in their testimony and called most of the Minister's witnesses liars. The Court will rely upon the decision of **Baker-Warren v.**

Denault, supra., to assist with this review and assessment. 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 of fact may believe none, part, or all of the witness's evidence and may attach different weight to different parts of a witness's evidence.

[59] In addition, the Court will review the evidence of past parenting. It is a relevant consideration in determining the probability of an event re-occurring, where past history aids in the determination of future probabilities, it is admissible, germane and relevant (**Nova Scotia (Minister of Community Services v. G.R.**, supra.). I, therefore, reject C.H.'s submission that the admission of such evidence "suffocates evidence of the Respondent's current situation".

[60] The Minister and the Respondents started out on the wrong foot, primarily due to the Respondents' continued and aggressive questioning of the Minister's concerns about the Respondents' parenting abilities. This distrust impacted services, access and general interpersonal relations throughout the proceeding.

[61] After O.F. was born, C.H. fully expected to go home with her new baby upon discharge. Although C.H. had obtained her discharge, Nurse White explained to the Respondents that O.F. could not be discharged until done so by

the baby's doctor. When Nurse White explained the process, C.H. got irritated and G.F. was yelling and swearing.

[62] Nurse White believed she had detected a heart murmur and hospital procedure required that a medical doctor assess the situation before the baby could be discharged.

[63] Unfortunately, the information about the heart murmur was not communicated to the Respondents due to hospital policy. In the circumstances, one can understand the Respondents' frustration, but their decision to remove the child from the hospital against medical advice cannot be condoned. It was irresponsible and not in O.F.'s best interest.

[64] Not surprisingly, the hospital reported the Respondents' conduct to the Minister, who acted appropriately. Although there may have been some misunderstanding as to whether or not the Respondents were informed about the heart murmur, it is nonetheless clear to the Court that the Respondents acted against medical advice and not in O.F.'s best interest.

[65] The conduct of the Respondents opened the door to an investigation by the Minister to ensure the child, O.F. was not at risk of harm. The Minister acted on

its legislative authority to protect children. The Respondents took exception to the Minister's conduct, believing they had done nothing wrong.

[66] For the Respondents to subsequently state, "had they been aware", they would have acted differently does not remove the initial concern about their conduct. The Respondents acted inappropriately, and not in O.F.'s best interest, in the Court's view.

[67] The evidence surrounding the events of the Minister's intervention on January 11, 2018 are conflicted. Minister workers and police all testified there was a smell of marijuana coming from the Respondents' apartment and marijuana smoke in the apartment upon entry. The Respondents deny this to be true.

[68] Ainslie Eligibeily testified as they entered the apartment, the smell of marijuana, "just hit us" and she could see marijuana smoke in the apartment. This evidence was confirmed by Paul Mugford.

[69] The Court accepts the Minister's evidence in this regard. Although denied by the Respondents, the conduct of G.F. weakens his credibility in this instance. Specifically, when the workers called G.F.'s cell phone, he pretended to be someone else who said G.F. was in Sydney Mines. This was clearly a misrepresentation by G.F. to hopefully put off the entry of the authorities. In

addition, G.F. was found “hiding in the closet”… not the actions of a person with nothing to hide.

[70] Not that this deceitful and evasive conduct of G.F. is determinative of the ultimate issue, but G.F.’s version of events is not capable of belief. Another example of the Respondents’ deceitful and evasive conduct can be found in the evidence of Cst. Erick Latwaitis, who testified about a car accident involving the Respondents in Baddeck, N.S., on September 11, 2017. The Respondents’ vehicle was found in a ditch on its roof. The male driver, later identified as G.F., was observed leaving the scene, leaving C.H., who was pregnant, behind in the overturned vehicle.

[71] C.H. told the police she did not know who was driving and was picked up hitchhiking by an unknown person. This was not true.

[72] The police dog assisted in locating G.F.. G.F. asked, “How’s C.?” Clearly, the Respondents were evasive and not truthful in this instance.

[73] It appears the Respondents have a propensity to lie to authority figures. The Court accepts the Minister’s evidence in this regard, and finds that, on a balance of probabilities, there was marijuana smoke/use in the Respondents’ apartment the

night of January 11, 2018. The Respondents' evidence is rejected. It is not credible.

[74] The main issue before the Court is to determine whether or not protective concerns of January 11, 2018, or other protection concerns continue to exist at the present time. If the Court finds that O.F. remains in need of protective services, it cannot dismiss the matter in favour of the Respondents.

[75] O.F. was found to be in need of protective services in April 2018, which resulted in the Minister putting forth a plan of care with recommended remedial services for the Respondents.

[76] Unfortunately, there was a major disconnect between the Minister and the Respondents, despite the Minister's best efforts to provide access and remedial services to the Respondents.

[77] O.F. was placed in foster care in Port Hawkesbury, N.S. The Respondents lived in Sydney, N.S. The geographical distance between parents and child was a "trigger" for the Respondents in the Court's opinion, as it caused the Respondents to be critical of the Minister. Access proved difficult for a number of reasons and the Respondents reportedly voiced their concerns about the distance; the location

of the access visits; the requirement access be supervised. All of this added to the Respondents' frustration and distrust of the Minister's motives.

[78] With respect, the Court fully understands their frustration and, no doubt, some decisions taken by the Minister were a catalyst for the Respondents' aggressive outbursts toward the Minister's staff and others. Krista Morrison agreed some decisions could have been handled differently by the Minister.

[79] Nonetheless, two wrongs do not make a right, and the Respondents aggressive and inappropriate conduct opened the door further for the Minister to investigate their fitness as parents.

[80] The Respondents proved to be very difficult and non-compliant during this process. This non-compliance manifested itself in many reported cases of verbal aggression by the Respondents. This display of aggression, regardless of the triggering factors, is very concerning to the Court.

[81] Witness after witness described contact with the Respondents as disturbing and unsettling to the point some feared for their personal safety (Nurse White; Dr. Hall; Dr. Pollett; G.F.'s niece; G.F.'s sister; Assistant Cindy Pearo; Supervisor Sandi Virick; Access Team Leader Stan Brown; Nurse Hopkins).

[82] Other witnesses, such as Dr. Landry, and other assessors, testified about the inappropriate behaviour of the Respondents, while in their respective offices. Neighbour Jill Perry, who testified as a rebuttal witness about G.F.'s aggressive and profane behaviour, was witness to events she found very disturbing. She wished to shield her teenage children from same. Specifically, Ms. Perry attributed the following yelling comments to G.F.:

- "you fucking whore";
- "you fucking slut";
- "you fucking cunt";
- "you fucking rats"; and
- "your smelly fucking food".

Ms. Perry described the outbursts as "extreme anger"; "loud and prolonged yelling by G.F..

[83] Ms. Perry was so concerned for the safety of the other person, identified as C.H. in the neighbouring apartment, that she called police on five or six occasions.

[84] Ms. Perry totally rejected the suggestion that G.F. was merely talking loudly, and was concerned for the safety of C.H. Ms. Perry identified herself to the Court

as a managing lawyer at Nova Scotia Legal Aid. She would be well aware of the signs of domestic violence which caused her to call the police. Ms. Perry was a disinterested witness in this proceeding. She had no motive to lie.

[85] The Court carefully observed all the witnesses during this proceeding. All of those who testified about G.F.'s aggressive behaviour were very credible and it was clear to the Court that most, if not all, were quite frightened and traumatized by their experience with G.F. In particular, Nurse Hopkins became quite emotional while testifying about her encounter with the Respondents.

[86] The Respondents called all of the above-named witnesses "liars". The Court believes the converse to be true. I find the Respondents, in particular G.F., are not being truthful in denying their aggressive conduct. Their credibility on this issue is highly suspect and the Respondents' version of events must be weighed with great caution.

[87] Although the episodes of aggression are far less with C.H., she, nonetheless, intimidated Dr. Hall and Dr. Pollett as evidenced by their respective letters to C.H. To C.H.'s detriment, she fully supports G.F. in his repeated denials, arguing he is a loud talker and is simply misunderstood.

[88] The letters of Dr. Hall and Dr. Pollett also question whether or not C.H. is no longer dependent on opiates. C.H. insists she is not, but the evidence of Dr. Hall and Dr. Pollett would suggest otherwise. This is a logical inference the Court can and does make.

[89] The Court shares the Minister's concerns that the Respondents' violent and aggressive outbursts are easily triggered when challenged by authority or placed in a confrontational position. This lack of self-control resulting in explosive anger could easily place an innocent child with no ability to self-protect at risk of harm. This conclusion is based upon an objective and reasoned assessment of the evidence, not a "rubber stamping" of the Minister's decision.

[90] The Respondents have challenged the authority of the Minister and as events have unfolded have done so at their peril. The initial protection concerns have evolved into additional protection concerns of which the Minister was not aware of at the time of apprehension.

[91] During the course of the proceeding, the Respondents have misrepresented facts; withheld information; bullied professional staff; and, have attempted to manipulate the process to their favour.

[92] The Respondents have deemed information from their past as irrelevant to the present circumstance. Their position is that they have moved on with their lives and any historical evidence to the contrary is of no consequence. The Court disagrees and finds that the historical information before the Court is highly relevant and germane to the ultimate issue in determining the best interest of the child, O.F.

[93] As stated by Hamilton, J. in the recent case of **C.R. v. Nova Scotia (Community Services)**, 2019 NSCA 89, at paragraph 18:

> [18] First, the judge made no error in considering the evidence of the mother's past actions in assessing future risk. This is appropriate as pointed out by the judge in paragraph 30 of her reasons:
>
> > [30] In coming to my conclusions, I am mindful of the Court of Appeal's observation in *S.A.D. v. Nova Scotia (Community Services)*, 2014 NSCA 77 regarding the correlation between past history and future risk:
> >
> > > [82] The trial judge found (para 30) that "the best predictor of future behaviour is past behaviour". That was Mr. Neufeld's testimony (above para 55) and was supported by the evidence of Ms. Boyd-Wilcox (above paras 49, 53). There is no legal principle that history is destiny. But a trial judge may, based on the evidence in a particular case, find that past behaviour signals the expectation of future risk … .
> >
> > (Emphasis added)

[94] The Respondents have demonstrated a self-centered perspective and have not been child focused. This is exampled by their decision not to attend access due to their disagreement with the Minister. Such a decision is not in the best interest

of their child, O.F., regardless of the point the Respondents were trying to make with the Minister.

[95] I agree there were difficult issues with access that the Minister could have handled differently, but the Respondents cannot exonerate themselves of blame. That said, access may not have been as confrontational had the Minister found a foster placement geographically closer to the Respondents. Calmer waters may have prevailed.

[96] The Respondents' consistent pattern of aggression; misleading; intimidation; profane behaviour; and, lack of insight exist currently as protection concerns. These concerns have not been addressed by remedial services, although consistently offered by the Minister.

[97] The timeline in this proceeding has been exhausted and it is unlikely the protection concerns can be adequately addressed at this time to reduce or eliminate risk.

[98] The Respondents expect things to be done their way. They see no need to participate in services and according to Dr. Landry, they attempted to manipulate the outcome of their assessment by being untruthful and/or not forthcoming.

[99] The Respondents do not see their behaviour(s) as a problem in terms of providing safe child care. This lack of insight proves to the Court, on a balance of probabilities, that risk has not been adequately addressed. Risk has not been reduced or eliminated. The child, O.F., would be exposed to risk or harm if returned to her parents.

[100] The Respondents entrenched and combative attitudes have disadvantaged their bid to have their child returned to their care.

[101] The Court of Appeal decision in **K.L.M. v. Nova Scotia (Minister of Community Services)**, 2007 N.S.C.A. 100 is relevant to the case at bar.

[102] In that case, the parents had a lengthy history of child welfare involvement in various provinces. Bateman, J.A. noted in paragraph 10:

> [10] …At subsequent proceedings services were ordered for the parents. The parents were uncooperative with the service providers' efforts to remediate the many parenting deficiencies and were generally non-compliant. K.L.M. was unwilling or unable to benefit from the services of a family support worker. D.M. was hostile and threatening to Agency workers. …

[103] In the **K.L.M.** case, the parents were not happy with access arrangements, which resulted in them "boycotting" access for a month.

[104] In dismissing the parents' appeal, the Court of Appeal noted as follows, at paragraph 22:

> [22] The parents' lack of insight, intransigence and hostility to the efforts of service providers were documented in the July 29, 2005, psychological assessment and parental capacity report prepared by Sharon Cruishank, Psychologist, for the former proceeding.
>
> [23] In the face of this evidence, the judge did not err in concluding that B.K.M. continued to be in need of protective services.
>
> [24] Nor is the parents' assertion that service provision by the Agency was inadequate supported by the record.
>
> [25] In addition to the services which had been provided in the proceeding relating to the four older children, the Agency requested orders for the following services within this proceeding:
>
> …
>
> [26] In the face of clear evidence that the parents consistently either rejected outright or failed to meaningfully engage with the services offered; failed throughout the proceeding to identify any additional services which might be of assistance; and denied any deficiencies which might warrant remediation, their submission that the Agency should have forced them to accept additional, unspecified services is without merit.

[105] Bateman, J.A. further stated, at paragraph 30:

> [30] Throughout these proceedings the parents' approach had been one of "parental rights" rather than child protection. They say it is their right to raise their children as they see fit, unimpeded by society's oversight, regardless of the impact on the children. However, the Supreme Court of Canada has clearly rejected a parental rights approach to child welfare. In *Syl Apps Secure Treatment Centre v. B.D.*, [2007] S.C.J. No. 38, Abella J. wrote for the Court:
>
> > [44] The primacy of the best interests of the child over parental rights in the child protection context is an axiomatic proposition in the jurisprudence. As Daley J.F.C. observed in *Children's Aid Society of Halifax v. S.F.* (1992), 110 N.S.R. (2d) 159 (Fam. Ct.):
> >
> > > [Child welfare statutes] promot[e] the integrity of the family, but only in circumstances which will protect the child. When the child cannot be protected as outlined in the [Act] within the family, no matter how well meaning the family is, then, if its welfare requires it, the child is to be protected outside the family. [para. 5]
> > >
> > > ...

> [45] This Court has confirmed that pursuing and protecting the best interests of the child must take precedence over the wishes of a parent (*King v. Low*, [1985] 1 S.C.R. 87; *Young v. Young*, [1993] 4 S.C.R. 3, *New Brunswick (Minister of Health and Community Services) v. L.(M.)*, [1998] 2 S.C.R. 534). It also directed in *Catholic Children's Aid Society of Metropolitan Toronto v. M.(C.)*, [1994] 2 S.C.R. 165, that in child welfare legislation the "integrity of the family unit" should be interpreted not as strengthening parental rights, but as "fostering the best interests of children" (p. 191). L'Heureux-Dubé J. cautioned at p. 191 that "the value of maintaining a family unit intact [must be] evaluated in contemplation of what is best for the child, rather than for the parent."
>
> [46] It is true that ss. 1 and 37(3) of the Act make reference to the family, but nothing in them detracts from the Act's overall and determinative emphasis on the protection and promotion of the child's best interests, not those of the family. The statutory references to parents and family in the Act, which the family seeks to rely on to ground proximity, are not stand-alone principles, but fall instead under the overarching umbrella of the best interests of the child. Those provisions are there to protect and further the interests of the child, not of the parents ...

[31] The paramount consideration is the best interests of the children.

These comments are applicable to the case at bar.

DECISION:

[106] I have reviewed and considered the evidence, together with the plan of the Minister, the plan of C.H. and G.F., 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.

[107] 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.

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

[109] 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 parents, C.H. and G.F..

[110] 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.

[111] 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).

[112] 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.

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

[114] 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 Respondents, C.H. and G.F., pose a substantial risk of harm or real chance of danger to their child has been proven to the Court's satisfaction on a balance of probabilities.

[115] I reject the plan put forth by C.H. and G.F.. The Respondents' plan does not address the short term and long term needs of the child, O.F.. Some progress was made by the Respondents; but the events of January 2018 and beyond clearly establish that the Respondents have no meaningful insight into the child protection concerns described herein.

[116] The Court finds that it is not safe to put the Respondents in a child caring role at this time. The evidence is clear, convincing, and cogent that the Respondents cannot be entrusted with their child, O.F.. Past history and present events make it clear that it would be too dangerous to put the Respondents in a child caring role at this time.

[117] The Court thus concludes that the child, O.F., remains in need of protective services. The child cannot be returned to C.H. and G.F.. This matter cannot be dismissed.

[118] The outstanding child protection concerns remain unchanged. The Respondents made no progress to address the child protection concerns since the protection stage of this proceeding. It seems the Respondents' defined strategy was 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 Respondents, C.H. and G.F.. The statutory requirements of s. 42(2); (3); and (4) of the *Children and Family Services Act* have been met.

[119] 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 O.F.. 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.

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

[121] Order Accordingly,

Haley, J.