SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Nova Scotia (Community Services) v. F.C. and R.C.*, 2020 NSSC 142

Date: 2020-04-21
Docket: 114681
Registry: Sydney

Between:

Minister of Community Services

Applicant

v.

F.C. and R.C.

Respondents

LIBRARY HEADING

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

94(1) No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding pursuant to this Act, or a parent or guardian, a foster parent or a relative of the child.

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:	February 11, 12, 13, 14, 2020 in Sydney, Nova Scotia
Final Written	April 21, 2020
Submissions:	Tara MacSween – March 2, 2020 Jill Perry – March 10, 2020 Robert Crosby – March 10, 2020 Lisa Fraser-Hill – March 10, 2020

Written Decision: April 21, 2020

Subject: Protection Hearing, *Children and Family Services Act*

Summary: The Court found that the children K.C. and O.C. were children in need of protective services, pursuant to ss. 22(2)(b); (g) and (h) as of the date of the Protection Hearing.

Issues: (1) Are the children K.C. and O.C. in need of protective services pursuant to ss. 22(2)(2)(b), (c), (d), (g), (h) and (kb)?

Result: The Court found:

1. That the children K.C. and O.C. were at substantial risk of harm or real chance of danger that they will suffer physical harm inflicted by R.C. or caused by the failure of R.C. to supervise and protect the children adequately contrary to s. 22(2)(b).

2. That there is substantial risk or real chance of danger that K.C. and O.C. will suffer emotional abuse and R.C. does not provide, or refuses, or is unavailable or unable to, or fails to cooperate with the provisions of services or treatment to remedy or alleviate harm pursuant to s. 22(2)(g).

3. That K.C. and O.C. suffer from a mental, emotional or developmental condition, that if not remedied, could seriously impair the children's development and F.C. does not provide, refuses, or is unavailable or unable to consent to, or fails to cooperate with the provision of, services or treatment to remedy or alleviate harm pursuant to s. 22(2)(h).

4. That the Minister failed to prove, on a balance of probabilities, that the children K.C. and O.C. were in need of protective services pursuant to ss. 22(2)(c); (d); and (kb).

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

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Judge:	The Honourable Justice Kenneth C. Haley
Heard:	February 11, 12, 13, 14, 2020, in Sydney, Nova Scotia
Written Release:	April 21, 2020
Counsel:	Tara MacSween for the Applicant Robert M. Crosby for the Respondent, F.C. Jill Perry for the Respondent, R.C. Lisa Fraser-Hill for the Litigation Guardian

By the Court:

Background

[1] The Respondent, F.C. is the natural mother of the children, K.C. and O.C.

[2] The Respondent, R.C. is the natural father of the child, O.C.

Issues

[3] Are the children, K.C. and O.C. in need of protective services?

Legislation

Child is in need of protective services

> 22(1) In this Section "substantial risk" means a real chance of danger that is apparent on the evidence.
>
> (2) A child is in need of protective services where
>
> > (b) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (a); [clause (a) states: (a) the child has suffered physical harm, inflicted by a parent or guardian of the child or caused by the failure of a parent or guardian to supervise and protect the child adequately;]
> >
> > (c) the child has been sexually abused by a parent or guardian of the child, or by another person where a parent or guardian of the child knows or should know of the possibility of sexual abuse and fails to protect the child;
> >
> > (d) there is a substantial risk that the child will be sexually abused as described in clause (c).
> >
> > (g) there is substantial risk that the child will suffer emotional abuse and the parent or guardian does not provide, or refuses or is unavailable or

unable to consent to, or fails to co-operate with the provision of, services or treatment to remedy or alleviate the harm;

(kb) the child is in the care of an agency or another person and the parent or guardian of the child refuses or is unable or unwilling to resume the child's care and custody.

(h) the child suffers from a mental, emotional or developmental condition that if not remedied, could seriously impair the child's development and the child's parent or guardian does not provide, refuses or is unavailable or unable to consent to, or fails to co-operate with the provision of, services or treatment to remedy or alleviate harm.

[4] Section 3(1) of the *Children and Family Services Act* defines "emotional abuse" and "sexual abuse" as follows:

s. 3(1) in this Act:

(1a) "emotional abuse" means acts that seriously interfere with a child's health development, emotional functioning and attachment to others such as:

(i) Rejection,

(ii) isolation, including depriving the child from normal social interactions;

(iii) inappropriate criticism, humiliation or expectation of or threats or accusations towards the child, or

(iv) any other similar acts

…

(v) "sexual abuse" means

(i) the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist any other person to engage in, any sexually explicit conduct or simulation of such conduct, or

(ii) the use of a child in, or exposure to, prostitution, pornography or any unlawful sexual practice.

Protection Hearing

40(1) Where an application is made to the court to determine whether a child is in need of protective services, the court shall, not later than ninety days after the

> date of the application, hold a protection hearing and determine whether the child is in need of protective services.
>
> (2) In a hearing pursuant to this Section, the court shall not admit evidence relating only to the making of a disposition order pursuant to Section 42 unless all parties consent to the admission of such evidence or consent to the consolidation of the protection and disposition hearings.
>
> (3) A parent or guardian may admit that the child is in need of protective services as alleged by the agency.
>
> (4) The court shall determine whether the child is in need of protective services as of the date of the protection hearing and shall, at the conclusion of the protection hearing, state, either in writing or orally on the record, the court's findings of fact and the evidence upon which those findings are based.
>
> (5) Where the court finds that the child is not in need of protective services, the court shall dismiss the application.

Authorities

[5] 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.

[6] 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 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 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.

Substantial Risk

[7] In **M.J.B. v. Family and Children Services of Kings County**, 2008 NSCA 64 at paragraph 70, the Court of Appeal stated:

> [70] 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.

[8] In **M.J.B.**, supra, at paragraph 77, the Court of Appeal adopted the principles outlined in paragraphs 26 to 30 of the British Columbia Court of Appeal case, S.(B), v. *British Columbia (Director of Child, Family and Community Services*) [1998] B.C.J. No. 1085, which stated:

> 26 I do not have any doubt that the burden of proof in child protection cases rests on the person who asserts the need for protection. Nor do I have any doubt that the standard of proof is the standard in civil cases, namely the standard usually called "the balance of probability". Sometimes, applying that standard to the seriousness of the allegation being made is thought to require a higher and more particularized measure of confidence on the part of the decision maker that the balance of the probability test has been met. But the test remains the same. The weight of the evidence must show that it is more probable than not that the assertion being made is correct.
>
> 27 When the assertion being made is about a past event then the actual occurrence of that event must be shown by the weight of the evidence to have been more probable than not . That is the case with past abuse, neglect, or harm to a child.
>
> 28 But where the assertion being made is that there is a risk that an event will occur in the future, then it is the risk of the future event and not the future event itself that must be shown by the weight of the evidence to be more probable than not. That is the case with consideration of a threat of future harm.
>
> 29 The result is that in considering past abuse the degree of certainty that it has occurred will be more than is required in considering whether the abuse will occur

> in the future. A ten percent risk of future abuse may meet the test of the risk being shown to exist on a balance of probabilities, whereas a ten percent assignment of the probability that the abuse had occurred in the past would not meet the balance of probabilities test.
>
> 30 In assessing the risk of future harm, (which is called the threat of future harm in s. 2), there is room for a variable assessment depending upon the nature of the threatened harm which is in contemplation. A threat of harm through neglect of a child's hygiene might well have to be much more probable to meet the balance of probability test than a threat of serious permanent injury through physical or sexual abuse. Generally speaking, a risk sufficient to meet the test might well be described as risk that constitutes "a real possibility".

[9] In **G.M. v. Children's Aid Society of Cape Breton-Victoria**, 2008 NSCA 114, at paragraph 37, the Court of Appeal affirmed paragraph 30 of S.(B) v**. British Columbia (Director of Child, Family and Community Services**, supra, noting that in assessing the risk of future harm, the severity of the threatened harm is relevant.

[10] In **N.(H.A.) v. Nova Scotia (Minister of Community Services),** 2013 NSCA 44, the Court of Appeal stated at paragraph 39:

> 39 Section 22(2) of the Act states that a child is in need of protective services in a number of situations, including a "substantial risk" of harm. Section 22(1) says that "substantial risk" means a "real chance of danger that is apparent on the evidence". The standard does not require that the judge be satisfied the future risk will materialize But the judge must be satisfied, on a balance of probabilities from the evidence, that there exists a real possibility the risk will materialize. Expert evidence, though often helpful, is not essential to satisfy the standard.

[11] More recently, the Court of Appeal stated as follows in **C.R. v. Nova Scotia (Community Services)**, 2019 NSCA 89, at paragraph 14:

> 14 When deciding whether there is "substantial risk", a judge must only be satisfied that the "chance of danger" is real, rather than speculative or illusory, "substantial", in that there is a "risk of serious harm or serious risk of harm" (**Winnipeg Child and Family Services v. K.L.W.** , 2000 SCC 48, paras. 104, 106 and 117), and it is more likely than not (a balance of probabilities) that this "risk" or "chance of danger" exists on the evidence presented.
>
> 15 I am satisfied the Judge applied the correct test. In paragraphs 21 and 22 of her reasons, set out in paragraph 7 above, the judge referred to this test. There is nothing in her reasons to indicate she did not correctly apply it She recognized it was not necessary for the evidence to show on a balance of probabilities that future physical harm, emotional abuse, or negligence would actually occur for

> there to be a real chance of danger. Several times in her reasons she referred to the need for the Minister to prove on a balance of probabilities that there was a substantial risk to the child.

[12] In **Nova Scotia (Community Services) v. KM**, 2019 NSSC 312, Justice Forgeron stated the following with respect to a finding of substantial risk of emotional abuse, at paragraphs 27 and 28:

> 27 A finding of a substantial risk of emotional abuse, like any other protection finding, is not one that will be entered lightly. Evidence must support such a finding in keeping with the civil burden of proof. Such a finding involves both objective and subjective elements. The parental conduct must be viewed objectively to prove actions that seriously interfere with a child. The parental conduct must also be viewed subjectively based on the impact that the conduct has or will likely have on the specific child.
>
> 28 In the end, the Minister must prove that there is a substantial risk that the father will seriously interfere with three aspects of the children's lives – that involving their healthy development, emotional functioning and attachment to others. In addition, for a finding of substantial risk, the Minister must also prove that the father does not participate in services to remedy or alleviate the abuse.

Grounds Not Included in Pleadings

[13] The Court is obligated to consider whether there are facts in evidence that support any of the grounds in s. 22(2), regardless of whether they are pleaded. In **Nova Scotia (Minister of Community Services) v. S.(A),** 1995 Carswell NS 118, 144 NSR (2d) 71 (Family Court), Justice Neidermeyer stated as follows at paragraph 9:

> 9 In my opinion when dealing with an application under Section 40(1) a court is bound to look at all of the sub-clauses under Section 22(2) whether or not pleaded.

[14] In **H.A. v. Children's Aid Society of Halifax**, 2002 NSCA 94, the Court of Appeal upheld a trial judge's finding that the children were in need of protective services pursuant to s. 22(2)(h), despite that ground not being included in the pleadings. Writing or the Court of Appeal, Justice Cromwell stated at para. 36:

> 36 The determination of whether the child is in need of protective services is primarily a factual matter focused on the determination of whether the grounds for intervention listed in s. 22(2) of the Act have been established.

[15] In **H.A.** supra, the appellant argued that the children's "emotional condition" was unspecified and that the evidence amounted to nothing more than there being issues that needed to be explored; however, the Court of Appeal upheld the finding under s. 22(2)(h), stating at paragraph 32:

> 32 I cannot accept these submissions in the context of the judge's decision read in light of the record before her. The judge had abundant evidence to support her conclusion respecting emotional harm and risk of emotional harm. This included evidence of the children's extremely anxious behavior as reflected in the repeated and escalating allegations of abuse, their taking on the aura of children injured and unwell, an aura unsupported by the medical evidence, their reports of unsubstantiated medical conditions and their prolonged absence from school. The evidence showed that the appellant appeared incapable of addressing their situation in an appropriate manner and indeed proposed to return the children to one of the schools in which the alleged abuse was perpetrated. The record is obvious, in my respectful view, that these children are very troubled and at serious risk. The fact that the depth of the trouble in combination with the appellants' conduct made more precise definition of the trouble impossible up to the time of the hearing does not, in my view, take away from the palpable risk of emotional harm evidenced in the record.

Finding is About the Child's Circumstances

[16] Except for findings under s. 22(2)(a) and (c), which have the result of placing a parent or guardian on the Child Abuse Register, a protection finding is not made *against* the parent(s) or guardian(s). Rather, it is the circumstances of the child which places them at risk. In **Minister of Community Services v. C.K.Z.**, 2016 NSCA 61, the Court of Appeal stated as follows at paragraph 47:

> 47 Nowhere in s. 22(2) is the protection status of a child linked to the specific attributes of his or her parent or guardian. It is, however, clearly linked to the actions, failure to act, or inability to act of the adults responsible for the child's care. Whether a child is in need of protective services is based upon the real life, lived experiences of the child. Nowhere in that definition, or elsewhere in the Act, is the status of a child as being in need of protective services informed by the reason why their parents acted, failed to act, or have the inability to act in a particular manner.

Credibility

[17] In **Baker-Warren v. Denault**, 2009 NSSC 59, which was approved 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 and 19:

> 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. 49.
>
> 19 With these caveats in mind, the following are some of the factors which were balanced when the court assessed credibility:
>
> > a) What were the inconsistencies and weaknesses in the witness' 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.)
> >
> > b) Did the witness have an interest in the outcome or was he/she personally connected to either party;
> >
> > c) Did the witness have a motive to deceive;
> >
> > d) Did the witness have the ability to observe the factual matters about which he/she testified;
> >
> > e) Did the witness have sufficient power of recollection to provide the court with an accurate account;
>
> 20 I have placed little weight on the demeanor of the witnesses 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 also 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 a 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).

Inferences

[18] **In Jacques Home Town Dry Cleaners v. Nova Scotia (Attorney General),** 2013 NSCA 4 (C.A.), Saunders, J.A. provided commentary on the use of interferences, their application, and their importance to the decision-making process, starting 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 of 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 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.**

33 When it comes to reviewing inferences on appeal, we apply the same "palpable and overriding error" standard of review to inferences, as we do to facts found to exist by direct evidence. See for example, **Housen v. Nikolaisen**, 2002 SCC 33; **H.L. v. Canada (Attorney General),** 2005 SCC 25; and **McPhee v. Gwynne-Timothy**, 2005 NSCA 80 where this Court said at paragraphs 31 and 32:

> [31] A trial judge's findings of fact are not to be disturbed unless it can be shown that they are the result of some palpable and overriding error. The standard of review applicable to inference drawn from fact is no less and no different than the standard applied to the trial judge's findings of fact. Again, such inferences are immutable unless shown to be the result of palpable and overriding error can be shown in the inference drawing process itself that an appellate court is entitled to intervene. Thus, we are to apply the same standard of review in assessing Justice Richard's findings of fact, and the interferences he drew from those facts. [Cases omitted]
>
> [32] An error is said to be palpable if it is clear or obvious. An error is overriding if, in the context of the whole case, it is so serious as to be determinative when assessing the balance of probabilities with respect to that particular factual issue. Thus, invoking the "palpable and overriding error" standard recognizes that a high degree of deference is paid on appeal to findings of fact at trial. See, for example, **Housen, supra,** at para 1-5 and **Delgamuukw v. British Columbia**, [1997] 3 S.C.R. 1010 at paras. 78 and 80. Not every misapprehension of the evidence of every error of fact by the trial judge will justify appellate intervention. The error must not only be plainly seen, but "overriding and determinative".

34 **Inferences, like findings of fact, will not be disturbed unless they fall outside a spectrum or range of reasonableness**. Such restraint and deference was explained by Professor Adrian A.S. Zuckerman in his text Civil Procedure

(London: LexisNexis U.K., 2003) cited with approval by the Court in **H.L., supra**, where the author stated:

> …if the appeal court cannot conclude that the lower court's inference from the primary facts was wrong, in the sense that it feel outside the range of inferences that a reasonable court could make, the appeal court should allow the lower court's decision to stand…Put another way, as long as the lower court's conclusions represent a reasonable inference from the facts, the appeal court must not interfere with its decision.

Protection Hearing

[19] The Protection Hearing commenced in this matter by way of a *voir dire* on November 18, 19, 20, 27, 28; December 11 and 12, 2019. A written decision dated December 18, 2019, resulted in the **exclusion of the police/protocol statements taken on April 24 and 25, 2019.** See **Nova Scotia (Community Services) v. F.C. and R.C.** [voir dire], 2019 NSSC 403.

[20] It was agreed by counsel that all *voir dire* evidence, not ruled to be inadmissible, would be evidence at the formal Protection Hearing which commenced February 11, 2020, and concluded February 14, 2020. This includes evidence of:

- Mary Annette Mrazek (Family Support Worker); and
- D.M. (Mother of R.C.)

[21] The Court received evidence from the following additional witnesses at the Protection Hearing, namely:

- Constable Liam MacKinnon, Cape Breton Regional Police Service
- Constable Jordan MacNeil, Cape Breton Regional Police Service
- Constable Glen Ford, Cape Breton Regional Police Service
- Constable Keith Power, Cape Breton Regional Police Service
- Constable David Browner, Cape Breton Regional Police Service
- Renee Wilson, Child Welfare Services

- Constable Mike Jones, Cape Breton Regional Police Service
- Amy Donovan, Child Welfare Services
- F.C., Respondent
- R.C., Respondent
- Carol MacLellan, Litigation Guardian for K.C.

[22] The following Exhibits were placed in evidence at the hearing, namely:

- Exhibit 1 – Occurrence Report of Constable Liam MacKinnon
- Exhibit 2 – Witness Statement Notes regarding R.C.
- Exhibit 3 – Statement of R.C.
- Exhibit 4 – Statement of F.C. - #1
- Exhibit 5 – Statement of F.C. - #2
- Exhibit 6 – Book of Pleadings for the Minister
- Exhibit 7 – Affidavit of D.M.
- Exhibit 8 – Recognizance regarding R.C.
- Exhibit 9 – R.C.'s mental health records – May 18/19
- Exhibit 10 – Additional mental health records of R.C.
- Exhibit 11 – N.S. Health Authority chart re O.C.
- Exhibit 12 – Affidavit of Carol MacLellan

Minister's Submissions

[23] The Minister submitted written submissions to the Court on February 29, 2020.

ISSUE #1

- Are the children K.C. and O.C. in need of protective services, pursuant to Section 22(2)(b) of the *Children & Family Services Act*?

[24] The Minister submits:

- That K.C. and O.C. are in need of protective services pursuant to s. 22(2)(b);
- That the Respondent, R.C., has significant mental health issues, issues with anger management, and issues with substance abuse;
- That R.C.'s mental health issues are long standing, dating back to the age of 9 or 10 years old;
- That R.C. testified he had no significant issues with mental health until K.C.'s allegations;
- That in April 2018 R.C. was referred by his family doctor to Mental Health Services for issues with insomnia, agitation, and depression;
- That after being released by Police in reference to K.C.'s allegations, K.C. demanded to go to the Crisis Centre, and said he was suicidal.
- That R.C. said he was under stress following the allegation of his step-daughter.
- That on May 18, 2019 R.C. was again brought to the Cape Breton Regional Hospital following a suicide attempt wherein he overdosed on clonazepam/cocaine;
- That the evidence is clear R.C. has difficulty coping with stressful situations.
- That R.C. has acknowledged that he has an issue with anger as supported by his mental health records;
- That R.C. was belligerent, argumentative, and insulting during interactions with Agency Workers, Renee Wilson and Scott Clarke;
- That R.C. does not have appropriate insight to effectively address his mental health issues;
- That R.C. often seeks out help while he is in crisis; but also exhibits a pattern of rejecting the help that professionals try to give him;

- That R.C. has a history of not following through with ongoing mental health services and supportive counselling;

- That it is unlikely that R.C. will reach out for assistance in the future;

- That R.C. believes his mental health is being used against him. This demonstrates a lack of insight into what is required for R.C. to learn healthy coping mechanisms;

- That instead of supportive counselling, R.C. has relied on substance use to help him cope, including alcohol, marijuana, and cocaine;

- That R.C.'s inability to manage his mental health and anger, combined with his inability to follow through with appropriate services to assist him with developing healthy coping skills presents a substantial risk of physical harm to his children;

- That F.C. testified she believes R.C.'s access with O.C. needs to be supervised, given his recent lifestyle and associates.

- That a protection finding under 22(2)(b) is about the circumstances of the child and their real life, lived experiences.

ISSUE #2(a)/2(b)

2(a) Is K.C. in need of protective services, pursuant to s. 22(2)(c) of the *Children & Family Services Act*?

2(b) Are the children K.C. and O.C. in need of protective services pursuant to s. 22(2)(d)?

The Minister submits:

- That K.C. was sexually abused by R.C., and is therefore in need of protective services pursuant to s. 22(2)(c).

- That there is no evidence to support F.C. knew of any sexual abuse occurring in her home.

- That both children, K.C. and O.C. are at substantial risk of sexual harm, and are in need of protective services pursuant to s. 22(2)(d) of the *Children & Family Services Act*.

- That social workers with training and experience conducted a complete investigation and substantiated K.C.'s allegations.

- That Renee Wilson and Amy Donovan believe K.C.'s allegations.

- That Police also conducted a thorough investigation of R.C. who has been charged with sexual assault and sexual interference.

- That R.C. has denied the allegation.

- That the Minister acknowledges that the Court has made an evidentiary ruling regarding K.C.'s out of court statements, such they cannot be offered for the truth of their contents.

- That the Minister also acknowledges that the Court has ruled that K.C.'s out of court statements cannot be offered for the fact that they were said.

- That F.C. has vacillated on whether or not she believes K.C.'s allegation

- That while F.C. completed services, she continued to fail to recognize or acknowledge any concern that K.C.'s behavior may be attributed to sexual abuse.

- That F.C. advised Family Support Worker, Annette Mrazek, that she did not believe K.C., while if one of her other children had made a similar allegation, she would have believed them.

- That F.C. has testified that she doesn't know what to believe.

- That F.C. has testified K.C. has started to open up and say things relating to her allegation against R.C.

- That the nature of sexual assault is that it can have a long term, detrimental effect on the victim.

ISSUE #3

Are the children K.C. and O.C. at substantive risk of emotional abuse pursuant to s. 22(2)(g) of the *Children & Family Services Act*?

The Minister submits:

- That the children K.C. and O.C. are at substantial risk of emotional abuse.
- That R.C. testified that K.C. told him every day she hates him.
- That R.C. acknowledged he told K.C. he hates her while in anger.
- That under no circumstances is it appropriate for a parent to say "I hate you" to a child.
- That F.C. testified she has always been supportive of K.C.
- That F.C. has not supported K.C. in several significant ways.
- That F.C. failed to recognize how K.C. might be feeling after having made such a significant allegation against her step-father.
- That the Agency Workers were concerned about the message being sent to K.C. because F.C. initially remained with and supported R.C.
- That K.C. knew that F.C. did not believe her.
- That in spite of F.C.'s testimony that she was supportive of K.C., her actions between April and December 2019 indicate otherwise.
- That while F.C. has supported K.C. in encouraging her to attend counselling, she has failed to fully support K.C. since April 24, 2019.
- That by refusing to entertain the possibility that K.C. may have been telling the truth, and by continuing her relationship with R.C., when she understood the pain it would cause K.C., F.C. has subjected to a form of rejection and isolation.
- That it is clear from F.C.'s own evidence that she continues to lack insight into this, and the risk it presents to K.C.
- That F.C. testified she has "always been supportive of K.C.".

- That the Minister acknowledges that in the last two months, F.C. has made some progress which appears to be having a positive impact on the family.

- That K.C. is now attending family counselling with F.C. and her siblings.

- That this is a very recent transformation, and it is clear from F.C.'s evidence that F.C. is still struggling to understand the extent to which her actions (initially maintaining regular contact with R.C.), and her failure of not following through with services for her children have placed the children at risk.

- That F.C.'s failure to fully appreciate the extent of K.C.'s emotional issues has prevented her from acting effectively to ensure K.C. is connected with services.

ISSUE #4

Are the children K.C. and O.C. in need of protective services pursuant to s. 22(2)(kb) of the *Children & Family Services Act*?

The Minister submits:

- That R.C. is on conditions not to have direct or indirect contact or communication with K.C.

- That R.C. is also on conditions not to be in the presence or company of any persons under the age of 16 years old.

- That R.C. is not in a position to have care of either child given his current charges, and conditions of his Recognizance.

ISSUE #5

- Are the children, K.C. and O.C. in need of protective services pursuant to any other ground not included in the pleadings?

The Minister Submits:

- That the evidence supports a finding on a balance of probabilities that both K.C. and O.C. are in need of protective services pursuant to s. 22(2)(h).

- That the evidence suggests K.C. is a bright, capable student, has a sense of humor, and can be polite.

- That K.C. also has significant behavioral and emotional issues.

- That K.C. exhibits an emotional condition that requires intervention and remedial services.

- That K.C. has been rude and disrespectful to Agency Workers, and the Guardian Ad Litem.

- That the level of hostility K.C. demonstrated towards F.C. was disturbing.

- That F.C. has testified that K.C.'s "typical self" is to be rude and disrespectful and has been that way since K.C. was a toddler.

- That by exhibiting such resignation towards K.C.'s behavior, F.C. failed to fully recognize and appreciate that K.C.'s behavior is indicative of an emotional condition.

- That F.C. does not appear to understand the risk that, if not remedied, K.C.'s emotional and behavioral issues are likely to impair her development.

- That F.C. failed to maintain appointments for O.C. with the Strongest Family Institute, and Tammy McPhee-Doyle of the Choice Program in 2016 and 2017.

- That F.C. did not follow up with further mental health services for O.C. until June 2019.

- That F.C. deferred to O.C.'s wishes regarding counselling.

- That F.C. is now taking O.C. to Child & Adolescent Service appointments.

- That the family is now attending counselling.

- That present counselling services were only initiated recently.

- That F.C. is now accepting services to help alleviate the children's conditions, but her history of parenting is relevant.

- That F.C. has failed to follow through with necessary services for her children in the past.

- That F.C. demonstrates a lack of understanding of her role as a parent to ensure her children access services.

- That F.C. requires and would benefit from assistance in ensuring her children attend the necessary services.

- That the fact F.C. has been having difficulty with discipline in the home, and has not raised this issue with her current Case Worker suggests that F.C. is reluctant to reach out for help.

- That although F.C. is a good mother in many ways, and although she loves her children, she has demonstrated an inability to act effectively to ensure that her children are protected to ensure that they access services that are essential to their healthy development.

CREDIBILITY

[25] The Minister submits:

- That the Court should view R.C.'s evidence with caution.

Litigation Guardian/Carol MacLellan – Submissions

[26] Counsel for the Litigation Guardian for K.C. submitted written submissions to the Court on March 10, 2020.

[27] The Litigation Guardian submits:

Section 22(2)(b)

- That K.C. is a child in need of protective services pursuant to s. 22(2)(b).

- That R.C. has significant and longstanding issues involving his mental health, issues with anger management, and substance abuse from 1994 to present.

- That R.C.'s mental health issues and problems controlling his anger are significant, and for the most part have not been treated due to his failure to follow up with treatment and his lack of cooperation.

- That most recently on May 15, 2019, R.C. went to the Cape Breton Regional Hospital and was detained and referred to crisis due to a suicide attempt.

- That R.C. has a history of failing to follow through with ongoing mental health services.

- That R.C. acknowledged the deterioration of his mental health since the sexual abuse allegation by K.C. in April 2019.

- That R.C. has yet to follow up with treatment providers.

- That it is unlikely R.C. will seek to help he requires in the future.

- That R.C. has continued to rely on substance abuse to help him cope, rather than pursue a course of treatment and counselling.

- That R.C. admitted to using alcohol, marijuana and cocaine.

- That R.C. acknowledged that he did not seek help for his addictions.

- That F.C. is very concerned about the people R.C. is associating with, and his suspected drug use.

- That F.C. would require R.C.'s access with the child, O.C. to be supervised.

- That F.C. and R.C. are no longer in a relationship.

- That F.C. no longer knows what to believe with respect to the allegation.

- That Carol MacLellan, Litigation Guardian for K.C., supports the Minister's position that R.C.'s inability to manage his mental health and anger, and his failure to follow through with treatment, presents a substantial risk of physical harm to his children.

- That there is no evidence that R.C. is in counselling, and he remains on a year and a half waiting list.

Section 22(2)(c); Section 22(2)(d)

[28] The Litigation Guardian submits:

- That she supports the Minister's position with respect to a finding pursuant to 22(2)(c) and 22(2)(d) with respect to the child K.C.
- That Carol MacLellan believes the allegations to be true.
- That Carol MacLellan is very concerned about K.C.'s emotional and mental health going forward.
- That Carol MacLellan testified K.C. is going to need support and counselling.
- That F.C. testified initially she did not believe the allegation made by K.C. against R.C.
- That initially R.C. had F.C.'s full support.
- That F.C. is now concerned about the change in R.C.'s lifestyle, choice of friends, and drug use, and the impact this will have on the children.

Section 22(2)(g)

[29] The Litigation Guardian submits:

- That K.C. is at substantial risk of emotional abuse.
- That although F.C. maintained throughout that she always supported K.C., her actions following the allegation up to December 2019 fall short of supporting her daughter during this most difficult time.
- That F.C. failed to provide K.C. with the emotional support she needed following the allegation.
- That F.C. told K.C. she did not believe her.
- That F.C. continued to support R.C. which she knew was hurtful to K.C.

- That whether the allegation was truthful or not, the serious nature of the allegation would indicate that K.C. needed the support and comfort of her mother, family, and treatment providers.

- That K.C. would have felt rejected and alone with nobody to turn to for support.

- That F.C. failed to fully appreciate the extent of K.C.'s emotional issues and the need for immediate services.

- That it appears that F.C. and K.C.'s relationship has improved since R.C. is no longer involved with F.C.

- That K.C. now attends family counselling with F.C. and her siblings.

- That K.C. will require long-term support and services.

- That there is a serious risk of emotional harm if she does not receive the required supports and services.

Section 22(2)(h)

[30] The Litigation Guardian submits:

- That the evidence supports a finding that K.C. is in need of protective services pursuant to s. 22(2)(h).

- That Carol MacLellan believes K.C. has emotional, psychological, and anger issues.

- That K.C. loves her mother a great deal, and relies on her mother to look after her and provide for all her needs.

- That the fact F.C. did not believe K.C. has hurt K.C.

- That whether or not the allegation is true, K.C. is a child in need of protective services.

- That the serious nature of the allegation, and the circumstances in which it was made, along with K.C.'s anger and emotional issues, support a protection finding.

- That K.C. wants nothing to do with R.C.
- That K.C. felt rejected by F.C. for months following the allegation.
- That R.C. and F.C. lacked the insight to take any action to help K.C.
- That K.C. and her family are just beginning to obtain the services needed for K.C. to overcome the emotional, psychological, and anger issues that have been part of her life for years.
- That it will take time and dedication to access the services necessary to help K.C.
- That F.C. acknowledged that after separating from R.C. she recognized that she needed to change her life.
- That for the 9 months after the allegation was made, F.C. gave R.C. her complete support.
- That F.C. did not believe the allegation of sexual abuse.
- That F.C. no longer knows what to believe.
- That F.C. no longer trusts R.C. to have unsupervised access with O.C.
- That F.C. is supporting her children, and recently began accessing services for her and the children to help the family heal.
- That Carol MacLellan testified that F.C. had responded to K.C.'s inappropriate behaviour in the past by ignoring it.
- That Carol MacLellan testified there is no question that F.C. is now trying to deal with K.C.'s behaviour.
- That although F.C. is trying to assist K.C., she will require the ongoing support of the Minister to appropriately manage her behaviours going forward.
- That F.C.'s failure to discipline K.C. would have also impacted O.C.

- That F.C. testified that grounding K.C. and cutting her off from her friends may not have been in the best interests at a time when she was not connecting with therapists and guidance counsellors at school.

Credibility

[31] The Litigation Guardian submits:

- That R.C.'s testimony in many respects is suspect, and must be viewed with caution.

- That R.C. made several inconsistent statements in his statement to police when questioned about the allegation.

ORDER SOUGHT

[32] The Minister seeks a finding that K.C. and O.C. are in need of protective services, pursuant to ss. 22(2)(b); 22(2)(c); 22(2)(d); 22(2)(g); 22(2)(kb) and 22(2)(h) of the *Children & Family Services Act*.

RESPONDENT'S SUBMISSIONS – F.C.

[33] Counsel on behalf of F.C. submitted the following:

- That the Minister may have been justified to initiate this Application on June 6th, 2019, but the question is whether the evidence supports this intervention now at this point in time.

- That F.C. testified her world was turned upside down as a result of the allegations of K.C., and the intervention of the Minister.

- That the Social Workers and Police told F.C. that they believed K.C.

- That F.C. said she did not believe K.C., and for that reason was considered an unfit mother.

- That K.C. locked herself away from her family; K.C. refused to talk to F.C.

- That as a result the Minister concluded there was risk of emotional harm to K.C.

- That R.C. had left the home.
- That K.C. was isolating herself.
- That O.C. was not reacting well to not seeing her father R.C.
- That F.C. was trying to continue her employment and care for her children.
- That F.C. began attending sessions with a Family Support Worker, as well as sessions with Child & Adolescent Services.

Section 22(2)(b)

- That there is not one scintilla of evidence, let alone convincing evidence to support the finding that F.C. has or even would physically harm either child, nor that she has failed to supervise and protect them.
- That the Minister's argument that she was maintaining a relationship with R.C. is no longer valid.
- That the claim F.C. was slow to report her concerns about R.C.'s lifestyle occurred at a time when Agency Facilitators were supervising his access to O.C.

Section 22(2)(d)

- That the Minister argues that F.C. continues to fail to recognize or acknowledge any concerns about K.C.'s behaviour may be attributed to sexual abuse.
- That the important question is…where is the evidence that K.C.'s behaviour may stem from sexual abuse?
- That opinions and speculations do not suffice.
- That one should consider what if the events as alleged by K.C. did not happen?
- That what if K.C. decided to teach her father a lesson after being grounded?

Section 22(2)(g)

- That the Minister argues that F.C. has not supported K.C and continued to support R.C.
- That this argument is no longer available with the termination of her relationship with R.C.
- That there is no clear, convincing, and cogent evidence that either K.C. and O.C. would suffer emotional harm, demonstrated by severe anxiety, depression, withdrawal or self-destructive or aggressive behaviour.
- That Social Workers are entitled to their opinions, but expert evidence is required to establish a finding under this section.
- That the Minister opted not to have an assessment completed.
- That the Litigation Guardian and current Social Worker had limited success in communicating with K.C.
- That F.C. is the only one who has made progress with K.C., yet the Minister argues F.C. is a substantial risk to her children.

Section 22(2)(kb)

- That there is no basis for a finding under this section.

Section 22(2)(h)

- That there is no sufficiently clear, convincing, and cogent evidence that K.C. and O.C. are suffering from a mental, emotional or developmental condition, where if not remedied, could seriously impair their development.
- That F.C. did her best given the circumstances of having one child with anxiety, while working two jobs and caring for her other children while she maintained a relationship with R.C.

- That the Minister is not able to tender proper evidence to establish the requisite elements of this section.

- That an inference from what has been presented should not be made.

- That opinions or speculation regarding the future based on the past should be given little weight, and received with caution.

- That the Minister failed to prove that F.C. did not provide, or refused, or is unavailable or unable to consent to services or treatment to remedy or alleviate the harm.

Conclusion

- That F.C. requests this Application be dismissed.

RESPONDENT'S SUBMISSIONS – R.C.

[34] Counsel on behalf of R.C. submits the following:

- That the circumstances surrounding and resulting from allegations made by K.C. about her step-father have taken a toll on all family members.

- That s. 22(2) of the *Children & Family Services Act* delineates 15 specific situations that are sufficient to render a child "in need of protective services".

- That if a child's circumstances do not fit within one of those subsections, the protection finding cannot be made.

- That none of the subsections alleged by the Minister apply to K.C. and O.C.

- That it is not possible for the Court to make a protection finding and the matter should be dismissed.

Section 22(2)(c) and (d)

- That the Minister's refusal to abandon these grounds flies in the face of the Court's ruling following the extensive voir dire.

- That K.C.'s statements to police on April 24 and April 25, 2019 were deemed inadmissible.

- That there is no other evidence of sexual abuse.

- That it is not open to this Court to conclude that sexual abuse occurred or is at risk of occurring in the future.

- That the only evidence before the Court is that an allegation was made.

- That the evidence is R.C. denied this allegation.

- That in spite of R.C.'s persistent denials, the social workers for the Minister testified that they believe K.C.'s allegations to be true.

- That the Litigation Guardian also shares this belief.

- That such beliefs do not constitute proof of the substance of K.C.'s allegations.

- That there is no such proof available.

- That there is no proof to suggest F.C. knew of any sexual abuse occurring in the home.

- That there is no evidence for a finding under s. 22(2)(c) or s. 22(2)(d).

Section 22(2)(b)

- That R.C. is the focus of this ground.

- That the Minister cites his "significant mental health issues" with anger management, and issues with substance abuse as factors which purportedly render R.C.'s children at risk of physical harm, due to a resulting failure to supervise and protect adequately.

- That the problem with the argument is the absence of any evidence that such concerns have ever, or could ever, pose a substantial risk of physical harm (a real chance of danger) to K.C. and O.C.

- That the Minister attempts to frame the evidence as demonstrating that R.C. has untreated mental health issues, shows no insight and is resistant to treatment.

- That the evidence in fact shows that R.C. has been seeking assistance with mental health issues since he was a young person.

- That R.C. sought out crisis intervention at the hospital when needed and has been treated by his family doctor for many years.

- That R.C.'s mental health problems have clearly intensified since April 2019; but he has stepped up his efforts to address those problems.

- That R.C. followed up with a counsellor in the spring/summer 2019 until he could no longer afford the cost of those sessions.

- That R.C. now sees his family doctor every two weeks, and takes prescribed medication as he has done for years.

- That it is difficult to accept the Minister's characterization of R.C. as "unlikely to reach out for assistance in the future".

- That R.C. is candid about his substance use and abuse in relation to alcohol, marijuana and cocaine.

- That R.C. never used drugs or alcohol when he was solely responsible for caring for the children.

- That F.C. testified that R.C.'s substance abuse was not an issue while the family was still together.

- That by his own evidence, R.C.'s substance use has intensified since April 2019.

- That R.C. has testified he has cut down on his drinking, and is making an effort to take better care of himself.

- That R.C. also acknowledges having some problems managing his anger over the last year.

- That the Minister has failed to link R.C.'s alleged flaws to any risk to the children.

- That the Minister had no concerns about this family prior to April 2019.

- That there is no evidence to suggest R.C.'s mental health, anger management, and substance abuse issues have placed R.C. or O.C. at risk due to inadequate supervision at any time while the family unit was still intact.

- That there is no evidence that K.C. and O.C. have been at risk since April 2019.

- That R.C. does not see K.C. and does not wish to do so.

- That R.C.s access with O.C. has gone well.

- That R.C. has abided by the informal directions of Child Welfare and the Court.

- That F.C. testified she will only allow R.C. to have supervised contact with O.C. until her concerns about his substance use and lifestyle have been addressed.

- That R.C. does not believe his access with O.C. needs to be supervised.

- That there is no evidence for a finding under s. 22(2)(b).

Section 22(2)(g)

- That emotional abuse is defined in s. 3(1) as "acts that seriously interfere with a child's health, development, emotional functioning and attachment to others".

- That the legislation goes on to provide the following examples of emotional abuse: Rejection, Social Isolation, Inappropriate Criticism, Humiliation, Threats or Accusations.

- That the Minister does refer to R.C.'s acknowledgement that he told K.C. he hates her in response to her making similar comments to him.

- That there is no evidence of any problematic interactions between O.C. and R.C. at any time.

- That most of the Minister's submissions on this ground focus on F.C.'s reaction to K.C.'s allegations.

- That the Minister takes issue with the fact that F.C. continued to see R.C. in the months after the allegation, and did not believe K.C.'s allegation.

- That the Minister further argues F.C.'s behaviour negatively impacted her efforts to secure appropriate services for K.C.

- That there is no evidence F.C. communicated to K.C. at any time that she did not believe her; instead F.C. tried to encourage K.C. to talk to her, but she refused to do so.

- That there is no evidence to suggest that F.C. did anything other than to encourage K.C. to go to counselling.

- That K.C.'s resistance to counselling was in keeping with other evidence indicating she did not want to talk to anyone about the allegations.

- That F.C. is no longer certain about what did or did not happen between K.C. and R.C.

- That it is not difficult to criticize or second guess the reactions of F.C. to the devastating events of April 2019.

- That the purpose of s. 22(2)(g) is not to hold parents to a standard of perfection.

- That the evidence in this case, F.H. is short of the definition of emotional abuse in s. 3(1).

- That F.C. is not refusing, unavailable, unable, or unwilling to cooperate with services.

- That F.C. got a referral for O.C. to go back to Child Adolescent Services, and ensure O.C. sees her pediatrician on a regular basis.

- That there is no evidence to support a finding under s. 22(2)(g).

Section 22(2)(h)

- That the focus of this ground is on F.C.

- The Minister contends that both K.C. and O.C.'s issues meet the test of having "a mental, emotional or developmental condition".

- That the Minister has failed to demonstrate the failure or inability of a parent to respond appropriately to that condition, if established.

- That the available evidence does not support a protection finding under s. 22(2)(h).

Section 22(2)(kb)

- That the Minister's argument with respect to this ground is based on R.C.'s current situation.

- That the law is clear that protection findings are about the circumstances of the child, not the circumstances of the parent.

- That the Court cannot make a finding under s. 22(2)(kb).

Conclusion

- That Amy Donovan was unable to link the Minister's concerns to a specific protection ground.

- That Amy Donovan testified that the Minister "wants to stay involved" in order to provide support to the family.

- That this goal by the Minister is not a protection finding under the *Children & Family Services Act.*

- That this proceeding was prompted by the allegations of K.C. in April 2019.

- That there is no evidence of the content of those allegations before the Court.

- That the C. family has been under the microscope of Child Welfare.

- That there are clearly ongoing issues and challenges.

- That none of those issues and challenges constitute circumstances sufficient to warrant a conclusion that K.C. and O.C. are children in need of protective services.

- That the Respondent, R.C., asks that this application be dismissed pursuant to s. 40(5) of the *Children & Family Services Act*.

PROTECTION DECISION

Background:

[35] This matter came before the Court on June 12, 2019, at which time the Minister alleged there were reasonable and probable grounds to find that the children of the Respondents, R.C. and F.C. were in need of protection services.

[36] An allegation of sexual assault was made by the child, K.C. against her step-father, R.C. Given the circumstances R.C. was removed from the family home, and denied access to his child, K.C. with supervised access to his child O.C. The children were placed in the supervised care of their mother, F.C.

[37] A contested protection hearing commenced with a *voir dire* hearing on November 18, 19, 20, 27, 28 and December 11 and 12, 2019.

[38] A written decision cited as **Nova Scotia (Community Services) v. F.C. and R.C.,** 2019 NSSC 403, December 18, 2019, ruled the statements (2) made by K.C. to police and social workers inadmissible.

[39] The Protection Hearing recommenced with the hearing of evidence on February 11, 2020.

[40] Written submissions were received by the Court from respective counsel on February 29, 2020, March 10, 2020 and March 11, 2020.

[41] This is my decision regarding Protection.

[42] It is agreed that the Minister carries the burden to establish that there is sufficiently clear, convincing, and cogent evidence for the Court to find that it is in the best interests of K.C. and O.C., on a balance of probabilities, be found in need of protective services.

[43] The Minister initially requested a finding be made under s. 22(2)(c)(d) and (g) of the *Children & Family Services Act*.

[44] After the *voir dire* ruling the Minister added grounds under ss. 22(2)(b) and (kb).

[45] At the conclusion of the evidence, and in written submissions, the Minister also included s. 22(2)(h) as a ground for protection.

[46] The allegation by K.C. against her step-father has been a severe blow to the very fabric of this family. Prior to this allegation the C. family was never a concern to the Minister.

[47] Upon learning of this very serious and alarming allegation, the Minister quite correctly investigated the complaint, and intervened in the best interests of K.C. and O.C.

[48] Reasonable and probable grounds has been defined as follows:

> What reasonable and probable grounds are is a question of fact depending on the circumstances of each case. The facts must be such as would cause a reasonable, careful, and prudent person to believe or have an honest or strong belief that the child is in need of protective services (See Salhany, Canadian Criminal Procedure, 4th ed (Toronto, Canada Law Book 1984).

[49] **Nova Scotia (Minister of Community Services v. B(A),** 2013 NSSC 101 states at paragraphs 22 to 23:

> The essential inquiry for the court at this stage is to determine whether there are "reasonable and probable grounds to believe" that the children are in need of protective services. The inquiry is not whether the children are in fact in need of protective services, but whether the evidence before the court leads one reasonably to conclude that they probably are. The decision is to be made on the basic evidence that the court considers credible and trustworthy in the circumstances.

[50] **In Family & Children's Services of Kings County v. B(Y)** 181 NSR (2d) 178 (NSFC) at paragraph 4 stated:

> [Section 39(2}…imposes the obligation to determine whether the grounds and evidence put forward are both reasonable and probable. This again obliges the Family Court Judge to assess and weigh, and to allow the matter to proceed only if and when that assessment satisfies the Judge that the Agency's case reveals reasonable and probable grounds to believe that the child is in need of protective services.

And further at paragraph 13:

> The question to be asked and answered in the affirmative is whether it is reasonable to conclude that there probably is and that there is a sound basis to believe that at an eventual hearing will result in a granting of the Agency's application for a finding that the children are in need of protective services.

[51] The reasonable and probable grounds standard was met in this instance by Orders dated June 12, 2019 and July 8, 2019 respectively.

[52] Section 40(4) states:

> The court shall determine whether the child is in need of protective services as of the date of the protection hearing and shall, at the conclusion of the protection hearing, state, either in writing or orally on the record, the court's findings of fact and the evidence upon which those findings are based.

[53] Section 40(5) states:

> Where the court finds that the child is not in need of protective Services, the court shall dismiss the application.

[54] It is agreed that the burden of proof upon the Minister at this stage of the proceeding is "on a balance of probabilities". The Minister must establish "substantial risk" as per s. 22(1) which means a real chance of danger that is apparent on the evidence. In this regard the Minister alleged K.C. and O.C. are in need of protective services pursuant to ss. 22(2)(b); (c); (d); (g); (h); and (kb).

[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 K.C. and O.C., on a balance of probabilities, are in need of protective services.

[56] The issue of credibility will be assessed by the court as the Minister has pointed to portions of evidence which it believes compromises the credibility of R.C. and F.C., particularly in relation to R.C.'s denial of the sexual abuse allegation.

[57] There is no principle of law that requires the 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 testimony and may attach different weight to different parts of a witness's evidence.

[58] I have reviewed and considered the evidence. I have scrutinized the evidence with care and have considered the totality of evidence in reaching this decision, including court exhibits, and submissions of counsel.

Section 22(2)(c)

[59] This is the primary ground alleged by the Minister. The Minister was not successful in it's attempt to have the statement made by K.C. admitted into evidence as a consequence of the *voir dire* hearing.

[60] In the court's decision cited as **Nova Scotia (Community Services) v. F.C. and R.C.,** supra, the Court stated at paragraph 104-105:

> [104] In consideration of the above, I find the Minister has failed to prove on a balance of probabilities that the statements meet the threshold reliability test. Threshold reliability is established when the hearsay is sufficiently reliable to overcome the dangers arising from the difficulty of testing it. This has not been achieved in this instance. Hearsay dangers still persist. I am mindful of the distinction with ultimate reliability which the Court need not consider at this time. The issue before the Court at this time is one of admissibility only. The statements are, therefore, ruled to be inadmissible.
>
> [105] K.C. is a young, bright, articular and well-spoken young woman. She has made a serious allegation against her father. That allegation, nonetheless, cannot be presented to the trier of fact in statement form. There are insufficient safeguards to establish its inherent trustworthiness. The statements do not exhibit sufficient indicia of reliability so as to afford the trier of fact a satisfactory basis for evaluating the truth of the statement. I am exercising my discretion under s. 96(3) not to admit the police statements. I find this decision is appropriate and just in the circumstances.

[61] It is apparent to the Court that the exclusion of the statements proved difficult for the Minister in the presentation of its case. The Minister offered no other clear, convincing and cogent evidence to establish that sexual abuse had occurred.

[62] The Minister relied upon the evidence of social workers, police, and the litigation guardian who believed the allegations made by K.C. Suspicion is not proof. The Court cannot be guided or influenced by the beliefs of the Minister's witnesses which was tantamount to reasonable and probable grounds only.

[63] The Minister may have substantiated the complaint of sexual abuse according to its own mandate, but the Minister has nonetheless failed to prove that R.C. sexually abused K.C. on a balance of probabilities.

[64] Reliance upon this evidence in the face of the court's earlier *voir dire* ruling would sanction the Minister to minimize the burden of proof upon it, namely, on a balance of probabilities. The more serious the allegation does not impose a different level of scrutiny on the trial judge. As stated in F.H., supra, at para. 45:

> …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.

[65] Section 96(3) of the *Children & Family Services Act* states:

> Upon consent of the parties or upon application by a party, the court may, having regard to the best interest of the child, and the reliability of the statement of the child, make such order concerning the receipt of the child's evidence as the court considers appropriate and just, including:
>
> (a) The determination of the persons, including parties, who may be present while the child is giving viva voce evidence, and
>
> (b) The admission into evidence of out-of-court statements made by the child.

[66] The Minister was not successful in its application under 96(3)(b), but the Court notes Section 96(3(a) does permit a child to provide direct testimony. The Minister opted not to exercise this option. That is their right, and the Minister may have good reason not to do so, but the Minister must also accept the ultimate consequence of that decision, which resulted in its failure to discharge the burden of proof placed upon it.

[67] I have considered the circumstances of K.C. as it relates to the alleged sexual abuse. I find there is no proof apparent on the evidence that R.C. sexually abused K.C., and this ground is hereby dismissed. The Court is not suggesting that the alleged act of sexual abuse did not occur; simply put the alleged sexual abuse was not proven to have occurred. R.C.'s denial must therefore be viewed in this context. The Minister failed to provide clear, convincing, and cogent evidence in this regard. There is nothing more than the allegation which is not a sufficient basis upon which the Court can make a finding under s. 22(2)(c).

[68] All the parties agree F.C. had no knowledge of the alleged sexual abuse until disclosed by K.C. As a result there is no evidence that F.C. knew or should have known of the possibility of sexual abuse, and failed to protect K.C. This ground is dismissed in relation to F.C.

Section 22(2)(d)

[69] Given my ruling above in relation to s. 22(2)(c), I find there is no clear, convincing, and cogent evidence to support this ground on a balance of probabilities. The Court is not suggesting the allegation of K.C. is not capable of belief. There is simply no evidence that exhibits sufficient indicia of reliability so as to afford the Court a satisfactory basis for evaluating the truth of the allegation. Given there is no evidence of sexual abuse, it then becomes difficult for the Court to be satisfied that there exists a real possibility that risk of same will materialize in the future. The risk in this instance is "speculative or illusory" . This ground is dismissed.

R.C. – Section 22(2)(g)

[70] The Court finds there is clear, convincing, and cogent evidence that R.C. told K.C. "he hated her". This is inappropriate, disturbing, shocking and frightening. No parent should address their child in this way. Although the comment was directed toward K.C., I find it would also impact and affect O.C.. A reasonable inference can be made in this regard. Whether the allegation is true or not, it does not afford R.C. the luxury of making such a statement without consequence. R.C.'s behavior causes the Court to conclude that there is a substantial risk that K.C. and O.C will suffer emotional abuse as defined by s. 3(1). Such conduct by R.C., regardless of his denial to the allegation, must be addressed in the best interests of the children.

[71] I therefore find that K.C. and O.C. are children in need of protective services as defined by s. 22(2)(g) of the *Children & Family Services Act*.

F.C. – Section 22(2)(g)

[72] The Minister alleges F.C. is also culpable under this Section as the result of supporting R.C. after the allegation was made by K.C., in essence communicating to K.C. she did not believe her.

[73] This, no doubt, was a traumatic and challenging time for the family. F.C.'s family history with K.C. was the basis for her disbelief of the allegation. F.C. has since separated from R.C., F.C. now states "she does not know what to believe".

[74] F.C. has had both K.C. and O.C. in her supervised care since the allegation.

[75] The family are now in counselling, and from all reports F.C. and her children are doing well with services and committed to cooperating with the Minister.

[76] On April 23, 2019 K.C. and O.C. were arguing. F.C. testified K.C. came out of her room "screaming at O.C.". F.C. testified K.C. always did this and "gets in her mother's face". F.C. testified that K.C. said "you're always defending O.C.".

[77] This type of behaviour is corroborated by the mother of R.C., D.M., who described K.C.'s bad attitude as a young child. She testified K.C. could be saucy and ignorant. D.M. recalled overhearing a conversation two years ago wherein she heard K.C. say:

> I would just call the police and say you did something to me.

[78] D.M. admonished K.C. for this comment.

[79] D.M. does not believe the allegation, but testified:

> It is wrong if it happened, it's wrong if it didn't.

[80] The Court finds merit in this statement.

[81] F.C. testified that R.C. was the disciplinarian and he took K.C.'s phone away and grounded her the night of April 23, 2019. K.C. said "I don't fucking care" while throwing things. K.C.'s behaviour was described as getting worse, and that K.C. felt that she was in control of the house. Given this behaviour exhibited by K.C., the Court can understand F.C.'s reluctance not to believe K.C. K.C.'s present and historical behaviour gave F.C. reason to question K.C.'s motives, and

whether or not she was telling the truth, but this disbelief should not be equated with emotional abuse.

[82] F.C. testified on December 12, 2019:

> I support her (K.C.) but I don't believe her.

[83] Upon learning about the allegation F.C. testified:

> My whole life got flipped around.

[84] When pressed on cross-examination F.C. acknowledged she was mistaken about some details when speaking to police. F.C. quickly called the police back to clarify her mistake(s). F.C. testified she simply forgot and there was no intention to mislead.

[85] I believe F.C. Her evidence is credible. I reject the Minister's submissions to the contrary. Her whole world was transformed upon hearing K.C.'s allegation in the blink of an eye. F.C. saw her family being torn apart with the intervention of the Minister and Police.

[86] R.C. was removed from the house for safety purposes R.C. nonetheless denied the allegation. F.C. was processing a lot of conflicting information at the time, and she made some quick decisions in an effort to maintain family balance. This falls short of emotional abuse as defined by s. 3(1) in these particular circumstances.

[87] F.C. has since reassessed the situation. She still does not know what or who to believe, but her full focus is now on the children.

[88] Whether or not one accepts the correctness of F.C.'s initial reaction, I find it is nonetheless understandable, and not demonstrative of her abandoning her children's emotional needs.

[89] On February 12, 2020 F.C. testified that "things were going good now". F.C. testified that after the allegation K.C. isolated herself from the family, and was quite aggressive.

[90] F.C. testified K.C.'s demeanor had changed over time. F.C. testified she never discussed the details of the allegation with K.C., but said "I tried".

[91] The family is now in counselling, and believes things are improving within the family unit. K.C. has been opening up with her mother.

[92] F.C. testified R.C. is a different person now, and she has concerns about his friends, alcohol use, and drug use which included cocaine multiple times.

[93] F.C. still struggles with the veracity of K.C.'s allegations:

> I don't know what to believe

[94] F.C. is fearful for O.C. given R.C.'s current lifestyle. F.C. believes R.C.'s lifestyle and friends put O.C. at risk. F.C. stated:

> I don't see why the Minister needs to be involved with me…
>
> I'm doing nothing wrong.

[95] F.C. stated during cross-examination:

> You are trying to make me look like a bad person.

[96] F.C. stated she is child focused. That is now her top priority. I accept her evidence in this regard.

[97] F.C. was living with a difficult child, who was challenging within the family household. Then came the allegation, and given F.C.'s relationship with K.C. at the time, one could understand why she may have doubted the veracity of the allegation. One must be mindful K.C. was disciplined and grounded the night before the allegation was made to police. This gives rise to the concern about the possibility of fabrication.

[98] F.C. had the right to assess the situation from her perspective as a mother and wife. In doing so I fail to see how she placed the children at risk of emotional abuse. F.C. should not be indicted for failing to agree with the Minister's belief of K.C.'s allegation.

[99] F.C. is a good mother who is trying to manage a horrific family experience. It should be noted the Minister entrusted F.C. to have the care of her children throughout this proceeding.

[100] A protection finding must be based upon evidence that establishes that the children are in need of protective services at the time of hearing. I find there are no protection concerns that exist at this time in relation to the children involving F.C. under s. 22(2)(g). This ground is, thus, dismissed.

22(2)(b) – R.C.

[101] The Minister submits that R.C. has significant mental health, anger management, and substance abuse issues. There is uncontradicted evidence that R.C. became suicidal after K.C.'s allegation, and R.C. resorted to excessive use of alcohol and drugs during this stressful time.

[102] Initial attempts by the Minister to intervene and assist R.C. were repelled, and he was belligerent, argumentative, and insulting with Agency Workers. This rejection of professional help by R.C. demonstrates a total lack of insight regarding his mental health issues. Such behaviour by R.C. causes the Court to question R.C.'s ability to be around his children at this time of crisis.

[103] R.C.'s behaviour has spiraled into self-centered and destructive behaviour. As recent as February 8, 2020, R.C. was assaulted by two persons known to him, causing him a severe head injury. The evidence of police described a man whose lifestyle was out of control, and associating with people of questionable character. R.C. was aggressive with police and medical staff, was disruptive and uncooperative.

[104] It is clear from the evidence that R.C. is having great difficulty coping with the present situation involving his children. When questioned about his mental health issues following K.C.'s allegation, R.C. testified:

> It would happen to any normal person

[105] I do not accept that R.C.'s altered behaviour in using drugs, alcohol, and attempting suicide is the reaction of a "normal person". It certainly causes the Court concern about how R.C. will react around his children given the circumstances. He is demonstrating self-destructive and violent tendencies.

[106] I find R.C. is unlikely to reach out for supportive assistance in the future. R.C. has, in fact, testified he will not seek out help again because he feels his mental health is being used against him. This demonstrates a lack of insight into what is required for R.C. to learn healthy coping mechanisms.

[107] I find that R.C.'s inability to manage his mental health and anger, combined with his inability to follow through with appropriate services to assist him with developing healthy coping skills, presents a substantial risk of physical harm to his children. I am satisfied on a balance of probabilities from the evidence, that there exists a real possibility the risk will materialize.

[108] I find there is clear, convincing and cogent evidence to support a protection finding against R.C. under 22(2)(b). The children are in need of protective services.

Section 22(2)(b) – F.C.

[109] The Minister submits because F.C. did not disclose her concerns about R.C.'s substance use and associates to the Minister until January 2020, even though R.C.'s access with O.C. was taking place in the family home supervised by Case Aides.

[110] F.C. is a mother attempting to hold the family together in light of serious allegations made by K.C. against R.C. Although F.C. initially supported R.C. "100%" and disbelieved K.C., F.C. never waivered in support of her daughter(s).

[111] I find the children are not at future risk of physical harm from their mother. F.C. is now child focused, and has terminated her relationship with R.C. F.C. candidly admits she does not know what to believe in terms of K.C.'s allegation. I fail to see how that in of itself, or the overall reaction of F.C. to a very unique set of circumstances supports the Minister's request for a finding against F.C. under 22(2)(b). F.C. is not a physical threat to her children. To suggest otherwise is speculative or illusory.

[112] I find there is no clear, convincing and cogent evidence to support a finding against F.C. on a balance of probabilities. This ground is therefore dismissed.

Section 22(2)(kd)

[113] The Minister submits because R.C. is on conditions to the Court, he is not in a position to have care of either child, given his current charges and the conditions of his Recognizance.

[114] I agree R.C. is not in a position to have care of his children at this time. I nonetheless question the applicability of this ground, given that R.C. is under court imposed conditions not to have contact with his children.

[115] The Court has found the children are in need of protection services under 22(2)(b) and (g) thus far in this decision.

[116] The Court declines to include this ground as a further basis for protection.

Section 22(2)(h)

[117] The Minister submits K.C. has significant behavioural and emotional issues that require intervention and remedial services. I agree that an inference may be made in this regard. The fact that K.C. made such an allegation, true or not, suggests she suffers from mental, emotional or developmental conditions that necessitates treatment to remedy or alleviate harm. This is a reasonable and logical conclusion to be inferred from the evidence and established facts.

[118] The Minister's evidence indicated that K.C. was rude and disrespectful to her mother, F.C.; that K.C. was rude to Agency Workers and the Litigation Guardian. The litigation guardian found K.C.'s level of disrespect and aggressiveness to be disturbing and troublesome.

[119] F.C., in response, testified that these observed behaviours were K.C. being her "usual self". F.C. testified:

> K.C. is K.C.
>
> …She is always going to have attitude.

[120] I accept the Minister's submission that by being resigned to K.C.'s behaviour, F.C. failed to fully recognize and appreciate that K.C.'s behaviour was indicative of an emotional condition . I agree with the contention that F.C. does not appear to understand the risk, that, if not remedied, K.C.'s emotional and behavioural issues are likely to impair her development.

[121] The Minister is of the belief that K.C.'s apparent issues are the result of the sexual abuse alleged. That is one possibility; but so also are other causative factors which have not been fully explored by the Minister, including the behavioural consequences that may result from the possibility of fabrication. K.C.'s behavioral problems may, or may not be related to sexual abuse. The fact remains the allegation was made. This cannot be disregarded in terms of K.C.'s emotional well being. The Court can and does draw an inference that K.C. suffers from a mental, emotional or developmental condition, that if not treated, could seriously impair K.C.'s development. Because of the strained relationship between F.C. and K.C., F.C. overlooked the nature of the allegation, and did not immediately assist in the retention of services or treatment to remedy or alleviate harm to K.C. Such an allegation demands immediate action by a parent to investigate the basis upon which it was made by the child.

[122] Failure to do so in a timely manner puts the child at risk. Whether or not F.C. believed the allegation, F.C. should have realized the very nature of the allegation required action on her part to protect K.C.'s best interests. F.C. failed to do so. In dismissing the allegation as not being true, F.C. abandoned her responsibility to provide immediate parental support and remedial assistance to K.C., who was clearly in need of same.

[123] F.C. was entitled to disbelieve the allegation but she, nonetheless, had the responsibility to act in a more immediate and proactive manner to provide remedial support and services to K.C. I accept that F.C. did her best to support K.C., but her initial response was inappropriate and not in the best interests of K.C.

[124] Similarly F.C. failed to follow through with services to address O.C.'s issues with anxiety. Her rationale for not doing so is rejected by the Court.

[125] Both K.C. and O.C. are now involved with services. F.C. is now totally focused on her children's needs, including their mental and emotional health.

[126] I find F.C. is a good mother, who has now gained insight into her failure as a parent. Although progress has been made in this regard, I, nonetheless, find K.C. and O.C. are children in need of protective services under s. 22(2)(h).

CONCLUSION

[127] For different reasons the Court has found the children K.C. and O.C. to be in need of protective services. R.C.'s parenting deficiencies have been identified

under ss. 22(2)((b) and (g). F.C.'s parenting deficiencies have been identified under s. 22(2)(h).

[128] A serious allegation was made by K.C. against R.C. The Court was unable to establish, on a balance of probabilities, that the allegation was true; but the very nature of the allegation placed this entire family in turmoil. This has resulted in the necessary continued involvement of the Minister to provide remedial services to the Respondents, so as to reduce or eliminate risk of harm to the children, K.C. and O.C.

[129] The Court has determined that R.C. and F.C. require the guidance and assistance of the Minister, for different reasons, to address their respective identified parental deficiencies through remedial services.

[130] Protection findings have thus been made under ss. 22(2)(b); (g); and (h). Alleged grounds under ss. 22(2)(c); (d); and (kb) are dismissed.

[131] The Court acknowledges that the legislative time limits in this proceeding have been necessarily extended. The reasons are a matter of record, and the extensions were done in the best interests of K.C. and O.C. In this regard I reference the case **D.C. v. Family & Children Services of Lunenburg County and T.M.C. and C.L.G.** (2006) 249 N.S.R. (2d) 116 (NSCA), Justice Oland stated at paragraph 17 as follows:

> [17] However, the law is clear that exceeding that time limit does not always constitute an error of law**. In Children's Aid Society of Cape Breton-Victoria v. A.M.** 2005 NSCA 58 (CanLII), [2005] N.S.J. No. 132, 2005 NSCA 58, in seeking to overturn an order placing her children in permanent care, the appellant parent argued first, that the judge had no jurisdiction to make a permanent care order once the section 45(1)(a) time limits had been reached, and second, if the judge had discretion to extend the time, he erred in doing so because he failed to consider whether the extension was in the best interests of the children. Cromwell, J.A. for this Court stated:
>
> > [28] Turning to the first submission, there was no loss of jurisdiction here. The Court made this clear in **Nova Scotia (Minister of Community Services) v. B.F**. 2003 NSCA 119 (CanLII), (2003), 219 N.S.R. (2d) 41 (C.A.) [2003] N.SJ. No. 405 (Q.L.)(C.A.). At paras. 57 and 58 and **The Children's Aid Society and Family Services of Colchester County v. H.M** reflex (1996), 155 N.S.R. (2d) 334 (C.A.). The *Act* contemplates that there will be a judicial determination of the child's best interests. If a time limit, which is a milestone toward that determination, caused the Court to lose jurisdiction to determine the child's best interests it would

> contradict the purpose of the *Act*. Therefore, the Court did not lose jurisdiction by reserving its decision as to disposition for longer than the time limits for temporary care orders under section 45.

[132] I recommend counsel contact scheduling as soon as possible to arrange for a Disposition Hearing. Every effort should be made to ensure the extension of internal time lines to date do not result in the ultimate date for final disposition in this matter being superseded.

Order Accordingly,

Haley, J.