

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Nova Scotia (Opportunities and Social Development) v WM*,
2025 NSSC 30

Date: 20250124

Docket: Syd No: 132934

Registry: Sydney

Between:

Minister of Opportunities and Social Development

Applicant

v.

WM

Respondent

Judge: The Honourable Justice Pamela Marche

Heard: December 18 and 19, 2024, in Sydney, Nova Scotia

Written Release: January 27, 2025

Final Written Submissions: Applicant: January 13, 2025 and January 21, 2025
(Rebuttal)

Litigation Guardian: January 13, 2025

Respondent: January 17, 2025

Counsel: Tara MacSween and Emma Adlakha for the Applicant
Brianna Renou for the Litigation Guardian DM
Alan Stanwick for the Respondent WM

By the Court:

Overview

[1] On February 27, 2024, then 13-year-old Ab was awoken in the early morning hours by her father, WM, shooting a pellet gun out of her bedroom window. Ab texted her adult sister who alerted the police. Responding police officers arrested WM under the *Involuntary Psychiatric Treatment Act*, 2005, c. 42, s. 1, and contacted Child Protection Services (CPS) who took Ab into their care where she has remained throughout this proceeding.

[2] Should Ab be placed in the permanent care and custody of the Minister of Opportunities and Social Development (the “Minister”)? To decide this question, I must consider Ab’s best interests and assess whether substantial risk of harm to Ab exists. The *Children and Family Services Act*, SNS, 1990, c. 5, as amended, (the *Act*) applies.

[3] WM argues AB should be returned to him. NL, Ab’s mother, was killed in November 2023. Ab was placed in the permanent care of the Minister in June 2023 but was returned to WM on January 12, 2024, following WM’s successful appeal of the permanent care decision. This is the fifth child protection proceeding related to Ab.

Background and Procedural Facts

[4] Current protection concerns cited by the Minister relate to WM’s anger management, substance abuse and mental health issues that create a substantial risk of both physical harm and emotional abuse.

[5] WM initially contested the protection finding. While he agreed out of court statements made by Ab could be considered for the truth of their contents without Ab testifying, he argued similar statements made by NL to police and CPS workers should be excluded. A *voir dire* was held, and I ruled hearsay evidence attributed to NL met the test of threshold reliability. At that point, WM consented to a protection finding under s. 22(2)(b) of the *Act*. Soon thereafter, the Minister filed a motion for permanent care of Ab.

[6] A contested permanent care hearing was held December 18 and 19, 2024. The Minister offered evidence from several CPS workers and child protection records were tendered. Dr. Nassar, qualified by consent to provide expert opinion on clinical and analytical toxicology, testified about WM's drug test results. Mental Health and Addiction Services records and Cape Breton Regional Police records related to WM were entered by consent. WM testified. Ab's Guardian, DM, gave evidence as well. Evidence from previous proceedings was admitted by consent pursuant to s. 96 of the *Act*.

[7] The history of child protection involvement is set out in: *Nova Scotia (Community Services) v. NL*, 2014 NSSC 201; *Nova Scotia (Community Services) v. BM*, 2015 NSSC 145; *Nova Scotia (Community Services) v. NL, WM*, 2022 NSSC 45; *Nova Scotia (Community Services) v NL, WM*, 2023 NSSC 184, *Nova Scotia (Community Services) v. NL*, 2023 NSSC 185; and *WM, NL v. Nova Scotia (Community Services)*, 2024 NSCA 7.

[8] Counsel for the Minister provided a summary of past proceedings involving Ab, which I have anonymized below:

- This is the fifth child protection proceeding involving the child, Ab.
- Ab was taken into care upon her birth in September 2010, and that protection proceeding was terminated in January 2012 in favour of her paternal grandmother, BM, having custody of Ab under the *Maintenance and Custody Act*.
- Ab was taken into care again on July 16, 2013, due to ongoing concerns with substance use by NL, and due to concerns that NL, WM, and BM were not abiding by the terms of a supervision order involving the child, Jc, who at that time was in BM care under a supervision order.
- The Minister filed a plan seeking permanent care and custody of Ab. After a contested hearing held over several days in 2015, the Honourable Justice Theresa M. Forgeron dismissed the Minister's motion for permanent care and custody and placed Ab in the custody of WM, with strict terms and conditions for NL's supervised access.
- The Minister filed another child protection proceeding involving Ab in October 2019, due to concerns involving substance use by WM and his involvement in incidents of violence with other individuals.

- Ab was placed in the care of MD under a supervision order, but MD wished to become a kinship foster placement, so Ab was subsequently taken into care, remaining with MD.
- In February 2021, Ab was returned to the care and custody of NL and WM under a supervision order, as they were residing together and presenting as a couple.
- The proceeding was terminated in April 2021, and by that time, WM had taken Ab to reside at the home of BM, as NL's daughter Js had moved into the apartment they had been sharing.
- The fourth proceeding began on August 30, 2021, less than five months after the previous proceeding involving Ab terminated in April 2021.
- The Minister became involved again after receiving a referral on July 21, 2021, alleging that WM was heavily medicated and was not looking after himself or Ab, and that NL was abusing drugs and had recently overdosed, and the child was now with MD.
- On February 9, 2022, this Honourable Court released a decision following a contested protection hearing, finding that Ab was in need of protective services pursuant to s. 22(2)(b) of the *Children and Family Services Act*.
- On March 31, 2022, the Minister made a decision to seek permanent care and custody of Ab, and a contested hearing on the motion for permanent care and custody was held on March 28, 29, and 30, 2023.
- On June 8, 2023, this Honourable Court released a decision placing the child, Ab, in the permanent care and custody of the Minister.
- In September 2023, WM and NL filed an appeal of the decision for permanent care and custody.
- In November 2023, NL died.
- On January 12, 2024, the Nova Scotia Court of Appeal granted WM's appeal and set aside the order for permanent care and custody.
- On February 27, 2024, Ab was taken into care again after police were called to WM's home.

Issues

- 1. Does Ab remain at substantial risk of physical harm?**
- 2. Is Ab at substantial risk of emotional abuse?**
- 3. What is the legislative timeline?**
- 4. Is it in Ab's best interest to be placed in the permanent care of the Minister?**

Position of the Parties

Position of the Minister

[9] The Minister argues there is substantial risk of physical harm and emotional abuse. The Minister says protection concerns continue to emanate from WM's anger management, substance abuse and mental health issues. The Minister claims WM has demonstrated an inability to recognize how his decisions and behaviours negatively impact Ab. The Minister relies on current and historical events to support their position.

[10] The Minister says WM has unresolved anger management issues. They say he has a propensity to be controlling and violent. The Minister cites the shooting event of February 2024 as evidence of this. The Minister further relies on an incident between WM and NL in August 2023 that resulted in WM being charged with assault as proof of this concern.

[11] The Minister cites historic events of violence as well. They refer to the 2014 findings made by Justice Forgeron in *NS Community Services v. NL, supra*. They also reference violent incidents from 2019 when WM grabbed Js (NL's daughter), and assaulted JR, (a friend of his mother's).

[12] The Minister argues WM has ongoing substance abuse issues related to drugs and alcohol. The Minister says, upon being admitted to the hospital in February 2024, WM admitted to a CPS worker that he drinks every night to help him sleep and reported to a nurse that he had used crack cocaine four to five weeks prior. The Minister relies on drug test results to prove WM has been using cocaine and unprescribed clonazepam. The Minister says WM was intoxicated at a June 2024 supervised visit with Ab while she was having junior prom pictures taken.

[13] The Minister cites historic substance abuse issues, as well, and says WM admitted to CPS workers in 2019 that his alcohol use was problematic. They argue

WM was intoxicated at an April 2023 supervised visit with Ab that took place in a hair salon.

[14] The Minister argues WM places unrealistic expectations upon Ab and inappropriately involves her in adult conversations and situations. They say he prioritizes his own wants and needs and has demonstrated an inability to focus on Ab's emotional well-being.

[15] The Minister says Ab no longer wishes to have any contact with WM and her views and preferences should be respected. The Minister argues that WM's unwillingness to respect Ab's boundaries demonstrates his inability to put her best interests first.

[16] The Minister argues WM's ongoing denial of protection concerns demonstrates not only a lack of insight into the issues but also the futility of offering services or programs to reduce risk. The Minister says the risk of harm is such that it is not safe to return Ab to WM's care.

[17] The Minister cites s. 45A of the *Act* in calculating the allowable time frame for CPS involvement. They say the cumulative duration of all prior disposition orders made under s. 42(1)(d) of the *Act*, in all prior child protection proceedings involving Ab, exceeds 36 months. The Minister argues I must, therefore, either dismiss this proceeding or place Ab in the permanent care of the Minister.

[18] The Minister argues it is in Ab's best interest to be placed in the permanent care and custody of the Minister. They say the parenting plan put forth by WM is not tenable and there is a long history of Ab coming in and out of care. The Minister believes Ab needs consistency, stability and security, which WM is unable to provide.

Position of the Guardian

[19] The Guardian agrees with the position put forth by the Minister. He says WM's continued substance abuse, and ongoing denial of use, poses a direct and serious risk to Ab. He argues WM has demonstrated a lack of insight into the mental health issues that resulted in him being involuntarily admitted into psychiatric care. The Guardian is concerned that WM continues to deny and deflect concerns about how Ab is negatively affected by WM's behaviours.

[20] The Guardian says he has met with Ab several times, both privately and with her sisters present. He is confident that Ab has been open with him and has not been influenced by others in communicating her views and preferences. The Guardian reports that Ab does not want to have contact with her father and does not wish return to his care. He says Ab wants to live with her sister.

[21] The Guardian reports WM has repeatedly attempted to communicate with Ab despite her very clearly stated wish to have no contact. WM has left numerous messages on her phone, has tried to contact her from other phone numbers (Ab has blocked his number) and has solicited others to contact her on his behalf. The Guardian argues this behaviour is not only contrary to court order but is also damaging to Ab's well-being.

[22] The Guardian concurs with the Minister's assessment of the legislative timeline and agrees it is in Ab's best interest that a permanent care order be issued.

Position of WM

[23] WM seeks the return of Ab to his care and a termination of the child protection proceeding. WM takes no position on the application of s. 45A of the *Act*. He says the only relevant issue is whether Ab remains a child in need of protective services. WM says she is not.

[24] In pre-hearing submissions, WM also argued an alternate position suggesting Ab should be returned to his care pursuant to a supervision order, or remain in the temporary care of the Minister with his parenting time being unsupervised, so that he could undertake services and programs within the remaining legislative time line to reduce any identified risk. WM argued the Minister had failed to properly offer services and programs to him.

[25] WM admits he was suffering from mental health difficulties when he shot a pellet gun out of Ab's bedroom window on February 27, 2024. WM attributes this episode to circumstances surrounding NL's murder. He says through hospitalization and medication, his mental health is now stable.

[26] WM argues the Minister's concerns about violence are historical and do not currently pose a risk of harm to Ab. He says he was defending NL in the 2019 incident involving Js, and no charges were laid against him following the 2019 event between him and his mother's friend. WM denies assaulting NL in August 2023 and says criminal charges laid against him in relation to this occurrence were dropped.

[27] WM argues there is insufficient evidence to prove he has a problem with alcohol. Even if I accept the evidence of Dr. Nassar about his drug use, WM characterizes these tests as dated (April-May 2024). WM says there is no evidence to suggest he has abused drugs since that time or that his substance use constitutes a significant risk of harm to Ab.

[28] WM understands the Minister to be arguing his heightened dispute with CPS along with his use of profanity constitutes a risk of emotional harm to Ab. He argues there is no merit to this claim. WM says the Minister has made similar arguments in the past and a risk of emotional harm has never been substantiated on this basis.

[29] WM says he has relocated to the South Shore in Nova Scotia where he has a suitable residence for Ab. He says he has a solid parenting plan for Ab and it is in her best interest to be returned to his care so she may be afforded a fresh start.

Applicable Law

[30] The Minister seeks a permanent care and custody order. The Minister must prove their case on a balance of probabilities by providing clear, cogent and convincing evidence that Ab remains at substantial risk of harm and that it is in Ab's best interest to be placed in the permanent care and custody of the Minister. *Nova Scotia (Community Services) v. C.K.Z.*, 2016 NSCA 61.

[31] Decisions about permanent care must be made with the legislative goal of the *Act* kept in mind. Section 2(1) of the *Act* says the purpose of the *Act* is to promote the integrity of the family, to protect children from harm and to ensure the best interests of the children. The best interest of the child is the paramount consideration (s. 2(2) and s. 46 of the *Act*).

[32] The *Act* must be interpreted with a child-centered approach. Circumstances that may be relevant to determining a child's best interests are outlined in s. 3(2) of the *Act*. This list is non-exhaustive. I must consider factors unique to the needs of each individual child and how those needs relate to risk of harm. *Nova Scotia (Community Services) v. R.M.N. and M.C.*, 2017 NSSC 270.

[33] The Minister says Ab is at substantial risk of physical harm and emotional abuse, ss. 22(2)(b) and (g) of the *Act*, respectively. Section 22(2)(g) of the *Act* says a child is in need of protective services for emotional abuse where:

...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 abuse.

[34] Emotional abuse is defined in s. 3(1)(la) of the *Act* to include acts that:

...seriously interfere with a child's healthy development, emotional functioning and attachment to others, including rejection, isolation, including the child from normal social interactions, deprivation of affection or cognitive stimulation, inappropriate criticism, humiliation or expectations of threats or accusations towards the child, or any other similar act.

[35] In *A.B. v. Nova Scotia (Community Services)*, 2022 NSCA 24, our Court of Appeal noted with approval Justice Forgeron's assessment of emotional abuse in *Nova Scotia (Community Services) v. T.L.*, 2019 NSSC 182 at para 22:

A finding of substantial risk of emotional abuse is not one that will be entered lightly. It involves both objective and subjective elements. The parental conduct must be viewed objectively to prove conduct that seriously interferes with a child. The parental conduct must also be viewed subjectively based on its impact on the specific child.

[36] "Substantial risk" is defined in s. 22(1) of the *Act*. It means a real chance of danger that is apparent on the evidence. I must be satisfied the chance of danger is real, rather than speculative or illusionary, and substantial in that there is a risk of serious harm or a serious risk of harm. *C.R. v. Nova Scotia (Community Services)*, 2019 NSCA 89.

[37] The Minister is relying on past parenting history. Past parenting history may be relevant as it may signal "the expectation of risk." *D. (S.A.) v. Nova Scotia (Community Services)*, 2014 NSCA 77. Where past parenting history aids in the determination of future probabilities, it is admissible, germane, and relevant. *Nova Scotia (Community Services) v. L.M.*, 2016 NSSC 80.

[38] Prior to an Order for permanent care and custody being granted, the requirements of s. 42(2), (3) and (4) of the *Act* must be met.

[39] Section 42(2) states children must not be removed from the care of their parents unless less intrusive alternatives, including services to promote the integrity of the family, have been attempted and have failed, or have been refused by the parent, or would be inadequate to protect the children. The obligation to provide services is not without limit. The *Act* obliges the Minister to take reasonable

measures in this regard. *Nova Scotia (Minister of Community Services) v. P. (L.L.)*, 2003 NSCA 1.

[40] Section 42(3) of the *Act* requires me to consider whether it is possible to place a child with a relative, neighbour, or other member of the child's community or extended family before removing that child from the care of a parent. The onus is on a potential family placement to put forward a reasonable plan for the care of the child. Reasonable means proposals that are sound, sensible, workable, well-conceived and have a basis in fact. *B. (T.) v. Children's Aid Society of Halifax*, 2001 NSCA 99.

[41] Section 42(4) of the *Act* says I can not make an order for permanent care and custody unless I am satisfied that the circumstances justifying the order are unlikely to change within a reasonably foreseeable time, not exceeding the statutory time limits outlined in the *Act*. *Nova Scotia (Minister of Community Services) v. Z. (S.)*, 1999 NSCA 155 add *Nova Scotia (Minister of Community Services) v. P. (L.L.)*, *supra*.

[42] Ab has been the subject of multiple child protection proceedings. Section 45A of the *Act* says where:

- (a) a child has been the subject of more than one proceeding;
 - (b) the proceeding closest in time to the current proceeding ended no less than five years prior to the commencement of the current proceeding; and
 - (c) the cumulative duration of all disposition orders made pursuant to clause (d) of subsection (1) of Section 42 with respect to all proceedings exceeds thirty-six months,
- the court shall, in the child's best interests,
- (d) dismiss the proceeding; or
 - (e) order that the child be placed in the permanent care and custody of the agency, in accordance with Section 47.

[43] Section 45A of the *Act* has not been expressly considered in any published Nova Scotia case. Child protection legislation in Alberta and the Yukon Territories also provide for the cumulative calculation of time when there have been multiple child protection proceedings. However, the law in those jurisdictions differs from Nova Scotia in that those laws expressly state that a gap of more than five years between any child protection proceeding interrupts the cumulative calculation of time. *Alberta (Child, Youth and Family Enhancement Act, Director) v. C.(M.)*,

2016 ABPC 184. In Nova Scotia, only the proceeding immediately prior to the current proceeding must have occurred within the past five years for s.45A of the *Act* to apply.

Findings and Decision

[44] In making my decision I have applied the civil burden of proof. I have analyzed the evidence and reflected upon the submissions of counsel. I have considered the applicable legislation and case law, including that relating to credibility (*Baker-Warren v. Denault*, 2009 NSSC 59 as approved in *Gill v. Hurst*, 2011 NSCA 100) and inference (*Jacques Hometown Dry Cleaners v. Nova Scotia (Attorney General)*, 2013 NSCA 4).

Past Proceedings

[45] I have considered prior child protection proceedings. While I must consider the current situation within the context of the past, I am also mindful that at different points prior to this proceeding, courts have assessed risk and determined Ab should be returned to WM's care. In my analysis, I rely most heavily upon recent events.

Credibility

[46] WM's evidence was not always credible. He was often argumentative and pedantic in his answers. At times, he cited difficulty with recall. When challenged during cross examination, he tended to resort to attacking the veracity and integrity of CPS workers. As a result, I approach WM's testimony with caution and prefer the testimony of CPS workers, the Guardian, and expert witness Dr. Nassar, all of whom I found to be impartial and credible witnesses.

Issue One: Does Ab remain at substantial risk of physical harm?

[47] WM conceded Ab was at substantial risk of physical harm when he consented to the protection finding in June 2024. I find there continues to be a substantial risk of physical harm because of WM's anger management, substance abuse and mental health issues. WM has not demonstrated any insight in relation to these issues and has not participated in any programs or services to mitigate risk. These protection concerns remain unabated.

Anger Management and Violence

(i) Shooting Incident – February 2024

[48] Although WM admitted to shooting a pellet gun out of Ab’s window and agreed his behaviour was inappropriate, WM’s testimony about this incident leads me to conclude he does not completely appreciate how problematic his behaviour was, nor does he fully accept responsibility for his actions.

[49] I find WM, at times, attempted to minimize the incident. For example, while WM agreed Ab was present during the shooting, he argued she was sleeping at the far end of the room. WM suggested Ab was startled by the incident but went back to sleep. I find Ab did not, in fact, go back to sleep but instead texted her sister. I further find Ab was too afraid to leave the house to meet her sister outside until police arrived.

[50] I find WM also tried to justify his actions. He explained he had “ongoing issues” with the person at whom he thought he was shooting. He reasoned that he did not want to go outside and, since Ab’s room had the only windows that opened, he shot from there. WM’s rationalization of the incident belies any assertion of regret.

[51] I find WM denied certain aspects of the incident. He said he did not leave the gun in Ab’s room. I find WM’s suggestion that anyone could have placed the gun near Ab’s window because police left his residence unlocked is not credible. The evidence supports a finding that WM did, in fact, leave the gun in Ab’s room. WM’s refusal to admit this suggests a lack of accountability.

(ii) Police Occurrence and 911 Call – August 2023

[52] I determined the recording of a 911 call made by NL in August 2023, along with police records containing out of court statements made by NL associated with events precipitating the call, met the test of threshold reliability and should be admitted. (Necessity was conceded given NL’s death). In assessing ultimate reliability, I must now decide what weight to afford this evidence.

[53] NL told police WM had pulled her out of a chair by grabbing her by her hair. She also said WM had previously tried to choke her and attempted to put her head through a glass coffee table. I am mindful of the fact that NL did not provide a sworn police statement, as she said she would, in the several months following the incident prior to her death. I approach this evidence, therefore, with caution. While I am not prepared to make the finding that WM assaulted NL on the night in question, or

earlier, as alleged, the evidence supports a finding that WM was angry to the point of dangerous volatility.

[54] WM's testimony about the incident lacked credibility. I find he attempted to minimize his culpability by characterizing the incident as an escalated response from NL resulting from his reasonable request that she leave his residence. WM attempted to rationalize his behaviour by saying he was afraid NL would break his phone. He denied calling NL a "f* whore," even though it is clear from the 911 phone call transcript that he did so.

Anger Management and Violence – Summary

[55] I reject WM's argument that grabbing Js, or fighting with his mother's friend JR, was justifiable because he was acting in someone else's defence. I find WM was convicted of assaulting his mother's friend JR. WM's poor anger management was recognized as a concern in past child protection proceedings.

[56] WM has demonstrated a pattern of minimizing, rationalizing and denying protection concerns. Even if I were to discount evidence from past proceedings entirely, and even if I did not consider the August 2023 incident involving NL, I would still conclude WM has anger management issues that pose a substantial risk of physical harm to Ab given his failure to meaningfully acknowledge or address his poor anger management.

Substance Abuse Issues

(i) Drug and Alcohol Testing

[57] I accept entirely the evidence of Dr. Nassar. His evidence was clear and unequivocal. His explanation of the testing process, including methods of confirmation testing, assure me the test results were accurate and reliable. His testimony was fair and balanced. He gave WM the benefit of any uncertainty in his interpretation of the tests. For example, he was careful to clarify when positive test results could have been the result of WM's prior consumption of cocaine and not necessarily indicative of ongoing use.

[58] I find WM has substance abuse issues with drugs and alcohol. When admitted to hospital in February 2024, cocaine was detected in WM's urine. I find that WM tested positive for unprescribed clonazepam in random drug tests arranged by the Minister. I also find cocaine metabolite levels in April 29 and May 5, 2024, test

results demonstrate active cocaine use by WM. I accept Dr. Nassar's evidence that the positive test result of May 5, 2024, represents a significant degree of cocaine consumption. Dr. Nassar testified:

Undoubtedly, cocaine was taken, and it's not passive. It's not accidental. Somebody deliberately took a good amount of cocaine.

[59] Despite Dr. Nassar's testimony, WM continued to deny cocaine use. WM suggested he tested positive due to passive exposure (having been evicted from his home, WM was without housing for a time after his discharge from hospital and was staying at a place where there was active drug use by others). WM claimed the May 5, 2024, test result was so high because there were multiple drug users around him at the time. WM's explanation clearly contradicted the evidence of Dr. Nassar, whose evidence I prefer.

(ii) Admissions made by WM

[60] WM told attending medical personal upon his February 2024 admission to hospital that he drinks every night and had used crack cocaine within the four to five weeks prior. I reject WM's suggestion that the medical notes associated with his psychiatric care are either incorrect or reflective of him being an "asshole, joking and carrying on," given his poor mental state at the time.

[61] WM admitted to a CPS worker in February 2024 that he drinks in the evening to help him sleep and has been doing so since his father died several years prior.

[62] I find WM was drinking during a telephone call with CPS Worker Morrison on June 25, 2024. WM was described as belligerent, "very hard to follow" and "making no sense." After advising Ms. Morrison that she should have police present for his intended visit to CPS offices the following day, he told her he was drinking Fireball and referred to her "sweet cheeks" before hanging up.

(iii) Hair Salon Incident – April 2023

[63] The Minister asks me to rely on evidence related to a hair salon appointment of Ab's in April 2023 where WM was present. Supervising case aide Barrett reported WM appeared to be inebriated during the visit.

[64] I find that WM was intoxicated during this visit with Ab. I make this finding based entirely on the evidence of case aide Barrett, who was cross examined about

the incident. I have not considered any statement attributable to Ab in making this assessment. I infer WM was inebriated given my previous findings about WM's substance use and Ms. Barrett's (anonymized) description of WM's behaviour:

I noticed WM nodding off next to me. WM stood up and fell into a column next to him, shook it off and kept walking towards Ab, and spoke to her briefly. ... WM nodded off repeatedly throughout the visit, and he slid out of his chair.

(iv) Jr. Prom Pictures Incident – June 2024

[65] WM denies being intoxicated during a supervised visit with Ab while she was getting junior prom pictures taken in June 2024. This occurrence differs from the salon incident in that the supervising case aide did not notice any concerning behaviour from WM. Reports of WM being inebriated came from both Ab and her sister. Ab's sister could have testified and did not and so I will not consider her hearsay evidence. While Ab's out of court statements met threshold reliability, I am not prepared to rely on them for the truth of their content (i.e. to make a finding that WM was, in fact, intoxicated), given the absence of corroborating evidence from the case aide.

Substance Abuse – Summary

[66] I find Ab is at substantial risk of physical harm given the severity of the WM's substance abuse issues and his failure to meaningfully acknowledge or address this concern. I see no utility in differentiating between drug and alcohol use in making this assessment. I reject the suggestion that tests related to April-May 2024 are outdated and, therefore, not indicative of current concern. I am mindful that substance abuse is a significant reoccurring theme in prior child protection proceedings. However, even without considering past proceedings, I would find WM has current substance abuse issues that pose a substantial risk of physical harm to Ab.

WM's Mental Health

[67] WM acknowledges he had a mental health crisis in February 2024. He explains that he "snapped" from all the stressors in his life, including the circumstances surrounding NL's death. WM says his mental health is now stable.

[68] WM concedes having said he could have benefitted from further care before being discharged from the hospital in March 2024. He told CPS workers upon his

release “my mental health has not changed.” WM agrees that he has neither sought nor accessed any further mental health services (other than from his family doctor). However, WM argues there are many people with mental health issues that are far worse off than he and he has done alright in caring for himself since his hospital release.

[69] WM was offered grief counselling, a service to address the very issue he says caused him to “snap”. WM refused to attend such counselling unless Ab agreed to participate with him. Even if WM’s mental health is currently stable, there is no evidence to suggest he has addressed the stressor that triggered the mental health crisis in the first place. I find the state of WM’s mental health continues to pose a substantial risk of harm to Ab. WM has not demonstrated any insight in relation to risk and has not participated in any programs or services to mitigate the protection concern.

Issue Two: Is Ab at substantial risk of emotional abuse?

[70] I find there is a substantial risk of emotional abuse should Ab be returned to WM’s care. WM’s behaviours fall within the definition of s. 3(1)(la) of the *Act*. I find WM has, at times, rejected Ab, placed inappropriate expectations upon her and behaved in a manner that has excluded her from normal social interactions. Furthermore, I find WM refuses to acknowledge how his behaviour negatively impacts Ab and, as a result, is unable to remedy or alleviate this abuse.

[71] I have declined previously to rely on out of court statements made by Ab to find WM was intoxicated. However, I am able to rely on these statements to assess Ab’s mental and emotional state. I appreciate WM believes Ab’s sisters are biased because of their difficult relationship with him. While I do not necessarily agree, in this part of my analysis I have relied entirely on Ab’s statements to CPS workers or her Guardian, all of whom were subject to cross examination and credible witnesses.

(i) Rejection

[72] I find WM actions amount to rejection of Ab on two critical occasions. I further find these behaviours have had a negative impact upon Ab’s emotional well-being and constitute emotional abuse.

[73] First, WM refused to have a last visit with Ab after she was placed in the permanent care of the Minister in June 2023. He argues the fault for this lies with the Minister who refused to change the visit locale so WM could take Ab someplace

special of his own choosing. I find WM was so entrenched in his dispute with the Minister that he was unable to put aside his own feelings to focus on Ab's emotional well-being. I find WM inappropriately tried to involve Ab in his dispute with the Minister about where the visit should take place. I find WM's refusal to confirm whether the visit would even take place resulted in Ab attending the visit with the unfulfilled hope of seeing her father who did not show.

[74] About this incident, Ab told CPS worker M. Aucoin that it did not matter if her parents could not be happy for her. Ab regarded the possibility of being adopted by her sister as a reason to celebrate.

[75] Second, WM would not meet with Ab upon the discovery of her mother's remains. NL had been missing for some time. To the credit of Ab's sisters and CPS workers, when NL was eventually found, they engaged in conversation about how Ab should be informed. Thought was given to including WM in that process, but WM chose not to participate.

[76] WM testified that he could not recall, and nor could he imagine, refusing to meet with Ab to break the news to her about her mother. If he had done so, WM offered a rationalization for his decision. WM reasoned that his appeal of the permanent care decision was well underway, and he fully expected Ab to be returned to his care. He said he would have discussed NL's death with Ab upon her return.

[77] While I do not have evidence about Ab's emotional state following the discovery of her mother's remains, I am prepared to conclude this would have been a very traumatic experience. I find this to be another example of WM being unable to put aside his legal entanglement with the Minister, and his disputes with Ab's sisters, to be emotionally available for Ab in what would have obviously been a very upsetting time.

(ii) *Normal Social Interactions*

[78] I find Ab believed WM to be inebriated during the hair salon visit in April 2023 and the junior prom pictures incident of June 2024. About the hair salon visit, Ab asked CPS worker Aucoin why her father's drunkenness at that visit was not considered a risk to her? About the prom pictures, Ab said to the same worker: "*He was high getting pictures. Why does he have to be high? I don't like seeing him high.*"

[79] I accept case aide Barrett's assessment that Ab was upset by WM's behaviours at the hair salon. Furthermore, even though there is evidence that Ab went on to enjoy herself at the prom, I can infer that Ab was also hurt by WM's presentation during picture taking. It was soon after the prom picture incident that Ab sent WM a text indicating that she no longer wished to have contact with him.

[80] Ab should be able to get her hair done and get pictures taken with friends without the concern that her father will present as intoxicated. To not be able to believe in, or rely upon, her father's sobriety as she moves through normal social interactions is a form of emotional abuse suffered by Ab.

(iii) *Inappropriate Expectations*

[81] WM does not believe that Ab wishes to have no contact with him. He says the Minister stopped his access visits "abruptly and for no good reason" and the lack of access with Ab has been stressful for him. WM argues Ab is a highly intelligent girl and his communications with her have been appropriate.

[82] I find Ab sent the following text to WM in early July 2024:

Hey dad, I don't really want to have contact with you right now because I just feel like when you talk to me it just brings me down and when I'm ready I will contact you but for now on I don't want to talk to you. I'm good and I'm happy you don't have to worry about me and I'm gonna block you after I send this, I hope your doing good and I hope you get better with your addictions. I'm praying for you and I will always love you but from a distance from now.

[83] I find the above is an accurate reflection of Ab's views and preferences. I reject WM's suggestion that someone else sent this message via Ab's phone, or that Ab was improperly influenced or pressured to send this message. I find WM's insistence that Ab speak to him directly about this, is unrealistic and unfair to Ab.

[84] I find WM's continuous attempts to contact Ab, directly and through others, in the face of her clearly articulated position, placed undue pressure upon Ab that amounts to emotional abuse. WM claims that Ab has been contacting him secretly. Even if I accepted this to be true, which I do not, this finding would not impact my overall assessment of the situation.

[85] The issue goes far beyond WM being angry or frustrated with the Minister or using profanity in the presence of Ab. I find WM has placed unrealistic expectations on Ab on numerous occasions:

- WM attempted, at times, to inappropriately involve Ab directly in his dispute with the Minister. For example, he asked Ab to intercede on the issue of where the last visit after permanent care should take place.
- WM refused to attend grief counselling unless Ab participated with him. WM should never have put Ab in the position of being the determinative factor of whether he accessed mental health services.
- WM's often communicated with Ab in a manner that was not child-focused. There were multiple occasions during supervised visits when case aides had to redirect, with mixed success, WM's attempts to involve Ab in clearly adult conversations.

[86] WM's expectation that Ab engage with him in these ways is completely unrealistic. It is not reasonable for WM to believe there would be no negative impact upon Ab resulting from his behaviours, given Ab's age and stage of development. WM's actions and behaviours in this regard amount to emotional abuse.

Emotional Abuse - Summary

[87] I agree Ab is intelligent and does well in school. She enjoys sports and volunteering. She laughed when she described her father as being on "crack" the morning of the shooting incident. I believe Ab must be an exceptionally resilient young person given her family history. I find Ab is also angry. I find Ab's anger, and her decision to severely restrict contact with WM, reflects the cumulative subjective impact of WM's actions which, objectively, constitute emotional abuse.

[88] WM does not recognize or refuses to acknowledge how harmful his decisions and behaviours have been on Ab's emotional well-being. For this reason, it is not reasonable to expect that WM can alleviate the substantial risk of emotional abuse.

Issue Three: What is the legislative timeline?

[89] The Minister asks me to rely on the following chart when assessing the legislative timeline in this matter:

Date Proceeding Commenced	Date of First Order made pursuant to s. 42(1)(d)	Date Child Returned to Parent or Guardian	Number of Months Spent in

			TCC under s. 42(1)(d)
September 2012	March 28, 2011 (See Ex 1(c), Tab F, Nova Scotia (Community Services v. N.L., 2011, NSSC 369, para. 15)	January 23, 2012, Proceeding terminated, and child placed with BM on January 23, 2012 (See Exhibit 2, Tab 2, Affidavit of Paul Mugford sworn March 4, 2024, para. 17)	10 months
June 2013	January 7, 2014,	May 12, 2015, Proceeding dismissed, and child placed in custody of WM	16 months
October 2, 2019	October 16, 2020 (See Ex 2, Tab 2, Affidavit of Paul Mugford sworn March 4, 2024, para. 29)	February 9, 2021 (see Exhibit 2, Tab 2, Affidavit of Paul Mugford sworn March 4, 2024, para. 31)	4 months
August 30, 2021	May 9, 2022	June 8, 2023 (Order for Permanent Care and Custody granted)	13 months
March 4, 2024	September 9, 2024	Continues currently (January 11, 2025)	4 months
TOTAL:			47 months

[90] I accept the position of the Minister (supported by the Guardian; WM taking no position on the issue), in terms of the application of s. 45A of the *Act* and the calculation of duration of all disposition orders issued under s. 42(1)(d) of the *Act*. I recognize there is a significant period of time during which Ab was in WM's care without CPS involvement (June 2013 to October 2019). However, being satisfied the most recent child protection proceeding occurred within five years of the current

application, s. 45A of the *Act* requires me to consider the duration of all prior disposition orders, irrespective of this gap.

[91] The cumulative duration of all prior disposition orders issued under s. 42(1)(d) exceeds 36 months. There is no time remaining in the legislative timeframe. Having decided Ab remains at substantial risk of physical harm and is also at substantial risk of emotional abuse, I cannot return Ab to WM's care. I must grant the Minister's motion for permanent care.

[92] If s. 45A of the *Act* did not apply, the legislative deadline would be September 4, 2025. I reject WM's argument that the Minister failed to offer him services and programs and I find the Minister acted reasonably in this regard. Furthermore, I find WM has engaged in a variety of services and programs in the past and yet protection concerns continue to resurface. Moreover, WM's pattern of denial, rationalization and minimization tells me provision of future services would be of little value. Even if there were time left, I do not believe there are services or programs that could alleviate the substantial risk of harm I have identified by September 2025.

Issue Four: Is it in Ab's best interest to be placed in the permanent care of the Minister?

[93] I find it is in Ab's best interest to be placed in the permanent care and custody of the Minister.

[94] WM says he has relocated to the South Shore in Nova Scotia where he has a suitable residence for Ab. He says he has a solid parenting plan for Ab and it is in her best interest to be returned to his care so she may be afforded a fresh start.

[95] I find WM's relocation is a relatively new development. The home in which he was staying as a border recently burned to the ground. The housing he currently has is temporary.

[96] Ab is well established in the local area. She is ensconced in a support system that involves her older sisters. She is involved with her school, sports and social circle. Ab has no connection to the new community in which WM resides. To relocate Ab there would serve only WM's interests, and not Ab's. Ab does not want to return to WM's care. Her views and preferences in this regard should be respected.

Conclusion

[97] Ab remains a child in need of protective services. No alternative placement has come forward. The legislative timeline has expired. It is in Ab's best interest to be placed in the permanent care and custody of the Minister. The Minister may arrange for a final visit between Ab and WM, if Ab is so agreeable.

[98] The Minister will please prepare the Order.

Marche, J.