

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *AT v Minister of Opportunities and Social Development*,
2025 NSSC 370

Date: 20251126

Docket: No. HFD *SFHCFS*A No. 138806

Registry: Halifax

Between:

AT

Applicant

v

Minister of Opportunities and Social Development, CLC and JE

Respondents

Judge: The Honourable Justice Theresa M Forgeron

Heard: October 6 and 7, 2025, in Halifax, Nova Scotia

Written Release: November 26, 2025

Counsel: Amanda Craig for the Applicant, AT
Megan Roberts for the Respondent, Minister of Opportunities
and Social Development
CLC and JE, unrepresented and not participating

By the Court:

Introduction

[1] AT, the father, seeks leave to terminate the November 2024 permanent care order involving his five-year-old daughter, A, and eight-year-old son, E, to whom he previously stood in *loco parentis*. The father states that he should be granted leave because:

- He sufficiently addressed the protection issues that resulted in the permanent care order.
- He proved that there is a realistic expectation that he will successfully address any remaining protection concerns within the reasonably foreseeable future.
- It is in the children's best interests.

[2] The Minister objects because she believes that the father did not address the outstanding protection concerns, nor is he capable of so doing within the reasonably foreseeable future. Further, the Minister states that leave is not in the children's best interests because the children need stability and structure, which the father cannot provide.

[3] Neither the children's mother, CLC, nor the son's biological father, JE, participated in the hearing.

Issue

[4] Should the father's leave application be granted?

Background Information

[5] In 2020, the Minister first became involved with the father, mother, and their two children because of family violence. In 2021, the Minister initiated formal proceedings. During the first proceeding, the children were placed in the supervised care of the mother on the condition that the father and mother have no contact in the children's presence. In addition, services for the father included parenting education with a family support worker, and counselling. In June 2022, the first child protection proceeding was terminated after the father and mother reported that they

were no longer in a relationship and that they had addressed the protection concerns through services.

[6] On July 20, 2022, a 12-month peace bond was granted against the father. According to the peace bond, the father was to have no contact with the mother unless otherwise permitted by order or written agreement so the father could exercise parenting time, and then, only through an access facilitator. The father was also not allowed within 50 meters of the mother's home.

[7] In June 2023, while the peace bond was still in effect, the Minister once again became involved with the family after receiving a referral from the daughter's daycare concerning family violence. The agency investigated the referral by speaking with the father, mother, and each of the children. A safety plan was implemented whereby the children would stay with the maternal grandmother. Contact between the children and each of their parents was to be supervised.

[8] On July 1 and 2, 2023, further violence occurred. The father was ultimately charged and convicted of impaired driving, disobeying a court order and uttering threats to cause death or bodily harm.

[9] On July 12, 2023, the second child protection proceeding was initiated. The children were placed in the supervised care of the maternal grandmother until June 2024. On June 6, 2024, the daughter was placed in the Minister's care as the grandmother said she could no longer care for her. On June 18, 2024, the son was placed in the Minister's care because the grandmother said she could no longer care for him and because the agency observed protection concerns with the grandmother.

[10] During the proceeding, the father was asked to correct four protection concerns – inadequate parenting skills, emotional abuse/harm, substance abuse, and family violence. The father's lack of emotional regulation was a significant personality challenge that permeated the four identified protection risks. The father was once again asked to engage in counselling and parenting education.

[11] On August 21, 2024, the Minister sought permanent care and custody, subject to assessing any reasonable plan which the father or his family would file. Neither the father nor the paternal grandparents had yet put forth a plan of care.

[12] Unfortunately, on August 21, 2024, another infraction came to light. An agency worker saw the father and mother near a liquor store. The father had just bought alcohol. That night, agency workers saw the father and mother, intoxicated,

arm and arm, dancing down the street near the mother's house. When approached by agency workers, the father said that he and the mother wanted to be a family and expressed surprise that the agency had not caught them together previously.

[13] The father was subsequently charged and pled guilty to a breach charge, as he was not supposed to be drinking alcohol nor having contact with the mother.

[14] On August 22, 2024, a further risk management conference was held and the decision made not to support any plan that the father may advance. An agency social worker reached out to the paternal grandparents to inquire about a possible family placement with either of them. Neither grandparent filed a plan of care.

[15] On November 18, 2024, a permanent care and custody order was granted for both children. Adoption and permanency planning have been paused because of the father's leave application, which was filed on September 5, 2025.

[16] The contested leave application was to commence on September 22, 2025, but had to be adjourned. The hearing was held on October 6 and 7, 2025. The following witnesses testified: the father; the paternal grandfather; the father's probation officer, Greg Beaumaster; and agency worker, Julie Dalley. In addition, a s. 96(1) order issued such that the evidence from the second child protection proceeding was entered by consent. At the conclusion of the hearing, counsel provided oral submissions to augment their written briefs.

Analysis

Should the father's leave application be granted?

Legal Principles

[17] Both parties agree that the father must obtain leave to pursue his application to terminate the permanent care and custody order based on ss. 48(6)(c) and 48(6A) of the *Children and Family Services Act*, SNS 1990, c 5.

[18]

[19] Both parties agree on the legal principles that apply to the father's leave application as confirmed in *LM v Children's Aid Society of Cape Breton*, 1999 NSCA 101, at paras 68-73, which adopted the reasoning of Judge Levy in *DLG v*

amily and Children's Services of Kings County, [1994] NSJ No 657 (Fam Ct), and s. 48(10) of the *Act*:

- Leave is not merely a formality but rather a matter of substance.
- The burden lies with the applicant.
- The applicant does not have to prove that the children should be returned forthwith. Rather, the applicant must prove that there is sufficient evidence to warrant the holding of a hearing and of having the agency's plans put on hold. The applicant must prove some reasonable prospect of success.
- The applicant must present ostensibly credible and weighty evidence that the deficiencies that led to the permanent care order have improved or are being convincingly and meaningfully addressed with the realistic expectation of success in the reasonably foreseeable future.
- Leave must be in the children's best interests.

[20] I have also considered *LAG v The Minister of Community Services*, 2024 NSSC 157, and *S(E) v Children's Aid Society of Cape Breton-Victoria*, 2005 NSSC 172, which applied these principles.

Father's Position

[21] The father states that he made significant progress on the outstanding child protection issues such that the leave threshold has been met by him:

- Living with his father who is employed, stable, and responsible. The paternal grandfather has a large home which will physically accommodate the children. The paternal grandfather will be a coparent with the father. Both will ensure that the children's physical, emotional, educational, and social welfare needs are met. The agency has never held protection concerns about the paternal grandfather.
- Terminating his relationship with the children's mother to ensure that the children are not exposed to a toxic and tumultuous relationship.
- Engaging with a clinical psychologist.
- Gaining insights into the daughter's significant behavioural needs and being willing to seek professional intervention to assist her.

- Participating in the Empowering Fathers Program at New Start Society.
- Completing the Respectful Relationship program through probation services on December 5, 2024.
- Completing the BOSS program on May 8, 2025.
- Engaging in a stress management course through Nova Scotia Community Health in May 2025.
- Engaging in an anger management/emotional intelligence program through the John Howard Society.
- Attending counselling at New Start.

[22] The father states that these services are sufficient evidence for leave purposes and to warrant a hearing.

Minister's Position

[23] The Minister asks that the father's application be dismissed because the father:

- Did not present sufficiently credible and weighty evidence to prove that the child protection concerns were either alleviated or meaningfully addressed with the realistic expectation of success in the reasonably foreseeable future.
- Only provided vague details about the services he engaged and failed to provide independent evidence to support his claims.
- Failed to prove that granting leave would be in the children's best interests. The children's need for stability, given their special needs, weighs heavily against the father's request for leave.

Decision

[24] While I do not doubt the father's love for the children, I must nonetheless deny the father's application for leave for reasons related to protection concerns and to the children's best interests.

Protection Concerns

[25] The father did not prove that the child protection concerns were either alleviated or will be meaningfully addressed in the reasonably foreseeable future. I have little evidence about the nature of the services which the father undertook or will undertake since the permanent care hearing, or how these services positively impacted or will impact the father's insights and lifestyle. The following findings illustrate my conclusion:

- The father relies on the November 2024 report of Eric Ross. I already considered that report at the permanent care hearing. It is not new evidence. I previously found that child protection concerns were not meaningfully addressed despite this report.
- Although the father completed a respectful relationship program as part of his probation, all but two weeks of that program was undertaken prior to the permanent care hearing. No significant change in circumstances was proven.
- The father's completion of the two-week BOSS program, without further details, does little to address the father's longstanding emotional regulation and anger issues, which were identified as areas of significant protection concern during the permanent care hearing. The father did not have anyone from the BOSS program testify about the program or the father's level of engagement and insight. The father previously was unable to successfully address the protection concerns despite participating in parenting education and individual counselling. The father was not able to translate the skills learned from the programs into his everyday life. To the contrary, the father became angry and dysregulated when confronted with situations or people who did not support his narrative or position.
- The father did not call anyone from Dr. MacKay's office, Community Mental Health, New Start, or the John Howard Society to confirm details of the courses or therapy undertaken, including topics covered, the length and format of the program, skills learned, or the father's level of engagement and insight. Given the circumstances that existed at the permanent care hearing, more specific details were required. The court cannot engage in speculation about the nature of these programs or how the skills learned have or will effectively change the father's problem-solving skills, anger, and dysregulation where other long-term counselling and programming failed.

- The father's reliance on the paternal grandfather likewise does not assist. The father lived with the paternal grandfather before the permanent care hearing. In addition, the paternal grandfather did not and has not filed a plan of care. He had ample time to do so. Further, the grandfather's home remains unfinished. Finally, the paternal grandfather can do little to stop the father's dysregulation, although he can step in to protect the children when the father dysregulates. The grandfather cannot, however, prevent the children from being exposed to the father's dysregulation, which will cause them to experience further trauma.

Children's Best Interests

[26] The father did not prove that it was in the children's best interests to grant leave given their needs and circumstances. Both children experienced significant trauma while living with the mother and father. The son continues to experience night terrors and participates in counselling. The son and his counsellor continue to work through issues associated with his early trauma. Despite the early trauma, the son is currently stable.

[27] Likewise, the daughter experienced considerable trauma while in the care of the mother and father. She frequently dysregulates by acting out, screaming, and hurting those around her. Her behaviour led to placement breakdowns. The daughter's emotional dysregulation occurred both before and after the permanent care hearing. Her circumstances are now guardedly improving.

[28] Has the father proved that he can meet the children's special needs? He did not because:

- The children require a caregiver who provides a consistent and nurturing routine, and who is patient, respectful, and calm. There is insufficient evidence that the father has mastered or will master these parenting skills.
- The children require a caregiver who is knowledgeable about their special needs. Unfortunately, despite agency disclosure, the father did not read all of the reports authored by the professionals involved in the children's care and thus lacks essential information about their needs.
- The children currently have a highly conflictual sibling relationship. The father did not sufficiently address how he would successfully navigate

this conflict. His plan for the children to live together, before resolving their issues through therapeutic counselling, is not in the children's best interests. Indeed, they will likely experience more trauma if they are housed together at this stage.

[29] The children need stability. The father has not and likely will not be able to provide them with stability. Stability will only come from permanency planning.

Conclusion

[30] The father's application for leave is denied.

[31] The father did not prove that he either mitigated the outstanding child protection concerns or that there is a realistic expectation of success in the reasonably foreseeable future. The evidence was insufficient for me to draw an inference that the father has mastered or will master the skills necessary to address the long-standing child protection concerns.

[32] Further, the father did not prove that it was in the children's best interests to grant leave. The agency's permanency planning should not be placed on hold in the circumstances.

[33] Ms. Roberts is to prepare the order.

Forgeron, J.