

IN THE SUPREME COURT OF NOVA SCOTIA  
(FAMILY DIVISION)

**Citation:** Children's Aid Society of Halifax v. L.A.G., 2005 NSSC 197

**Date:** 20050713

**Docket:** SFHCFSA-036290

**Registry:** Halifax

**Between:**

The Children's Aid Society of Halifax

Applicant

v.

L. A. G.

Respondent

**Restriction on publication:**

Publishers of this case please take note that s. 94(1) of the *Children and Family Services Act* applies and may require editing of this judgment or its heading before publication. Section 94(1) provides:

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

**Editorial Notice**

Identifying information has been removed from this electronic version of the judgment.

**Judge:** The Honourable Justice R. James Williams

**Heard:** June 14, 15, 16, 17 & 21, 2005, in Halifax, Nova Scotia

**Counsel:** Ms. Elizabeth Whelton, for the applicant  
Mr. Perry Borden, for the respondent

**By the Court:**

[1] This is an application by the Children's Aid Society of Halifax (the Agency) concerning B. G. (born March [...], 2001), the daughter of L. G.. The Agency seeks an order placing B. in its permanent care and custody. Ms. G. seeks B.'s return to her care.

**The Background**

[2] Ms. G. had four children prior to B.'s birth. All were placed for adoption by child welfare agencies in Ontario.

[3] Ms. G.' contact with the Children's Aid Society of Halifax commenced in the late fall of 2002. B. was taken into care by the Agency largely as a result of the condition of Ms. G.' home on October 22, 2002. These conditions were described in the October 24, 2002 affidavit of Suzanne Brown (a social worker with the Agency) as follows:

6. **THAT** on October 22, 2002 I attended at the [...] apartment of the Respondent, L. G.. Despite knocking at the door and ringing the buzzer for approximately five minutes there was no answer at the door. I spoke with a neighbour who indicated that he believed that the Respondent, L. G. was at home. On the second attempt to get someone to answer the door the door was knocked on and the buzzer rung again. Finally, police officers with me spoke into an open window, asking that the door be opened. At that point the Respondent, L. G. opened the door. She indicated it was not a good time as she was showering. It was impressed upon her that it was important that she meet with me. Through the open door I observed the child, B. G. inside and noted that she was naked. The Respondent, L. G. asked for a few minutes and when she later reopened the door B. G. was wearing a diaper.

7. **THAT** I was able to enter the apartment of the Respondent, L. G.. The Respondent, L. G. presented as being unkempt with a strong body odour. Immediately upon entering the apartment the foul odour of feces and urine in the apartment was overbearing. The bedroom of the Respondent, L. G. was in total disarray. The floor was covered with clothing and loose metal hangers. The mattress had several loose blankets on it and an empty baby bottle. There was a small plastic fan beside the bed. The bathroom was filthy. There were feces in the toilet which appeared to make the toilet unflushable and there was both mold and insects on the rotting feces. The sink was dirty, covered with hair and the tub

was dirty and showed no signs of any recent shower. There was a piece of cloth on the floor that appeared to be covered with bright blood. This piece of cloth gave the impression of giving off an odour, however it was hard to distinguish the odours in the general stench of the room. A closet, which contained a clothes washer, had what appeared to be rice and another brown substance on the floor. The hallway to the kitchen was dirty and cluttered with more clothing. There were bugs and flies throughout. There was a clothes closet piled about a third of the way to the ceiling with what appeared to be discarded clothing. Again these were covered with flies. In the kitchen there were more and different odours and an overall stench. The Respondent, L. G. indicated that she had appropriate food for the child, B. G., however I noted molding, rotting, sour and fly infested food. There was food rotting in the fridge and in cupboards. The counters were covered with a black substance. There were dirty dishes, and items that were to the point of molding and rotting that they could not be identified. In the room which contained a crib the floor was covered with clothing and the floor had dried dead flies on it. The Respondent, L. G. indicated that the dead flies were a result of her trying to kill flies with Raid. The living room contained a chesterfield and a TV. The floor was covered with clothing, plastic food containers, a fork, and open tube of toothpaste, chips, crackers, urine and food particles. Also on the floor was feces, some still in “form” and some smaller pieces of feces. There did not appear to be room on the floor for a toddler to make her way through the room without tripping over something, onto something or without stepping into something.

[4] Ms. G. acknowledged (in her affidavit of November 6, 2002) that the description of the apartment described in Ms. Brown’s affidavit was “accurate”.

[5] Ms. G. had been involved with Family SOS, a lay support service, before this. After B. was taken into care Ms. G. took/had parenting courses (through the Agency), a family skills program (through the Agency), had the support of Adsum House, and received counselling from Mary Haylock.

[6] On October 29, 2003, almost a year after B. came into care, Ms. G. acknowledged that she had a gambling addiction. Additional counselling through Addiction Services has been in place since that time.

[7] Despite a January 31, 2003 Assessment Report that recommended that B. be placed in the permanent care of the Agency, the Agency chose to support B.’s return to Ms. G.. B. was returned to Ms. G.’ care on March 6, 2004. The maximum time periods for a proceeding under the *Children and Family Services*

*Act* were expiring so the initial proceeding was terminated and a new one commenced.

[8] B. remained with Ms. G. (after March 6, 2004) - her counselling continued with Addiction Services. The Agency visited. On September 20, 2004 the second legal proceeding was terminated. Counselling with Ms. Stephen of Addiction Services continued. The proceeding was terminated upon the signing of an “agreement to close the file”. It contained the following conditions:

1. That the child, B., remain in daycare on a full-time basis.
2. Mother is stable and maintains a stable living accommodation.
3. That all Ms. G.’ bills that meet the necessities are paid.
4. Ms. G. continue with the service of addiction counselling.
5. That the child is attending daycare appropriately dressed and her personal hygiene is being addressed.
6. That Ms. G. follow through with speech and hearing therapy for the child . . .

[9] By early December 2004 Ms. G.’ living conditions had again deteriorated. Ms. G. was being evicted. The home was in total disarray. Cat feces were again an issue. Ms. G. herself described the condition of the apartment as “deplorable” in her April 6, 2005 affidavit (clause 5).

[10] Ms. G. indicated she was moving to an apartment on [...]. She became difficult to locate (by representatives of the Agency). The [...] apartment was stayed in for one night. Ms. G. could not get power hooked up so “moved on” to a friend’s. B. was taken into care by the Agency and this (the third) proceeding under the *Children and Family Services Act* was initiated by a Protection Application dated December 14, 2004.

[11] An interim hearing was held on December 21, 2004. B. was placed in the temporary care and custody of the Agency. At the time Ms. G. had no apartment, no independent living arrangement.

[12] B. was found in need of protective services pursuant to s. 22(2)(k) of the *Children and Family Services Act* on February 4, 2005.

[13] On April 4, 2005 an assessment report (a second one) was received from Assessment Services of the IWK Health Centre. The report recommended that B. be placed in the permanent care and custody of the Agency.

[14] The Agency filed an Agency Plan (dated April 18) on April 21, 2005 seeking a permanent care order. Ms. G. opposed this, seeking B.'s return to her care. I have considered both these plans.

[15] The trial of this matter took place on June 14, 15, 16, 17 and 21, 2005.

### **The Evidence**

[16] Evidence was heard from 11 witnesses. 22 Exhibits were filed. I have had the opportunity to review and consider the evidence and exhibits. The witnesses included:

#### **1. Dr. Khalil Ahmad**

[17] Dr. Khalil Ahmad is a psychiatrist. He performed a psychiatric evaluation of Ms. G. as part of the 2005 assessment by Assessment Services. He saw Ms. G. once. He concluded that Ms. G. was not suffering from any acute psychiatric illness. Ms. G. indicated that she "at one time was involved with gambling". She said that her apartment wasn't clean because she "was working too much".

#### **2. Carleen Hall**

[18] Ms. Carleen Hall, a psychologist with Assessment Services, had one three to four hour meeting with Ms. G. as part of the 2005 assessment. She noticed that Ms. G.' body odour and hygiene were poor. She felt Ms. G. had few supports. She indicated that the recommendations and conclusions of the April 4, 2005 assessment were reached by consensus, that she agreed with them.

#### **3. Nancy Curry-Rogers**

[19] Nancy Curry-Rogers, a social worker with Assessment Services, was the principal author of the assessment. She indicated that services were not recommended for Ms. G. as "gains from services would take years, not months".

She felt Ms. G. needed long term intervention - over a time frame beyond what was consistent with B.'s needs.

[20] The assessment report states:

. . . Ms. G., due to her own emotional difficulties, has promoted a climate of uncertainty, mistrust, transience, and secrecy all at the risk of her daughter . . . Ms. G.' own caustic and contentious attitude to the Agency, her complete denial of having put B. at risk, and her minimization and unwillingness to take responsibility for her actions have indeed jeopardized any possibility for her to accept and benefit from professional help. . . . (p. 33)

Ms. G.' life is shrouded with many unknowns and discrepancies. She denied this assessor contact with family and personal references, thereby leaving this assessor unable to validate her family and social history. It is evidenced in the documentation she has fabricated stories and given false accounts of situations to Agency representatives in order to deflect responsibility. She has been without food and in rent and power arrears on numerous occasions despite having either been gainfully employed or on Income Assistance. She has enlisted support from other suspect people, who have, reportedly, stolen her money or taken advantage of her in some way. She had demonstrated a chronic pattern of being unorganized in daily functioning and the circumstances involving her departure from her last place of employment are extremely suspicious. She has participated in various parenting programs and has shown that she has made gains with her ability to intellectualize parenting theory, however, she has proven that she has had difficulties putting theory into practice on a long term and consistent basis. . . .

. . .

In order to foster and promote her optimal development, B. deserves an environment in which she will be provided with stability, structure, nurturing and positive role modelling. Most unfortunately, Ms. G. is unable to provide such an environment for her. The chronicity and severity of her denial to accept and acknowledge her shortcomings, combined with her lack of insight into how her actions have negatively affected B. create a very poor prognosis for change.

Ms. G. would require intensive long-term therapeutic intervention to address her denial and resistance. The time required for her to make sufficient changes is too long for this child to wait. . . . (p. 34)

[21] The assessment recommends that B. be placed in the permanent care and custody of the Agency.

[22] When Ms. G. consented to this assessment being undertaken she did so on the condition that Dr. Lowell Blood not do the assessment. Dr. Blood had done a portion of the 2003 assessment. Dr. Blood, it became apparent at trial, is a supervisor at Assessment Services. He was consulted with during the preparation of this (second) report (in part as a result of his role in preparing the earlier report, in part as a supervisor). It appears that Assessment Services did not know of the “condition” referred to, and that the Agency did not know of the role of Dr. Blood. The “condition” should have been explicitly stated in the order for the assessment. The Court as much as anyone bears responsibility for this.

[23] Ms. G. was understandably upset by these events. I have considered ordering a new assessment but have chosen not to. While not ignoring it, I have purposely limited my consideration of this second assessment. I have focussed instead upon the other evidence, and particularly that of Ms. G.. Had I only the evidence of the Assessment Clinic I might well order another assessment. The other evidence available convinces me that further delay of this proceeding is not appropriate, is not consistent with B.’s best interests.

#### **4. Barbara MacPherson and 5. Lisa Dorman**

[24] Barbara MacPherson and Lisa Dorman are social workers with the Children’s Aid Society of Halifax. Their involvement was in early December of 2004. Their description of their involvement is consistent with Ms. G.’ evidence of the events, circumstances.

#### **6. Maureen Wheller**

[25] Maureen Wheller is a contract worker with the Children’s Aid Society. She supervises visits and provides transportation for visits between parents and children. She did so for L. and B. G. from February, 2005 forward. B. enjoyed the visits. Ms. G. was attentive. At times Ms. G. spoke of court proceedings to B.. On June 15, 2005 Ms. G.’ home was “buggy”, debris was an issue.

#### **7. Kathy Tait**

[26] Kathy Tait has worked as a case aid with the Agency for 14 and a half years. She facilitated visits between B. and Ms. G. from mid-December, 2004 to February, 2005. She had some sporadic involvement after that. B. was upset at the first couple of visits but then settled into the visits.

### **8. Anne Simmons**

[27] Anne Simmons is a social worker with the Agency and has had responsibility for this family, file. Ms. Simmons indicated B. was brought “into care” on October 22, 2002. The issues then were the cleanliness of Ms. G.’ home, transience and gambling. Services were provided - counselling, parenting classes and programs. B. was returned to Ms. G.’ care on March 29, 2004 following the provision of support and services (and in the face of the earlier assessment recommending permanent care). At that time Ms. G. was living on [...]. Ms. Simmons understood Ms. G.’ rent and power were being paid through a trustee. Ms. Simmons visited Ms. G.’ home in June of 2004. There was no power. It had been cut off for non-payment. Ms. G. lied and said a fuse had blown. Ms. Simmons had visits to Ms. G. through September when the legal proceeding terminated (with the agreement referred to earlier being signed). B. was in daycare throughout this time.

[28] Ms. Simmons once more became involved with the family in December, 2004 after B. was (again) taken into care. Ms. G. was staying at W.H.’s in December (21 on) and January. As there were concerns with the suitability of that environment for visits with B. the Agency paid for activities during access - so the access would be a better experience for B., and Ms. G..

[29] On June 3, 2005 Ms. Simmons learned, with the disclosure of the Community Service (Social Assistance) file, that Ms. G. had not paid her rent for February and March, 2005.

[30] Ms. G. told Ms. Simmons she was off work for a week at one point in April, 2005. In fact she had left (or been asked to leave) her work at [...], in part over a dispute that some \$1500.00 was missing.



[31] Ms. Simmons was asked why services were not being provided to Ms. G. at the time of trial. She indicated services had been provided in the past but not sustained, that Ms. G. had counselling, parenting programs, housing support from Bryony House, Adsum House and a trustee arranged through Social Assistance. She had ongoing counselling from Addiction Services. Her daycare costs had been paid for when B. was with her. Additional monies were made available during, for access visits. Ms. G. had used the Single Parent Resource Centre. Finally, Ms. G. had made no specific request for services.

[32] Ms. G. indicated in February, 2005 that any visit by Ms. Simmons to her (Ms. G.'s) home was to be arranged through her addiction counsellor, Ms. Stephen. Ms. Simmons' last visit to the home was March 8, 2005.

[33] Ms. Simmons acknowledged that Ms. G.'s follow up with B.'s speech therapy had been good (when B. was in her care), and that reports from the daycare concerning B. were positive.

[34] Ms. G. had not been able to maintain "stable living accommodation" or paid her "bills . . . for necessities" as she had agreed to do in the September, 2004 agreement (paragraph 8, supra). In fact, Ms. G. was failing to do this literally as she signed this agreement.

### **9. Ginny Henniger**

[35] Ms. Henniger is an employee of the Single Parent Resource Centre in Halifax. She has known Ms. G. for two years. She has seen Ms. G. with B. and observed her to be a "loving and nurturing parent". She felt Ms. G. could benefit from services. She did not identify what services.

### **10. Rebecca Skeete**

[36] Ms. Skeete is an employee of Adsum House. Ms. G. has volunteered there regularly, doing chores and cooking. She has observed Ms. G. with B. and feels she is a loving, nurturing parent. She felt Ms. G. could benefit from services. She did not identify what services.

### **11. Elizabeth Stephen**

[37] Elizabeth Stephen is a clinical therapist with Addiction Services. She has been counselling Ms. G. since November, 2003. Ms. Stephen felt that Ms. G. had not been gambling since late 2003 (literally when Ms. Stephen started seeing her). Her addiction was VLT focussed. Ms. Stephen has seen Ms. G. frequently. Ms. Stephen has been accepting and sympathetic to Ms. G.. There has been no confronting of Ms. G. by Ms. Stephen. Ms. G. has repeatedly failed to pay rent, power, et cetera during this time. Ms. Stephen has not always known this in a timely fashion, yet regards Ms. G. as “always having been honest with me.” In the face of ongoing problems with money (loss of purses and ID 3 - 4 times, non-payment of rent, power, losing/leaving her job in circumstances where money was missing) Ms. Stephen remains trusting and confident that L. G. is not gambling. Ms. Stephen seems to feel that Ms. G. is just behind and “can’t catch up” - yet there is no evidence of any real attempt to catch up on debt or failed obligations. I have no confidence that this counselling has the potential to effect change in Ms. G. within the time frames of this proceeding. Ms. G. has been anything but forthright with Ms. Stephen.

### **12. Mary Haylock**

[38] Mary Haylock is a counsellor. She was involved with Ms. G. in 2003 and early 2004. She gave way to Ms. Stephen’s counselling in March, 2004. Ms. G. was cooperative. Ms. Haylock felt that Ms. G. could if under stress revert to “self sabotaging behaviour”.

### **Ms. G.’ Evidence**

[39] Ms. G.’ evidence is the most important evidence in this proceeding.

[40] Ms. G.’ evidence indicates:

- She was living in a shelter in Toronto when B. was born (March [...], 2001).
- She moved to an apartment when B. was six weeks old.
- She moved to [...], Ontario when B. was eight months old (November/December, 2001).

- She moved to Dartmouth, Nova Scotia in February, 2002. She lived with a male friend.
- March 11, 2002 she moved to Bryony House where she stayed until May 2, 2002.
- May 2, 2002 she moved to an apartment on [...] in Halifax. The rent was \$345/month. By September she had rental arrears of \$1800.00. Apart from the initial payment she had paid no rent. No more was paid. Power was hooked up but never paid. By October 15 she knew that she would be evicted. B. was taken into care on October 22, 2002. The state of the apartment has been described earlier. She had refused a CAS worker entry to the apartment - relenting when she returned with police. She was evicted from the apartment February 17, 2003. Rent cheques had been provided by Social Assistance, cashed, but the rent not paid. Ms. G. lied to different people about having paid the rent.
- From February to June, 2003 she lived with a friend on [...] Street.
- Mid-June, 2003 she moved to Adsum House. There was a "problem" and Ms. G. was threatened. She left.
- The end of June she moved in with a friend, S.R..
- In September, 2003 she moved back to Adsum House.
- She moved to [...] in October, 2003. She told her landlord her cheque was lost in the mail. It wasn't. Social Assistance cancelled her rent cheque after this - saying it would only be paid through a trustee. A trustee was arranged - her rent was paid through J.M.. She set the power bill up in the false name "L. S." as she had not paid the power bill from the [...] apartment. She never paid anything on the "L. S." power bill on [...]t. In late October, 2003, she admitted to having a gambling problem. The Agency responded by supporting her efforts to deal with it. She had been seeing Ms. Haylock, and was involved in a second parenting course. She commenced counselling with Addiction Services. She had a phone, but it was disconnected in September, 2004, she owed over \$300.00 on it. She indicated in a December 16, 2003 affidavit that she would arrange to pay her power bill through J.M., i.e., to trustee it. She did not. The Agency was not aware of much of this at the time. B. was returned to Ms. G.' care on March 6, 2004. Her power was cut off for 2 - 3 weeks in May, June of 2004. B. was bathed at a friend's. When Ms. Simmons visited she

was told by Ms. G. that a fuse had blown, that it couldn't be replaced because the owner was away. This was a lie. On June 17 she advised the Children's Aid Society that her power had been off since May 19. She owed over \$1400.00. At the end of June Ms. G. had the power hooked back up, using the name of a friend - E.W.. This was not known to the Agency at the time. The legal proceeding was terminated in September, 2004 - B. remained in Ms. G.' care.

On November 2, 2004 Ms. G. was given an eviction notice. She was to be out November 16. By December 2 the apartment was in (as Ms. G. described it) a "deplorable" state.

- Ms. G. said she was moving to the [...] address. She appears to have arranged the apartment. The landlord had the power on for one night. Ms. G. stayed there that one night but then could not arrange to have the power maintained or switched to her account - as she was "being investigated for fraud by Nova Scotia Power."
- After one night at 105 [...] Ms. G. and B. stayed two nights at B. R.'s.
- She then stayed two nights with W.H.; Ms. G. stayed here after B. was taken back into care and this (the third) proceeding initiated.
- On February 16, 2005 she moved to an apartment on [...]. She still lives there. She has rental arrears of \$1500.00 - \$1800.00. Her affidavit of June 15, 2005 states "My rent money was stolen." She was apparently putting money in W.H.'s account, she says he kept it. She also said a friend's "girlfriend" had stolen money from her. In April she received a notice of eviction. It had not been acted on as of the trial date.

[41] Ms. G. has had some 15 moves since B. was born on March [...], 2001 - four years and three months ago.

[42] Ms. G. states that she has lost her I.D. on three to four occasions in the past couple of years - once leaving her purse at a roommates and being afraid to go back to get it, once on a bus, once at the casino. She put money in Mr.H.'s bank account because, she reported, she lost her I.D. a couple of years ago and couldn't open her own account.

[43] She was working at [...] in early 2005 - and either left or was asked to leave when an issue arose about missing money.

[44] She is largely unconcerned, even flippant, about her inability to maintain basics - housing, power, et cetera. For example, when asked whether her lack of power in June 2004 was a “big problem” she answered “Was she returned to care?” and “explained” that it wasn’t a big problem since the Children’s Aid Society had not taken B. back into care.

[45] In her affidavit of June 15, 2005 Ms. G. indicates “I have fully cooperated with the Applicant (Agency) and would continue to cooperate with them.”

[46] This would not be my conclusion from the evidence.

[47] Ms. G. has repeatedly lied to the Agency and others. She explains she does so to avoid giving the Agency “stuff against her”. Her lies, and lack of forthrightness go beyond this, however, and have impacted on her relationship with the Agency, Ms. Stephen, landlords, the Power Corporation, and most importantly B..

## **B.**

[48] B. was born March [...], 2001. She has been in foster care from October 22, 2002 to March 6, 2004 (16 months +/-); and December 10, 2004 to the present (6 months).

[49] She was less than 51 months old at the time of trial. Some 22 of those months have been in foster care. She has had numerous moves and little stability.

[50] She is four years old and will start school in approximately a year. She is described as a sweet, pleasant girl. She has good personal hygiene. She is, like all four year olds, vulnerable and dependent. She requires that a parent provide her basic needs - housing, heat, lights, a safe and secure environment.

[51] B. received speech therapy until February of 2005. She has been in daycare for most of the past two to three years and no significant difficulties have been reported there.

[52] Ms. G. loves B. and is attached to her. Ms. G. acknowledges that B. is “confused” about her (B.’s) parenting. B. appears to have adjusted well to foster care. She does not talk about her mother in the foster home or at daycare.

### **The Law**

[53] The burden of proof in these proceedings is clearly upon the Agency. It is a “heavy” civil burden.

[54] The *Children and Family Services Act* has a number of provisions that are relevant to the application before the Court. They include:

#### **1. The Preamble**

[55] I have considered the preamble of the legislation. The following portions of the preamble seem particularly relevant:

...

AND WHEREAS children are entitled to protection from abuse and neglect;

...

AND WHEREAS the basic rights and fundamental freedoms of children and their families include a right to the least invasion of privacy and interference with freedom that is compatible with their own interests and of societys interest in protecting children from abuse and neglect;

AND WHEREAS parents or guardians have responsibility for the care and supervision of their children and children should only be removed from that supervision, either partly or entirely, when all other measures are inappropriate;

...

AND WHEREAS children have a sense of time that is different from that of adults and services provided pursuant to this Act and proceedings taken pursuant to it must respect the childs sense of time;

AND WHEREAS social services are essential to prevent or alleviate the social and related economic problems of individuals and families;

...

[56] B. and child welfare concerns related to B. have been before the Court since October, 2002.

## **2. Section 2**

[57] Section 2 of this Act provides:

2(1) The purpose of this Act is to protect children from harm, promote the integrity of the family and assure the best interests of children.

(2) In all proceedings and matters pursuant to this Act, the paramount consideration is the best interests of the child.

[58] I have considered these principles.

## **3. Section 3(2)**

[59] Section 3(2) provides:

3(2) Where a person is directed pursuant to this Act, except in respect of a proposed adoption, to make an order or determination in the best interests of a child, the person shall consider those of the following circumstances that are relevant:

(a) the importance for the child's development of a positive relationship with a parent or guardian and a secure place as a member of a family;

I conclude that there is an attachment between Ms. G. and B.. I conclude that Ms. G. has been unable to provide B. with a "secure place".

(b) the child's relationship with relatives;

There is no evidence indicating that B. has an attachment to any family member, except Ms. G..

(c) the importance of continuity in the child's care and the possible effect on the child of the disruption of that continuity;

B. has had little continuity in her life.

(d) the bonding that exists between the child and the child's parent or guardian;

There is a bond between Ms. G. and B.. Ms. G. acknowledges that B. is confused about who is parenting her.

(e) the child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs;

B. needs, and is entitled to, some stability in her environment.

(f) the child's physical, mental and emotional level of development;

B. is four and will start school within a year.

(g) the child's cultural, racial and linguistic heritage;

(h) the religious faith, if any, in which the child is being raised;

(i) the merits of a plan for the child's care proposed by an agency, including a proposal that the child be placed for adoption, compared with the merits of the child remaining with or returning to a parent or guardian;

I have considered the plans before the Court. I do not believe that Ms. G. is able to provide B. with a safe, consistent physical environment.

(j) the child's views and wishes, if they can be reasonably ascertained;

(k) the effect on the child of delay in the disposition of the case;

B.'s care has been before the Court since October, 2002. Further delay risks the lack of stability in her life impacting directly on her school adjustment.

(l) the risk that the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent or guardian;



I conclude that a return to the care of Ms. G. would inevitably result in B.'s neglect.

(m) the degree of risk, if any, that justified the finding that the child is in need of protective services;

There was serious neglect.

(n) any other relevant circumstances.

#### **4. Sections 9 and 13**

[60] Sections 9 and 13 provide in part:

9 The functions of an agency are to

(a) protect children from harm;

...

(c) provide guidance, counselling and other services to families for the prevention of circumstances that might require intervention by an agency;

...

(e) develop and provide services to families to promote the integrity of families, before and after intervention pursuant to this Act;

...

13 (1) Where it appears to the Minister or an agency that services are necessary to promote the principle of using the least intrusive means of intervention and, in particular, to enable a child to remain with the child's parent or guardian or be returned to the care of the child's parent or guardian, the Minister and the agency shall take reasonable measures to provide services to families and children that promote the integrity of the family.

(2) Services to promote the integrity of the family include, but are not limited to, services provided by the agency or provided by others with the assistance of the agency for the following purposes:

- (a) improving the familys financial situation;
- (b) improving the familys housing situation;
- (c) improving parenting skills;
- (d) improving child-care and child-rearing capabilities;
- (e) improving homemaking skills;
- (f) counselling and assessment;
- (g) drug or alcohol treatment and rehabilitation;
- (h) child care;
- (i) mediation of disputes;
- (j) self-help and empowerment of parents whose children have been, are or may be in need of protective services;

...

[61] Ms. G. testified that no services have been provided to her since B. was taken into care in December, 2004. She indicates she wanted a case conference (a meeting of all concerned). This did not happen. There was a (second) assessment - it recommended permanent care, she was “geared up” for that result. She asked that B. have some counselling. This was not done. Ms. G. has been counselled by Ms. Stephen of Addiction Services since November, 2003. Ms. Henniger of the Single Parent Resource Centre and Ms. Skeete of Adsum House work for community services, supports that Ms. G. has been involved with on an ongoing basis. Both state she might benefit from services. They do not identify the services they are referring to. Ms. G. does not identify the service the Agency has failed to provide.

[62] Ms. G. has repeatedly lied to the Agency and others. She has allowed her living conditions with B. to twice deteriorate far below any acceptable standard. She has trusted “friends” who have then, she says, stolen from her, kept her purse or created threatening environments. She has repeatedly not paid rent and power. She has not paid power - in her own name and at least two others. She has received repeated notices re: possible eviction.

[63] The Act creates an expectation, a duty on an Agency to provide services within a context - that context is the desire, the goal of keeping children with or returning them to, their parents - provided it is in the best interests of the child as defined by the Act to do so. The provision of services by the Agency within a proceeding such as this must be reality based:

1. The services must address the problems, the issues as seen from the child’s perspective. Put another way, they should, where a finding in need of protective services has been made, address either directly or indirectly the circumstances that have led to that finding.
2. The services must serve the child’s best interests as defined by the Act. For example, the Act embraces the idea that the passage of time has more impact on children than adults - and creates statutory time lines for decisions to be made within. A service that addresses a parent’s problem over two, three or five years may be potentially effective for the parent but, simply put, take too long for the child to wait.
3. The Agency has the responsibility to identify and/or provide services to enable a child to remain or return to a parent’s care.
4. If a parent disputes the existence or continued existence of a problem or issue, the Agency bears the onus of proof, the Agency must prove it. Once proven, or admitted to, the “problem” needs to be addressed. Where services are an issue a problem will have been admitted to, identified and/or proven. To identify and use a service a parent must be prepared to act responsibly in acquiring and utilizing a service to address the problem.

5. The Court has the duty and/or authority to deal with services:
- a. The Court may in making an interim order (prior to a finding in need of protective services) make an order pursuant to s. 39(4)(g) for the

referral of the child or guardian for psychiatric, medical or other examination or assessment.

This is one way that the Court can facilitate an independent assessment of what services might address the circumstances (or alleged circumstances) that have brought the family to Court.

- b. If a finding in need of protective services is made, the Court must consider services at the disposition stage - s. 41(3) provides, in part:

41(3) The Court shall, before making a disposition order, obtain and consider a plan for the child's care, prepared in writing by the agency and including,

- a. a description of the services to be provided to remedy the condition or situation on the basis of which the child was found in need of protective services . . .

- c. If the Court is making a Supervision (Disposition) Order, it may impose "reasonable terms and conditions" relating to the child's care and supervision including:

43(1)(f) the assessment, treatment or services to be obtained for the child by a parent or guardian or other person having the care and custody of the child;

(g) the assessment, treatment or services to be obtained by a parent or guardian or other person residing with the child; and

(h) any other terms the court considers necessary.

d. If the Court is making a Temporary Care (Disposition) Order, it may impose “reasonable terms and conditions”, including:

44(1)(c) the assessment, treatment or services to be obtained for the child by a parent or other person seeking the care and custody of the child;

(d) the assessment, treatment or services to be obtained by a parent or guardian or other person residing with the child;

...

(e) any terms the court considers necessary.

The Court has the authority to “refer” before a finding in need of protective services, to order services to be obtained after such a “finding”.

If an agency fails to identify or provide services “reasonably” the Court may on its own motion or that of a party make orders dealing with services as these sections authorize.

The issue of services has been commented upon in *Min. C.S. v. L.L.P.* (2003), N.S.C.A. 1 at paragraphs 25, 37 and 38:

25 The goal of “services” is not to address the parents deficiencies in isolation, but to serve the children’s needs by equipping the parents to fulfill their role in order that the family remain intact. Any service-based measure intended to preserve or reunite the family unit, must be one which can effect acceptable change within the limited time permitted by the Act. If a stable and safe level of parental functioning has not been achieved by the time of final disposition, before returning the children to the parents, the court should generally be satisfied that the parents will voluntarily continue with such services or other arrangements as are necessary for the continued protection of the children, beyond the end of the proceeding. Ultimately, parents must assume responsibility for parenting their children. The Act does not contemplate that the Agency shore up the family indefinitely.

37 . . . the “duty” of the Agency, if any, to provide services should be decided in a factual context . . .

38 With the above caution, I would endorse as applicable to the case here under appeal, the comments of Niedermayer, J.F.C. in *Nova Scotia (Minister of Community Services) v. L.S.* (1994), 130 N.S.R.(2d) 193 (Fam. Ct.):

[15] I interpret the phrase “provided by the agency or provided by others with the assistance of the agency” as follows. An agency is required to directly provide only those services it is capable of providing. With respect to all other services, the agency is to render assistance to the parent in having the service provided by others. This would include giving the parent the names and locations of these “out of house” services; payment for the cost of transportation to and from the services, if such was necessary; making referrals and setting up initial appointments where appropriate; and, advising the parent of alternatives, when needed. The agency is not expected to step by step “walk the parent through” all the stages of the service. There is a responsibility on the part of the parent to engage the “out of house” services. Not only does this indicate a willingness by the parent to improve, but it also demonstrates to others that the parent is capable of improvement as well as the degree to which positive change can be prognosticated.

. . .

[17] Before any meaningful consideration can be given to the duty of an agency to be found wanting with respect to the services as enumerated in Section 13(2) the client has to be willing or be able to engage in such services. The offers for services can be presented. In order for them to be looked at they must be accepted and acted upon by the client.

[18] As counsel for the Minister has pointed out, it is not mandatory for the Minister to provide all of

the services enumerated in Section 13 but “shall take reasonable measures” to provide services. “Reasonable measures”, in the context, means the agency must identify, provide or refer to the services and there has to be a reasonable probability of success in the provision of service . . .

I am satisfied that the Agency here has both provided and helped Ms. G. identify services. Many have been used since (and before) the Agency’s initial involvement in October, 2002.

The “problems” that have led B. into care are persistent - Ms. G.’ failure, even refusal, to pay rent or power; Ms. G.’ inability to maintain a household at a level remotely acceptable for a child of B.’s age, or any age; Ms. G.’ repeated lies and mis-truths about her financial circumstances; Ms. G.’ apparent lack of understanding of the impact and potential impact this recurring pattern of behaviour has upon B.. Ms. G.’ consistent inability to be forthright about, or to follow through with issues as simple as paying rent and power makes it difficult to conclude that services are capable of being “accepted and acted upon”.

Ms. G. has had personal counselling for two years. She knows that Social Assistance can trustee rent monies and lost an apartment even when this was done. She has had parenting classes and courses. She is connected to and uses community resources such as Adsum House, the Single Parent Resource Centre, and Addiction Services. She has had private counselling. None of these services has impacted upon Ms. G. so as to enable her to create sustained change. The Agency states it can identify no services that will address these issues effectively. Two assessments, two years apart, come to the same conclusion. Ms. G. suggests there be a case conference (a meeting of service providers) and that B. have counselling - neither is a service that can or will address the problems that have led to B.’s coming into care.

6. B. was found in need of protective services pursuant to s. 22(2)(k) of the *Children and Family Services Act*. The section provides, in part:

22(2) A child is in need of protective services where

...

(k) . . . 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.

Ms. G. is unable to provide the most basic of needs - housing, heat, stability. She has few personal supports. The friends she has relied on have, she asserts, more often than not taken or stolen money, or added to her problems in other ways (one friend had a boyfriend who threatened Ms. G. - who was afraid to retrieve her purse and I.D. from their apartment). B. remains in need of protective services pursuant to s. 22(2)(k).

I also conclude that B. is in need of protective services pursuant to s. 22(2)(ja):

22(2)(ja) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (j);

Subsection (j) reads:

(j) the child has suffered physical harm caused by chronic and serious neglect by a parent or guardian of the child, and the parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;

The conditions B. lived in - in October, 2002 and December, 2004 are not in dispute.

7. Section 41(2) provides:

41(2) The evidence taken on the protection hearing shall be considered by the court in making a disposition order.



I have considered it.

8. Section 96(1)(a) provides:

96(1) At a proceeding pursuant to this Act other than Sections 68 to 87, the court may, subject to subsection (2) of Section 40, admit as evidence

- (a) evidence from proceedings, pursuant to this Act or any other similar legislation, respecting the child that is the subject of the hearing, or respecting another child that was in the care or custody of a parent or guardian of the child that is the subject of the hearing;

The evidence from the earlier proceeding(s) was admitted and considered.

9. Section 42(1) outlines the possible orders when the Court is, as here, making a disposition order:

42(1) At the conclusion of the disposition hearing, the court shall make one of the following orders, in the child's best interests:

- (a) dismiss the matter;
- (b) the child shall remain in or be returned to the care and custody of a parent or guardian, subject to the supervision of the agency, for a specified period, in accordance with Section 43;
- (c) the child shall remain in or be placed in the care and custody of a person other than a parent or guardian, with the consent of that other person, subject to the supervision of the agency, for a specified period, in accordance with Section 43;
- (d) the child shall be placed in the temporary care and custody of the agency for a specified period, in accordance with Sections 44 and 45;

(e) the child shall be placed in the temporary care and custody of the agency pursuant to clause (d) for a specified period and then be returned to a parent or guardian or other person pursuant to clauses (b) or (c) for a specified period, in accordance with Sections 43 to 45;

(f) the child shall be placed in the permanent care and custody of the agency, in accordance with Section 47.

I have considered the alternative orders that are available.

10. Section 42(2) provides:

42(2) The court shall not make an order removing the child from the care of a parent or guardian unless the court is satisfied that less intrusive alternatives, including services to promote the integrity of the family pursuant to Section 13,

(a) have been attempted and have failed;

I so conclude. Less intrusive alternatives have been tried. They failed.

(b) have been refused by the parent or guardian; or

Ms. G. has repeatedly not paid rent or power. She has effectively refused the most basic of services.

(c) would be inadequate to protect the child.

I so conclude. B. is four years old. She is completely dependent of those parenting her for her physical and emotional well being. Ms. G. has not been able to provide sustained care to B..

11. Section 42(3) provides:

42(3) Where the court determines that it is necessary to remove the child from the care of a parent or guardian, the court shall, before making an order for temporary or permanent care and custody pursuant to clause (d), (e) or (f) of subsection (1), consider

whether it is possible to place the child with a relative, neighbour or other member of the child's community or extended family pursuant to clause (c) of subsection (1), with the consent of the relative or other person.

There is no evidence that such a family or community placement is possible.

12. Section 42(4) provides:

42(4) The court shall not make an order for permanent care and custody pursuant to clause (f) of subsection (1), unless the court is satisfied that the circumstances justifying the order are unlikely to change within a reasonably foreseeable time not exceeding the maximum time limits, based upon the age of the child, set out in subsection (1) of Section 45, so that the child can be returned to the parent or guardian. 1990, c. 5, s. 42.

Section 45(1)(a) provides:

45(1) Where the court has made an order for temporary care and custody, the total period of duration of all disposition orders, including any supervision orders, shall not exceed

(a) where the child was under six years of age at the time of the application commencing the proceedings, twelve months; or

...

from the date of the initial disposition order.

The first disposition order in this proceeding was April 8, 2005. The Court has jurisdiction, then until April 8, 2006. The issues which have resulted in B. being found in need of protective services have been before the Court (with the exception of three months in the fall of 2004) since October, 2002. This is the third proceeding under the *Children and Family Services Act* dealing with the same issues. While Ms. G. loves B., she is unable to find the personal discipline to pay rent, power or maintain a household. She has had the monies to

do so and has offered no explanation for her failures - save saying that, for some of it, it was lost or stolen. She says she has not gambled since November, 2003. She has had all the services anyone can identify. B.'s life has been disrupted by these failings. The neglect of physical premises endangered B. at least twice and I conclude would in the future. Ms. G. does not appear to connect any of this to B. in a way that might motivate change. She is now in much the same place as 2002 - seriously behind on rent, in danger of eviction. I can contemplate no services or circumstances that would allow B. to return to Ms. G.' care within the next eight to ten months. Ms. G., in reality, has significant difficulty in providing for herself. Ms. G. cares deeply for B. but cannot provide or sustain an appropriate physical environment for herself, or B..

### **Conclusion**

[64] I have considered the evidence and law. I have considered the Agency plan and that put forward by Ms. G.. I have considered B.'s best interests, the circumstances that led to her and Ms. G. becoming enmeshed in this and the previous proceeding(s) and the prospect for change. I conclude that it is in B.'s best interests to be placed in the permanent care and custody of the Children's Aid Society of Halifax.

### **Access**

[65] The issue of access is dealt with in Section 47(2) of the *Children and Family Services Act*.

47(2) Where an order for permanent care and custody is made, the court may make an order for access by a parent or guardian or other person, but the court shall not make such order unless the court is satisfied that

- (a) permanent placement in a family setting has not been planned or is not possible and the persons access will not impair the child's future opportunities for such placement;

- (b) the child is at least twelve years of age and wishes to maintain contact with that person;
- (c) the child has been or will be placed with a person who does not wish to adopt the child; or
- (d) some other special circumstance justifies making an order for access.

[66] The Court of Appeal in *Min. C.S. v. S.N.S.* (1992), 112 N.S.R.(2d) 248 stated at p. 268:

Under this section, s. 47(2), the burden is on a parent or guardian to show that access is in the best interests of the child. Indeed the section is more restrictive than that.

[67] The section provides that where an order of permanent care and custody is made, the Court may make an order for access, but the Court shall not make an order for access unless the Court is satisfied that a permanent placement in a family setting has not been planned (here it has), the child is at least twelve years of age and wishes to maintain contact (B. is not twelve), the child has been or will be placed with a person who does not wish to adopt the child (this is not the Agency plan), or some other special circumstance (I can identify none).

[68] I conclude there is no alternative but to make no order for access.

J. S. C. (F. D.)

Halifax, Nova Scotia