FAMILY COURT OF NOVA SCOTIA

Citation: *Nova Scotia (Community Services) v. A.P.*, 2017 NSFC 13

Date: 2017-06-23
Docket: FATCFSA-95959
Registry: Antigonish

Between:

Minister of Community Services

Applicant

v.

A.P., C.B. and K.M.

Respondent

Restriction on Publication: pursuant to s. 94(1) of the Children and Family Services Act, S.N.S. 1990, c. 5

Editorial Note: **Identifying Information has been removed from this electronic version of the judgment.**

Judge:	The Honourable Judge Timothy G. Daley
Heard:	January 10 and January 11, 2017 in Antigonish, Nova Scotia
Written Decision:	June 23, 2017
Counsel:	Lorne MacDowell, Q.C. for the Applicant, Minister of Community Services Daniel MacIsaac, for the Respondent, C.B.

Introduction

[1] This case is about a child, I.P., born May *, 2014 and whether it is in her best interest that she be placed in the permanent care and custody of the Minister of Community Services ("the Minister") or placed in the care of her father, C.B.

[2] The Minister alleged that A.P. and C.B. has engaged in domestic violence in the presence of the children, that they were using illegal drugs and may have been impaired in their care of the children as a result and that they had not provided medication of the children as prescribed.

[3] The respondents are A.P., C.B. and K.M. A.P. is the biological mother of both children. C.B. is the biological father of I.P. K.M. is the biological father of K.P.

[4] In the current proceeding, the Minister filed a protection application and notice of hearing dated May 7, 2015. In it, the Minister sought a finding that two children, K.P., born August *, 2012, and I.P., born May *, 2014, were children in need of protective services.

[5] The protection application and the resulting proceedings also involved K.M. because his daughter, K.P., was being cared for in the home of A.P. and C.B. and, as the biological father with access at the time the proceedings commenced, he was named as a respondent. He participated throughout the proceedings. He received services to assist with behavior of his daughter, K.P., and he complied throughout.
[6] The child K.P. was eventually placed in the care of K.M. under the supervision of the Minister and the involvement of the Minister with K.P. and K.M. was ultimately terminated in favour of an order under the *Maintenance and Custody Act* placing K.P. in the care of K.M.

[7] It is also noteworthy that the timeline for completion of the proceeding respecting I.P. was extended by this court beyond the statutory timelines in order to complete the hearing. This was done with the consent of the parties, on the record, and was based on such extension being in the best interests of the child.

Evidence of Past Proceeding

[8] Evidence of past proceedings was admitted in this matter. That evidence is summarized below.

[9] In November 2013, a protection proceeding under the *Children and Family Services Act* ("the Act") was commenced involving A.P. and C.B. with respect to their child, K.P., who was, at that time, just over one year old. A.P. was pregnant at the time.

[10] The agency became involved because of a referral from the RCMP in April 2013 which was based upon a complaint by their landlord regarding the potential smell of marijuana from the residence of A.P. and C.B..

[11] Investigation revealed that C.B. was the alleged perpetrator of a sexual assault when he was approximately 13 years old. At that time, he was assessed as a high-risk sex offender. Subsequently, a comprehensive forensic sexual behavior assessment was conducted by Dr. Angela Connors, a clinical and forensic psychologist, and it was determined by her that C.B. was incorrectly labelled a "high risk" for sexual re-offense. She provided her opinion in part as follows:

> Given the lack of a sexual preference for children, the lack of re-offense following disclosure and treatment, the lack of indicators of escalation, persistence, sadism at the time of the offense, and C.B. young age at the time the offense occurred in conjunction with evidence of trauma reenactment, it does not appear that risk for sexual re-offense as an adult can be specifically predicted. Thus, sexual risk is not specifically predicted with respect to C.B. role as a stepparent or (even more so) as a biological parent.

[12]C.B. was charged with sexual assault in 2006 and was subsequently acquitted. He did admit to sexual contact with a younger cousin.
[13] With respect to marijuana use, these allegations were not substantiated on investigation by the agency. This protection proceeding was terminated by order on April 22, 2014.

Evidence in This Proceeding

[14] In early 2015, various referrals received by the agency respecting the behaviors of A.P. and C.B. in caring for K.P. and I.P. There were various allegations that C.B. was emotionally and verbally abusive to A.P., that they had consumed illegal drugs while caring for one of the children and they were not providing the children with their appropriate medication.

[15] It was reported that A.P. had moved with the children to Tearmann House, a women's support centre and temporary housing facility in New Glasgow, because of C.B.'s excessive use of alcohol, drugs and his verbal abuse.

[16] There were subsequent referrals alleging assault by both C.B. and A.P. in the home. These referrals were under investigation by the local police.

[17] When questioned by the agency worker in April 2015, A.P. admitted that she and C.B. had hit one another and she claimed that she had recently been assaulted by him in her residence. C.B. was not charged with assault on A.P.

[18] K.M. alleged that K.P. was being cared for by a babysitter who was too young, multiple sitters were being used, that A.P. was doing drugs and that she had a history of drug use. He alleged marijuana use in front of his child by A.P.

[19] As a result of these various referrals and concerns, the agency made an application to this Court seeking an order placing the children in the care of A.P. under the supervision of the Minister with various conditions. Those included a prohibition on the consumption of drugs or alcohol by A.P. and C.B. and putting services in place for each of the respondents. Specifically, C.B. was granted supervised access with I.P. as arranged through the agency and K.M. was granted unsupervised access with K.M.

[20] Ultimately the child K.P. was placed with her father K.M. under a *Maintenance and Custody Act* order and the mother, A.P., did not present a plan of care or participate in the final hearing of this matter concerning I.P. For these reasons, I will not review all the evidence concerning their circumstances except as it is relevant to I.P. and her father, C.B., who did put forward a plan of care for her and did participate in the final hearing.

Diane Chisholm

[21] Agency social worker, Diane Chisholm, provided evidence by way of several affidavits and her *viva voce* evidence at the hearing. She testified in her affidavit sworn June 1, 2015 that she attended at the residence of A.P. on May 29, 2015 in the company of another worker. She observed four empty cold shot cans and a 12 pack of empty beer cans in the kitchen.

[22] A.P. admitted that she had been drinking the night prior and that the children had been at home with her. She also admitted that she had smoked marijuana the day prior while the children were at daycare. She did not explain why she had not attended for addiction services appointments. She described feeling depressed and

confirmed that she was unable to follow the conditions of the supervision order, including the prohibition on the consumption of alcohol or drugs.

[23] As a result of this information, that the Minister sought a further finding that the children were in need of protective services and that they could not be adequately protected other than being taken into the temporary care of the Minister. The children were taken into care on May 29, 2015.

[24] A further interim order of June 16, 2015 was granted by this court placing the children in the temporary care of the Minister. The order required that A.P. and C.B. abstain from the use of alcohol and nonprescription drugs. A.P. was granted supervised access and, in the discretion of the Minister, unsupervised access. C.B.'s supervised access continued, as did K.M.'s unsupervised access. All three respondents were ordered to cooperate and participate with counselling, therapy or services recommended or requested by the Minister.

[25] At the protection hearing on August 4, 2015, A.P. appeared with counsel and C.B. appeared and represented himself. K.M. did not appear. C.B. and A.P., through counsel, consented to the protection finding on a reservation of rights basis.

[26] The evidence before the court at that time included the preceding affidavits of Diane Chisholm and her recent affidavit sworn July 28, 2015. Those affidavits established grounds for the protection finding on the basis of domestic violence by A.P. and C.B. in the presence of and while having care of the children, excessive alcohol and nonprescription drug use. The affidavits also established that both A.P. and C.B. were under the influence of these substances while caring for the children.

[27] At that hearing, and independent of the consent of the parties, this Court made the finding that the children were in need of protective services pursuant to sections 22(2)(b) and (g) of the *Act* and further determined that the children were at substantial risk of harm in the care of either A.P. or C.B. The temporary care order was continued, along with the various access arrangements for the respondents. The prohibition of consumption of alcohol and nonprescription drugs was continued for A.P. and C.B. All three respondents were required to cooperate and participate in counselling, therapy and services as requested and recommended by the Minister, including addiction counselling, services through Naomi Society, a provider of support to individuals who have experienced family or partner violence and parenting support.

[28] In the agency's plan for the children's care dated October 30, 2015 the Minister identified that A.P. would receive assistance through the family support worker including education on parenting. She was expected to participate with addiction services to deal with addiction issues and to obtain information on the impact of substance use on children. As of the date of the plan, October 30, 2015, A.P. had not attended at addiction services as required.

[29] Concerns were raised by the Minister at the protection hearing concerning whether the respondents were going to engage on a consistent basis with services and access.

[30] Almost immediately, A.P. began missing access visits with the children and this service was suspended. A.P. did begin work with the family support worker but these sessions were also suspended when the access visits were suspended for her.

[31] A.P. began attending addiction services but missed one of three initial sessions.

[32] A.P. was referred to mental health services and her file was closed due to two missed appointments. She was then referred to a private therapist to address issues of depression and her family of origin and a first appointment was pending at that time.

[33] She was participating with Naomi Society to develop awareness of intimate partner violence, the impact of domestic violence on children, healthy relationships and safety planning.

[34] Access was reinstated in July 2015 between the children and A.P.

[35] C.B. also began his access but missed two initial visits which he alleged to be due to work and because he had no transportation.

[36] He was referred to New Leaf, a program for men dealing with domestic violence issues.

[37] A disposition order was granted on November 3, 2015 continuing the placement and access provisions for the children and the respondents. The affidavit

of Diane Chisholm dated October 30, 2015 continued to express concerns about the participation services by the respondents A.P. and C.B..

[38] In the case of C.B., Ms. Chisholm said that she had received a report from New Leaf that he had only attended one session in early September, when that service was put in place. She said that C.B. claimed that he was having transportation problems and had been ill. Similarly, C.B. had missed three appointments with addiction services since early August 2015.

[39] C.B. was referred to addiction services to assist him in addressing his addiction issues and to obtain information related to the impact of substance use on children and achieving a healthy and safe environment. As of October 30, 2015, he had not attended or participated in such counselling on a regular basis.

[40] In Ms. Chisholm's affidavit of January 8, 2016, she said that A.P. had told her on November 3, 2015, just after that day's court appearance, that she had been assaulted by C.B. and that he had been arrested. She alleged he had tried to break into her apartment as well. C.B.'s access was suspended at that time.

[41] Ms. Chisholm said that she spoke to the officer involved who confirmed that no charges had been laid but that C.B. had been detained until he was sober. The officer also confirmed that A.P. had obtained a peace bond against C.B. nine months prior but that it had been made void when she invited him back into her life.

[42] Ms. Chisholm said that C.B. denied any assault but did admit to going to A.P.'s home after his arrest and release to get some belongings. He agreed that they were not to have contact and confirmed that the peace bond referred to earlier was still in place and he was aware that he should not have contact based upon that order. He said that he and A.P. had gotten back together two months prior but he wouldn't be getting back with her now. He told Ms. Chisholm "I know I screwed up; I don't want to be so angry, use drugs or alcohol."

[43] He did deny that he was intoxicated while in custody.

[44] He explained to Ms. Chisholm that he had been feeling suicidal but did not any longer and that he had been referred to mental health by his family doctor. He maintained he was attending New Leaf.

[45] Ms. Chisholm said when she interviewed A.P., A.P. disclosed that she and C.B. had been together a lot since the initial court appearance, saying that they

"hung out" every day. She said that she wanted to stay away from C.B. and she told him she would call for the RCMP to remove him if he would not leave on his own. Ms. Chisholm explained that the agency would have concerns if they remained together because of the conflict between them and that C.B. is not participating in any services.

[46] Ms. Chisholm spoke to C.B. on November 13, 2015 and he informed her that he was moving to Ontario for a month and a half to work. He told her that his new medication seemed to be working well for him and he was not even sure if he needed classes or services. She repeated that the expectation was that he would participate in services to address the issues identified and if he decided to leave for Ontario it was important to notify her, to check in while he was gone and to let her know when he returned. C.B. subsequently left to work in Ontario and told Ms. Chisholm that he would remain in Ontario until the end of February 2016. She informed him that she would look into services in the closest town or city to him.

[47] Ms. Chisholm said that she confirmed with New Leaf that C.B. did not attend any sessions in the month of November 2015. In a subsequent call with C.B., Ms. Chisholm informed him that he must see someone in person for addictions as opposed to telephone counselling and he confirmed that he understood.

[48] A.P. was scheduled for therapy with Gary Neufeld throughout this period and her attendance began to fall off in and around December 2015. In that month, it became difficult to contact A.P. at her home.

[49] Over the next few months A.P.'s involvement with Gary Neufeld as therapist and her access with the children began to falter. She became less involved and more difficult to reach.

[50] In her affidavit of February 24, 2016 Ms. Chisholm said that A.P. "went missing" for a period of weeks and her access was suspended as a result. When the access facilitator visited A.P.'s home on January 12, 2016 she was told by a friend that A.P. was in New Brunswick and that she may have plans to leave the community.

[51] A.P. had discontinued contact with the Naomi Society, Gary Neufeld and any other service providers.

[52] After several inquiries at A.P.'s home and among her family and friends, it appeared that she remained in New Brunswick and she was not engaged in any services.

[53] Ms. Chisholm said that she did receive communication from A.P. by email on February 4, 2015 asking to speak to her but after several attempts to set up a time to have her come speak with Ms. Chisholm, A.P. did not do so.

[54] As for the C.B., he returned to Nova Scotia in January 2016 and supervised access recommenced. It was made clear to him that the expectation was that he would attend addiction services and New Leaf before reinstatement of access. Ms. Chisholm subsequently confirmed with New Leaf that C.B. had attended for one session on January 20 and half a session on January 27, 2016.

[55] The director of New Leaf, Ron Kelly, informed Diane Chisholm on February 17, 2016 that C.B. had only attended two sessions so far that month as described, he was taken aside and questioned regarding his lack of participation and he replied that he was very tired. He was warned that New Leaf would report to the agency regarding his attendance and participation.

[56] Ms. Chisholm spoke with Geofrinne Boudreau-Arsenault of addiction services who confirmed that C.B. did attend for two appointments in January and one in February. He had cancelled one in February as well. He appeared to be motivated and claimed that he was not drinking and had not used substances while working in Ontario.

[57] In her affidavit sworn April 20, 2016 Ms. Chisholm said the C.B. expressed an interest in having custody of I.P. and that drug testing was discussed. She could confirm with New Leaf at that time that C.B. attended on four occasions in February of 2016.

[58] A.P. continued to make sporadic contact with Ms. Chisholm and, despite efforts by Ms. Chisholm to arrange a meeting, she did not cooperate and did not provide information of her whereabouts when requested.

[59] It was in mid-March 2016 that Ms. Chisholm took steps to locate C.B. by visiting a mobile home across from the home of T.B., in Antigonish. Ms. Chisholm knocked on the door of the mobile but no one answered. She could hear a dog barking inside.

[60] She and the social worker, Tiffany Hallett, then walked across the road to speak to T.B., C.B.'s mother. T.B. came outside holding her daughter, who was approximately four years old. When asked if she knew where C.B. was she replied, "in town". As she was saying this her child pointed across the road to the mobile home they had just visited and said, "He's over there". T.B. denied seeing A.P.

[61] When they returned to the mobile home where they believed C.B. resided, they knocked and he came to the door, coming onto the deck and closing the door behind him. Ms. Chisholm and Ms. Hallett informed him that someone had reported seeing him and A.P. together. C.B. denied they were living together. When asked if he had spoken with her he said he may have spoken with her once. He explained that he was attending New Leaf and needed to call addiction services for an appointment.

[62] In subsequent emails on March 15 and March 29, 2016, A.P. denied being in Nova Scotia and specifically denied being in Antigonish, claiming she would call Ms. Chisholm when she arrived at her father's home soon.

[63] A.P. finally met with Ms. Chisholm on March 31, 2016. This was the first in person or telephone contact Ms. Chisholm had with A.P. since December 17, 2015. A.P. maintained she been staying with a friend in New Brunswick. After discussing the many missed appointments and missed access visits, A.P. maintained that she was now back in Nova Scotia and wanted to have access with the children. When Ms. Chisholm was explaining how the children were doing, A.P. left and was tearful. She did not return to the meeting and could not be located.

[64] As for C.B., he continued to attend New Leaf on two occasions in March and New Leaf reported a more consistent attendance and participation by C.B. in a letter dated April 12, 2016.

[65] Addiction services informed Diane Chisholm on April 18, 2016 that they had not seen C.B. from February 1, 2016 until the prior week in April 2016. He reported that he was not using drugs or alcohol and had bought a mobile home across from his mother's home, making renovations to it to make an appropriate home for his daughter.

[66] When C.B. met with Diane Chisholm in April 20, 2016 she said C.B.admitted that he had been seeing A.P. on a casual basis and told A.P. that he

didn't want Diane Chisholm to see them together as he would be in trouble. Ms. Chisholm explained it was not about being in trouble but rather about being honest so appropriate services can be put in place. C.B. maintained that A.P. was not living with him. C.B. also admitted to using alcohol on one occasion and denied any marijuana use after he was arrested for allegedly assaulting A.P. He also admitted that he'd had a problem with marijuana in the past. He said he did not like New Leaf originally but that he now looks forward to attending.

[67] Ms. Chisholm said that approximately one hour after commencing the meeting with C.B. she received a voicemail message from A.P. who indicated she knew C.B. was just there at Ms. Chisholm's office "because he comes and talks to me every… day and we hang out every single day. So, if he's granted visitations with my daughter I'm going to be very upset because he's breaking the conditions too. He doesn't go to his appointments, he smokes drugs, you should do a hair follicle on him right now before he gets to see her…"

[68] In her affidavit sworn June 9, 2016, Diane Chisholm said that C.B. continued to have a positive interaction with New Leaf. Unfortunately, respecting the issues of drug use and engagement and other services, there was less improvement and an earlier admission of drug use.

[69] Ms. Chisholm confirmed that supervised access had been reinstated for C.B.. He claimed he hadn't had any further contact with A.P. but she did arrive at his mobile home on April 25, 2016. He'd told her earlier, by message, that he didn't want any contact with her because it would affect his chances of having I.P. live with him. He said A.P. came to the home to retrieve her clothing. When asked, C.B. confirmed that A.P. did stay at his mobile home on occasion before this.

[70] On May 26, 2016 Ms. Chisholm said she met with C.B. and he told her that he felt he should tell "the truth". He then confirmed that he hadn't smoked marijuana very much but that he had lied in telling her that he had quit for a longer period than he had. He then alleged he had quit.

[71] C.B. then went on to disclose that after he returned from Ontario to Nova Scotia he had gotten back together with A.P., that they did see each other, but that she wasn't living with him. He confirmed that they did smoke marijuana together.

[72] In that meeting, Ms. Chisholm and C.B. discussed creating a plan of care for presentation to the court. In her affidavit on June 9, 16, Ms. Chisholm reports that there had been some improvement in C.B.'s engagement with New Leaf but little

further advancement on any other presenting concerns and no plan of care had been received.

[73] In her affidavit of September 16, 2016 Ms. Chisholm reported that she met with C.B. on June 21, 2016. C.B. maintained that he had not smoked marijuana for two months and that he had broken up with A.P. He felt that any urinalysis test would come back clean for any substances. His access with I.P. was expanded to include in the community and urinalysis testing was organized.

[74] Ms. Chisholm reported that, as of July 22, 2016, six urine collections were completed for C.B. and all the results were negative for alcohol and nonprescription drugs. Two collections were not taken because C.B. was not at home.

[75] On August 19, 2016 Ms. Chisholm was advised by agency social worker, Tiffany Hallett, that she had observed A.P. and C.B. walking hand-in-hand on Main Street in Antigonish on Friday, August 19, 2016. They were in a group which included C.B.'s mother, T.B., and her daughter S. as well as two cousins.

[76] Diane Chisholm reported that on August 22, 2016 as she was walking in the back-parking lot of the agency office in Antigonish she met C.B.'s mother, T.B., A.P. and T.B.'s daughter S. walking in the other direction. A.P. was holding S's hand and put her head down when Ms. Chisholm saw her. Neither T.B. nor A.P. spoke with Ms. Chisholm at that time.

[77] When Ms. Chisholm spoke to C.B. at his home on September 12, 2016 he denied that he had been holding hands with A.P. on Main Street in Antigonish as reported by another worker and that the worker must have had him confused with A.P.'s boyfriend. When asked if he had seen A.P. around town he claimed he had seen her "just driving by or something".

[78] It was Ms. Chisholm's evidence that despite the clean drug tests for C.B., the agency could not support I.P. being in the care of C.B. as a result of information that he was continuing the relationship with A.P., who would not participate in services for some time and therefore had not addressed the risks to the child.

[79] C.B. continued to attend New Leaf throughout July for four sessions. New Leaf indicated it would be closed for the month of August.

[80] Reports to Ms. Chisholm from addiction services confirmed the C.B. had not been seen for a while due to his work schedule but that Ms. Boudreau-Arsenault had seen him on July 14 and that she been on vacation for three weeks in August.

[81] In her affidavit of October 27, 2016, Diane Chisholm confirmed that A.P. had not participated in the proceedings for some time and was not engaged with the agency or services in many months. She confirmed the agency was seeking permanent care of I.P. with no access to A.P. or C.B. The agency's plan for the child's care was filed on September 30, 2016.

[82] In her final affidavit of January 6, 2017, Ms. Chisholm said that she confirmed with New Leaf on September 20, 2016 the C.B. had not attended when New Leaf reopened in September 2016 despite being at sessions every week before the service closed in August. As well, C.B. did not attend for his access visit on November 7, 2016.

[83] Similarly, addiction services confirmed to Ms. Chisholm on December 1, 2016 that C.B. had not attended since July 14, 2016.

[84] In her direct evidence at the hearing, Ms. Chisholm confirmed that she has known A.P. said A.P. was 14 years old and she had met C.B. a few times prior to his involvement with the agency. She has known that they have been together since January 2013.

[85] She also confirmed that she attended at the mobile home of C.B. in September 2016 and that she noted some safety issues to him. She identified photographs of the mobile home, which showed a bag of dog feces on the deck, a door on the deck, empty alcohol bottles and beer cans, and trash in and around the area. She said the concern was the danger this material posed for an active child. She indicated the beer and alcohol containers may indicate alcohol abuse by C.B.

[86] In cross-examination, Ms. Chisholm confirmed that there were arranged collections for urinalysis, six of which took place and all were negative for alcohol, marijuana or any other nonprescription medication.

[87] She confirmed that she did not know who may have consumed the rum or beer from the bottles on the deck as she'd noted earlier. She also confirmed that she had no evidence that C.B. was under the influence of alcohol or drugs in any of her interactions with him.

[88] When asked the reasons for not supporting the placement of the child with C.B., she identified three concerns. The first was the fact that she believed C.B. was in contact with A.P. who had not participated in services to address the concerns raised. The second was that C.B. had ceased attending at New Leaf. The third was that he had also ceased attending at addiction services.

[89] She also raised concerns regarding his admission of intermittent drug use, his misleading of the agency regarding his relationship with A.P. and his overall inability over time to remain clean and sober, engage fully with services or stay away from A.P.

[90] Under cross-examination Ms. Chisholm confirmed that the C.B. was told on September 16, 2016 that the agency would not support the plan for placement of I.P. with him though she said that she and the other social worker present encouraged him to continue with services.

[91] It was her evidence that New Leaf attendance was important because in the presence of domestic violence where a child is exposed, regular attendance is essential to reduce the risk of repeat.

[92] As for addictions, she testified that the same risk applied as with domestic violence and that C.B. had not demonstrated a long period of sobriety and she had nothing from him regarding how he planned to deal with any triggers or how he would cope with stress that might give rise to alcohol or drug abuse in the future.

[93] She identified a concern regarding A.P. as being an ongoing risk in that she had been part of the presenting concerns when the matter first came before the court but she not had not meaningfully engaged in any services for some considerable time and had completed none of them.

[94] She confirmed that C.B. had not participated in New Leaf or addiction services since July 2016 despite being encouraged to do so. He was encouraged to continue with the services and was reminded that the decision of permanent care was not the agency's but the court’s.

Tiffany Hallett

[95] Tiffany Hallett, a social worker with the agency, gave evidence in the matter. In direct examination, she testified that she works with child protection in

Antigonish and has been a social worker for 12 years, working in the area of child protection for seven years.

[96] She confirmed that she knows A.P. and C.B. from being in their presence on various calls and emergency calls.

[97] She said that on August 19, 2016 she was in the local community and saw A.P. and C.B. holding hands near Shopper's Drug Mart. It was approximately 11:30 in the morning and they were hand-in-hand. With them was C.B.'s mother, T.B.and two cousins, E. and J. She said that they were all about 25 feet in front of her, there were no obstructions in her view of them and no comments were made by them to her.

Cathy Grant

[98] Cathy Grant, a Director of New Leaf, gave evidence at the hearing. In her direct evidence, she testified that she has worked with New Leaf, a program for men involved with domestic violence, for the last 17 1/2 years. She described domestic violence as a social issue and that New Leaf works with clients in group settings to discuss relationships and how to obtain healthy balance in their lives.

[99] She said that C.B. was interviewed on July 29, 2015 and attended on four occasions in 2015. She said this was not good attendance and he was not good in his participation during that time.

[100] She identified letters she provided on September 20, 2015 and April 11, 2016 confirming C.B.’s attendance in those years. As noted, C.B. attended for four sessions in 2015 and 8 1/2 sessions in 2016, for a total of 12 1/2 sessions.

[101] She confirmed that C.B.'s attendance did increase quite a bit in 2016 and that he appeared to look forward to participating, wanting to participate in his daughter's life.

[102] Ms. Grant described that in January of 2016 C.B. began to try to participate in and obtain some insight from the program and by February of 2016 he appeared more comfortable. She confirmed in a letter of June 1, 2016 that C.B. was doing well in his participation. She was asked to identify the attendance records from New Leaf and could do so. Those records show that C.B.had not attended at New Leaf since July 2016 and she had no contact with C.B. since then nor any information as to why he was not attending.

[103] In cross-examination, Ms. Grant confirmed that the program required a minimum of six months and preferably 12 months' participation comprised of one session per week. She was not informed why C.B. was attending but that he was very close to completing six months when he stopped attending.

[104] She had observed that he was really trying to understand things, he was excited when he spoke of his daughter and she was excited for him because he was really trying.

[105] She testified that over her 17 years of involvement she has observed between 1,600 and 1,800 men in the program. She observed the C.B. was friendly and got on well with the other participants. At the beginning, he was completely disengaged but later on became engaged, "trying to figure things out".

[106] On questioning by the Court, she confirmed that there is no formal end to the program for the client. Often the client says that they are done. She was confused why C.B. stopped attending as he seemed to be engaged and enjoying the program.

K.M.

[107] K.M. provided evidence at the hearing. As noted earlier, he is K.P.'s biological father and has care and custody of her under a *Maintenance and Custody Act* order.

[108] He testified that he knows C.B. because they were in school together. He says that on August 8, 2015 he saw A.P. and C.B. together at the Antigonish Atlantic Superstore location. They were standing in line together. He saw them because a friend had pointed them out and told him they were together.

[109] He also says that he observed A.P. and C.B. together with T.B. in a car in mid-fall 2016. This occurred, K.M. stated, while he was visiting his girlfriend's mother. A.P. was in the front seat, T.B. was driving and C.B. was in the left rear seat.

Geofrinne Boudreau-Arsenault

[110] Geofrinne Boudreau-Arsenault, a worker with addiction services, provided evidence at the hearing. She confirmed that she had been an addiction counsellor with C.B. and that she knows him.

[111] It was her evidence that she provides people with addictions with support, therapy and counselling. The patient sets goals to reduce or abstain from consumption of addictive substances and to change their behaviors.

[112] She confirmed C.B. referred himself to addiction services and they first met on May 12, 2015. C.B. identified the major issue as marijuana consumption. He also can identify consumption of alcohol in an incident with his partner just prior to attending addiction services.

[113] C.B. told her that he had used marijuana since the time he was an adolescent and had difficulty abstaining. He was in trouble at school and at home and therapy was provided when he was younger.

[114] In her direct evidence, Ms. Boudreau-Arsenault reviewed all the appointments attended by C.B. and their general discussions within each. He denied using alcohol or marijuana until the meeting of January 18, 2016. He'd been away working in Ontario and had no contact with the service for about 5 1/2 months. He explained it was an incident involving his former partner, A.P., that prompted his contact with addiction services. They had been "hanging out" and had been drinking. They got into an argument and a fight, the RCMP were called and he was arrested. He denied any consumption of drugs or alcohol since mid-November 2015.

[115] Meetings continued and on February 1, 2016 C.B. admitted to cravings but was motivated to stop using so that he could have his daughter with him. He was due to meet with Ms. Boudreau-Arsenault on February 8, 2016, he cancelled because he was not feeling well but never rescheduled. She contacted him to schedule an appointment for April 13, 2016, which he attended. He denied any alcohol or marijuana use and felt he didn't need to come to addiction services any further.

[116] Despite this, on May 8, 2016, C.B. attended for addiction services and admitted he had consumed marijuana in the past few months. He maintained he was clean for approximately one month. He also confirmed that he had drunk alcohol in Ontario when working there. He said he did not want a relationship with A.P.

[117] Over the next number of meetings from May 30 through to July 14, he denied any consumption of alcohol or marijuana or at least did not note any usage. Thereafter, he had no contact with addiction services.

[118] Geofrinne Boudreau-Arsenault contacted C.B. in December 2016 after she was subpoenaed to the hearing and C.B. informed her he was discouraged because the agency was not supporting his plan of care. He maintained that A.P. was in Alberta at that time.

[119] At the end of her direct examination Geofrinne Boudreau-Arsenault confirmed that C.B. informed her that he had used marijuana. He also confirmed he had used cocaine for approximately 4 to 5 months prior to May 2015.

[120] In cross-examination, Geofrinne Boudreau-Arsenault confirmed there were no visible signs of drug or alcohol use when meeting with C.B. She also confirmed he seemed motivated, friendly and talkative and was working on his goals. He was always receptive to her suggestions and understood as much as any 23-year-old could about addictions.

Suzanne Gardiner

[121] Suzanne Gardiner, the adoption social worker for the Minister, provided evidence in this matter by way of affidavit. It is her role to locate appropriate adoptive homes for children placed in the permanent care and custody of the Minister. In doing so, she is responsible to identify potential adoptive homes, screen, assess and select appropriate adoptive families and assist child protection social workers in assessing children in care to determine their placement needs. She must also help to prepare children for the transition to a new adoptive family and follow through with the family throughout the process.

[122] It was her evidence that the Minister maintains an electronic database containing non-identifying information respecting approved adoption applicants awaiting placement of a child. This database includes information such as the number, ages and gender of children accepted, the adoptive parents' racial and cultural background, religion and language of use as well as any specific health or behavioral issues that would cause a child not to be accepted for adoption placement with a family.

[123] It was her further evidence that as of September 30, 2016 the database confirmed 135 approved adoptive families and 44 of those were potential adoptive families who would be open to considering a child of I.P.'s age and needs.

[124] It was her further evidence that access with the birthparents after permanent care and custody is ordered will impede the adoption placement, significantly reduce the pool of potential placements and can impair the transition process.

T.B.

[125] T.B., the mother of C.B., provided evidence at the hearing. She said that she lives across from C.B.

[126] She is the grandmother to I.P. who lived with her for approximately one and a half years along with C.B., A.P., K.P. and her own child, S. In fact, I.P. came home to her house after her birth to live.

[127] She said that C.B. was good to both children and treated K.P. as his own.

[128] She said that she had met A.P. at a bank and Walmart when S. ran to greet her but that she doesn't have contact with her and doesn't want to have contact with her.

[129] T.B. said that she was supportive of C.B. in parenting I.P. if she were placed with him.

[130] In cross-examination, T.B. confirmed that C.B. was the victim of a sexual assault when he was young and that he had been charged with a sexual offense but was acquitted.

[131] She said that as a young person, C.B. acted out and was angry and destroying things. He had been consuming marijuana since he was approximately 13 years old. She was unsure when his use of alcohol began.

[132] She confirmed that she knew that C.B. had broken a friend's pelvis at one point. She confirmed that in 2010 she attended sessions with C.B. respecting his marijuana use and was very concerned about it. She was aware that he began attending at addiction services in 2015. She felt this was good and believed that marijuana did not help C.B.

[133] T.B. testified that A.P. and C.B. and I.P. lived together in Beaverbank, Nova Scotia and moved in with her in 2014.

[134] She confirmed telling social worker Diane Chisholm that she observed A.P. pulling a knife on C.B. on one occasion and that C.B. grabbed A.P. to defend himself. She said that A.P. described having "baby blues" and that she wanted to give K.P. away. T.B. said she regrets not calling the agency at that time.

[135] On a later occasion, she came home and smelled marijuana. The children were not present but she told A.P. she had to leave the home. At the time, she had her own small child to be concerned about and didn't want marijuana use around her child. The children, K.P. and I.P., left with A.P. and T.B. and she did not report this to the agency either.

[136] T.B. also confirmed in her evidence that A.P. "hollered" at C.B., getting him up at night to care for the children on several occasions. A.P. claimed to be stressed with no breaks in caring for the children and locked yourself in the bedroom of her home for hours at a time. C.B. and T.B. were present to care for the children. T.B. tried to help but she worked shift work and was not always available. A.P. maintained she didn't want to care for the children. T.B. felt this was an unhealthy environment for the kids but it did not happen all the time.

[137] T.B. said that in January 2015 A.P. and C.B. argued for two days. When she arrived home, the children were not present but marijuana had been used. She couldn't take it anymore and was very upset with the circumstances but did not call the agency. C.B. was present to care for the children. Because A.P. had smoked marijuana she told her to leave. She observed A.P. hitting C.B. while K.P. was in A.P.'s arms. Again, she did not report any of this to the agency.

[138] Later on, T.B. returned home from work and was headed to bed. C.B. asked her to look after I.P., who was then eight months old. C.B. told her that he had taken acid and was unable to care for the child. She told C.B. to go to the other room and took I.P. to her sister's home. She also confirmed that her sister, T., had a great deal of involvement with the Minister, had two children in care but that she was not doing drugs at the time. She also confirmed she did not call the agency on this occasion. Her fear was that I.P. would be placed in care.

[139] She said that C.B. told her that A.P. had taken cocaine the night before this incident. They'd had a sitter and the children were not present.

[140] T.B. testified that it is her view that C.B. and A.P. should not be together as A.P. is "messed up" and that she couldn't get off drugs.

[141] T.B. admitted that she was aware that A.P. and C.B. were in an "on again off again" relationship after the children were taken into care, they were not living together, but she did not disclose any of this to the agency. She denies knowing if C.B. and A.P. were together again after he returned to Nova Scotia in January 2016.

[142] T.B. denies the allegation made by K.M. that she, A.P. and C.B. were in a car at a trailer park and she also denies that she was with A.P. and C.B. on Main Street in Antigonish on August 19 as described by the social worker.

C.B.

[143] C.B. provided evidence by way of his affidavit sworn December 30, 2016, his plan of care of June 9, 2016 as well as his viva voce evidence at the hearing. He described a difficult youth. At the time of his birth his father was in juvenile detention. He was raised by his maternal grandparents. He did not complete high school but subsequently obtained his GED.

[144] At age 19 he went to the west of Canada for several months with relatives and then returned home.

[145] In his affidavit, he said that he was living as "man and wife" with when I.P. was born but their relationship ended when the child was approximately six months old.

[146] In his plan for the child, he said he purchased a mobile home in 2016 which he says is adequate for him and his daughter.

[147] He said that his mother, T.B., lives next door to him and is willing to supply support if I.P. is placed with him.

[148] He admits that he attended at New Leaf and addiction services until the agency informed him it would not support his plan of care for I.P..

[149] He is employed. He said that he works as a fisherman's help her with an uncle during the lobster and snow crab seasons. He also works at a local Inn and collects employment insurance benefits in the winter.

[150] In his plan of care, he described how he would care for his daughter from rising in the morning until putting her to bed at night. His plan is to use a daycare

to care for her when he is at work and pick her up at the end of his workday. He would have time after dinner to go to a local park and on return would have enough time to settle down before bed.

[151] He described a plan on the weekends with I.P. to participate in various activities including taking the dog for a walk, swimming at a local Inn, playing sports or visiting family. He also hoped to have contact between I.P. and K.P. from time to time.

[152] He would maintain her current doctor until he could change her care to his own doctor. He has arranged for a dentist for her. In the event of emergency, he would rely his mother who lives across from him for support and assistance. He said that he has an extended family to assist if necessary.

[153] In his direct evidence, C.B. confirmed that he and A.P. lived together in Beaverbank, Nova Scotia for approximately one year. He also confirmed that he did go out to Western Canada to work for couple of months but returned home and lived with A.P. at that time. When the apprehension of the children took place on May 29, 2015, he was not living with A.P.

[154] He testified that he began exercising supervised access with I.P. and believed that A.P. might have the girls returned to her care. When he discovered that would not occur, he provided his plan of before the court today.

[155] Respecting his involvement with New Leaf, he admitted to attending only a few sessions prior to leaving for Ontario. When he returned, he testified that his access was suspended until he began attending New Leaf regularly at which time he did participate. His access was reinstated in May 2016.

[156] He admitted to addictions and said he consume substances on an on-again off-again basis, smoking marijuana more regularly towards the end of his relationship with A.P. He did state that he had stopped consuming marijuana when is urinalysis testing confirmed no presence of marijuana in his system.

[157] With respect to the allegation that he assaulted A.P., he denied this.

[158] He confirmed that he stopped attending at New Leaf and addiction services when, in September 2016, he was told by the agency that they would not support his plan for I.P. to be placed with him. He maintained he did not have any addiction problems at that time and he had never assaulted a woman in his life.

[159] With respect to his residence, he testified that he owned the home and described its layout. He had done some repairs to the home and describe those. He maintained were still some work on the drywall to complete.

[160] When asked if he knew where A.P. was located, he testified that he believed she is in Calgary, Alberta with her mother. When asked about contact with A.P., C.B. testified that he admitted to having contact with her and "hanging out" with her when he returned to Nova Scotia from Ontario.

[161] In cross-examination, C.B. agreed that since the children were taken into care of in May of 2015 they have been in care for approximately 20 months. He had supervised access once a week for 1 1/2 hour since that time. He agreed that he had never applied to increase his access and had never applied for any other services to be provided to him.

[162] In speaking of his past, C.B. admitted to a difficult upbringing including receiving mental health services as a young person and living with his maternal grandmother instead of his parents.

[163] He had begun drinking alcohol at the age of 14 and began smoking marijuana at the age of 13. He been convicted of a possession of alcohol charge at the age of 15 and in 2009-2010 and again in 2011 have been referred to addiction services. At that time, he was at risk of losing a year at school, was consuming marijuana daily, was struggling and admitted using the drug to self-medicate.

[164] In discussing the incident in January 2015, C.B. confirmed at that T.B. asked A.P. to leave her home. He explained that he and A.P. were arguing and she was smoking marijuana in the home. He admitted that he and A.P. had been smoking marijuana elsewhere as well. He confirmed that both children were present in the home when this was taking place and he did not take any steps at that time respecting these issues.

[165] He also admitted to consuming acid at that time. He explained that he was alone with I.P. after he consumed acid and had a plan to get a sitter. T.B. then arrived home and he asked her to care for I.P. He confirmed that when he did this, he did not know whether his mother would be available and agreed that that decision was a bad one. He admitted to a long history of drug use.

[166] Respecting the allegation of February 2015 that there was a faint smell of marijuana when the social worker attended his home, he denied this and denied smoking marijuana at that time.

[167] He confirmed that he only attended New Leaf when ordered by the court. He also confirmed that each of the court orders in the proceeding prohibited him from consuming drugs or alcohol and that he was aware of all the orders including the provision that he notify the agency of any breaches of those orders.

[168] He admitted to a history of anger and violence including in-school violence as a young person. He admitted that he has anger management issues. He told the social worker that he wanted to deal with his anger and drug use problems.

[169] Between May 5, 2015 and January of 2016 C.B. admitted to sporadic attendance at addiction services. He confirmed that during the period that he was in Ontario, between November 14, 2015 and January of 2016, he did not attend for any services in Ontario respecting anger management or addictions. He also had no access during that time with I.P.

[170] He admitted that, prior to November 2, 2015, he had maintained that he was not in a relationship with A.P.. He also confirmed that on November 5, 2015 he told the agency social worker that he was back in a relationship with A.P. for about two months prior. This was from approximately September 2015 to November 2015. He also admitted that both he and A.P. had consumed marijuana and alcohol during that time. He admitted to lying about his contact with A.P. and his consumption of drugs and alcohol to avoid getting in trouble and causing a problem for K.P. and I.P..

[171] He testified in cross-examination that on his return from Ontario in January of 2016 he tried to get his access going again and started sporadically attending addiction services and New Leaf. When he met with the social worker in April of 2016 he was approved for access and told the worker that he was not drinking, was not consuming any drugs and had no contact with A.P.

[172] When asked about the message to the worker from A.P. later that same morning in which she said she knew that he had been with the worker and made certain other statements, he maintained that A.P. knew he was with the worker because of his Facebook update.

[173] He agreed that on May 26, 2016 he informed the social worker that he had lied again in that he was back in a relationship with A.P., consuming marijuana and doing so with her.

[174] When questioned about a photograph dated October 26, 2016 from the internet of him holding what appears to be a bottle of Coors beer with a friend, B.J., on his lap, he denied that the beer was his and said it was B.J.'s. He then said that B.J. had posted the photo, not him.

[175] With respect to the allegation of K.M. that he saw C.B. with A.P. at the local superstore in August 2016, C.B. admitted that he was in her presence. He said that he ran into A.P., it was K.P.'s birthday and he gave her $30 for gifts.

[176] When asked about apparent contradiction between this description and K.M.'s evidence that gifts and cards were dropped off the daycare by A.P. before he saw them together at the superstore, he had no explanation.

[177] He also agreed that he had denied to social worker Diane Chisholm that he had met A.P. at the superstore but now admits that was incorrect.

[178] To the allegation of Tiffany Hallett that she saw A.P. holding hands with C.B. in Antigonish, he denied that it was him and them Ms. Hallett must be mistaken.

[179] He also denied the allegation of K.M. that he, T.B., and A.P. were in a car together.

[180] When asked about photographs of his home showing beer bottles and spiced rum, he denied they were his. When asked about the various items on his deck described earlier, he maintained he was cleaning a shed and had not disposed of all the items yet.

The Law

[181] The *Children and Family Services Act* sets out the relevant considerations and requirements for the court to consider in a permanent care application, as set out below:

> **Purpose and paramount consideration**

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.

Interpretation

…

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

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

(b) the child's relationships with relatives;

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

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

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

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

(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;

(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;

(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;

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

(n) any other relevant circumstances.

…

Child is in need of protective services

22 (1) In this Section, "substantial risk" means a real chance of danger that is apparent on the evidence.

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

(a) the child has suffered physical harm, inflicted by a parent or guardian of the child or caused by the failure of a parent or guardian to supervise and protect the child adequately;

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

…

(g) there is a substantial risk that the child will suffer emotional harm of the kind described in clause (f), 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;

…

(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;

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

…

Disposition hearing

41 (1) Where the court finds the child is in need of protective services, the court shall, not later than ninety days after so finding, hold a disposition hearing and make a disposition order pursuant to Section 42.

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

(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;

(b) a statement of the criteria by which the Agency will determine when its care and custody or supervision is no longer required;

(c) an estimate of the time required to achieve the purpose of the Agency's intervention;

(d) where the Agency proposes to remove the child from the care of a parent or guardian,

(i) an explanation of why the child cannot be adequately protected while in the care of the parent or guardian, and a description of any past efforts to do so, and

(ii) a statement of what efforts, if any, are planned to maintain the child's contact with the parent or guardian; and

(e) where the Agency proposes to remove the child permanently from the care or custody of the parent or guardian, a description of the arrangements made or being made for the child's long-term stable placement.

…

(5) Where the court makes a disposition order, the court shall give

(a) a statement of the plan for the child's care that the court is applying in its decision; and

(b) the reasons for its decision, including

(i)a statement of the evidence on which the court bases its decision, and

(ii) where the disposition order has the effect of removing or keeping the child from the care or custody of the parent or guardian, a statement of the reasons why the child cannot be adequately protected while in the care or custody of the parent or guardian. 1990, c. 5, s. 41.

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.

(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;

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

(c)would be inadequate to protect the child.

(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.

(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.

…

Duration of orders

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

(b)where the child was six years of age or more but under twelve years of age at the time of the application commencing the proceedings, eighteen months,from the date of the initial disposition order.

(2) The period of duration of an order for temporary care and custody, made pursuant to clause (d) or (e) of subsection (1) of Section 42, shall not exceed

(a)where the child or youngest child that is the subject of the disposition hearing is under three years of age at the time of the application commencing the proceedings, three months;

(b)where the child or youngest child that is the subject of the disposition hearing is three years of age or more but under the age of twelve years, six months; or

(c)where the child or youngest child that is the subject of the disposition hearing is twelve years of age or more, twelve months.

(3) Where a child that is the subject of an order for temporary care and custody becomes twelve years of age, the time limits set out in subsection (1) no longer apply and clause (c) of subsection (2) applies to any further orders for temporary care and custody.

…

Permanent care and custody order

47 (1) Where the court makes an order for permanent care and custody pursuant to clause (f) of subsection (1) of Section 42, the Agency is the legal guardian of the child and as such has all the rights, powers and responsibilities of a parent or guardian for the child's care and custody.

> (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 an order unless the court is satisfied that
>
> (a)permanent placement in a family setting has not been planned or is not possible and the person's 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.

Standard of Proof

[182] It is important to recognize that this is a civil matter and, therefore, the standard of proof required is as set out by the Supreme Court of Canada in *F.H. v. McDougall*, 2008 SCC 53, at paragraphs 40 and 49, as follows:

> . . . I think it is time to say, once and for all in Canada, that there is only one civil standard of proof at common law and that is proof on a balance of probabilities. Of course, context is all important and a judge should not be unmindful, where appropriate, of inherent probabilities or improbabilities or the seriousness of the allegations or consequences. However, these considerations do not change the standard of proof.
>
> …
>
> …I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.

Burden of Proof

[183] It is also important to establish who bears the burden of proof in such matters. The burden rests squarely with the Minister in this matter to prove her case and, in particular, to establish she has met the requirements for a permanent care finding and order pursuant to the provisions of the *Act*.

Continuing Need for Protective Services

[184] The Minister must prove that the child in this matter, I.P., continues to be a child in need of protective services *(Catholic Children's Aid Society of Metropolitan Toronto v. C.M.*, [1994] S.C.J. No.37; 2 S.C.R. 165). That said, it is also the case that, as set out the Supreme Court of Canada in the same decision, at paragraph 42:

> The determination of whether the child continues to be in need of protection cannot solely focus on the parent's parenting ability, as did Bean Prov. Ct. J., but must have a child-centred focus and must examine whether the child, in light of the interceding events, continues to require state protection.

Substantial Risk

[185] The Minister must also prove that the child, I.P. remains at substantial risk as it maintains that its position to seek permanent care is grounded, in part, in sections 22(2)(b) and (g) of the *Act*, each of which requires proof of substantial risk to the children.

[186] Substantial risk is defined in the Act under s.22(1) to mean "a real chance of danger that is apparent on the evidence." Help in understanding what is meant by this is found in the decision of the Nova Scotia Court of Appeal in *M.J.B. v. Family and Children's Services of Kings County*, 2008 NSCA 64 when it held at paragraph 77:

> The Act defines "substantial risk" to mean a real chance of danger that is apparent on the evidence (s. 22(1)). In the context here, it is the real chance of sexual abuse that must be proved to the civil standard. That future sexual abuse will actually occur need not be established on a balance of probabilities (B.S. v. British Columbia (Director of Child, Family and Community Services) (1998), 160 D.L.R. (4th) 264, [1998] B.C.J. No. 1085 (Q.L.) (C.A.) at paras. 26 to 30). (emphasis added)

[187] Though that case was in the context of an allegation of risk of sexual abuse which is not applicable in this case, it does makes clear that in this matter, the Minister must prove that there is a substantial risk of physical harm (s.22(2)(b)) or emotional harm (s.22(2)(g)). The Minister does not have to prove that such harm will occur in the future, only that there is a substantial risk of such harm occurring.

Physical or Emotional Harm

[188] The Minister also maintains that I.P. has suffered physical or emotional harm as set out under s.22(2)(i) of Act. The Minister does not have to prove substantial risk of harm under this section but does have to establish the physical or

emotional harm, that it was caused by the child being exposed to domestic violence towards a parent and that the parent failed or refused to obtain services or treatment to alleviate the violence.

Services to Promote the Integrity of the Family

[189] Under s.42(2) of the *Act*, I cannot grant an order for permanent care unless I am satisfied that less intrusive measures, including those promoting the integrity of the family under s.13 of the *Act*, have been attempted and failed or refused by the parent or would be inadequate to protect the child. But this must be seen in context as noted in *Nova Scotia (Minister of Community Services) v. L.L.P.*, 2003 NSCA 1, at paragraph 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.

[190] Likewise, in *Family and Children's Services of King's County v. D.A.B.*, 2000 NSCA 38, the Court of Appeal found, at paragraph 51:

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

Prospects for Change

[191] Under s.42(4) of the *Act*, I cannot grant an order for permanent care unless I am satisfied that the circumstances justifying the order are unlikely to change within a reasonably foreseeable time, not exceeding the time limits under the *Act*.

[192] In this case, the time limit for I.P. is November 3, 2016 based on s.45(1)(a) of the *Act* which allows 12 months from disposition, as the child was under six at the time the proceedings commenced.

[193] This hearing was commenced on January 10, 2017 and completed on January 11, 2017. Therefore, there was no time remaining at the commencement of the hearing. The timeline for this child has expired, though I have extended the timeline for the purpose of completion of the hearing and the provision of this decision.

[194] As noted in *G.S. v. Nova Scotia (Minister of Community Services)* 2006 NSCA 20, at paragraph 20:

> Before the conclusion of the final disposition hearing which commenced in June 2005, the time limits had run out for M and P, and there were approximately three months remaining with respect to R and D. The trial judge had previously extended the time so that the evidence could be completed. Section 45 of the Act stipulates that the total duration of all temporary disposition orders for the two younger children cannot exceed 12 months from the first disposition. Once the time has expired there are only two possible dispositions, dismissal of the proceeding or permanent care. If the children are still in need of protective services the matter cannot be dismissed. The court had no jurisdiction to order either supervision or temporary care and custody of M and P. (emphasis added)

Family or Community Placements

[195] Under s.42(3) of the *Act*, I must also be satisfied whether it is possible to place the children with a relative, neighbour or other member of the children's community or extended family. But as noted in *Children's Aid Society of Halifax v. T.B.*, 2001 NSCA 99, at paragraphs 29 and 30:

> Justice Cromwell's words should not be interpreted as imposing either upon the Agency or the court a statutory burden to investigate and exhaust every conceivable alternative, however speculative or fanciful. He spoke of reasonable family or community options. Neither the Agency nor the court is obliged to consider unreasonable alternatives. Their statutory obligation is nothing more than to assess the reasonableness of any family or community alternatives put forward seriously by their proponents. By "reasonable" I mean those proposals that are sound, sensible, workable, well-conceived and have a basis in fact.

> The onus of presenting such a reasonable alternative must surely be upon the person or party seeking to have it considered. It is hardly the responsibility of the Agency or the court to propose the alternative, provide the resources for its implementation, or shepherd the idea through to completion.

[196] I note that in this case only C.B. has presented a plan of care. The mother, A.P. did not choose to present a plan of care at any point throughout the proceedings and did not participate in the hearing. No one else in the extended family or community offered a plan of care.

Analysis and Decision

[197] In arriving at a decision respecting the best interests of I.P., I have reviewed the evidence carefully. In this case, although A.P. ceased contact with the agency early on the proceedings, did not complete services to address the risks identified, did not present a plan for the child and did not participate in the hearing, her history in this matter is, I find, highly relevant. This is due to the evidence that she and C.B. have maintained a relationship throughout this proceeding and, as a result, she represents a risk to children.

[198] It is important to recall that this proceeding began because of concerns of domestic violence caused by both C.B. and A.P. There were concerns identified in the evidence that these parents were fighting, both verbally and physically, in the presence of the children and that both parents were consuming marijuana and abusing alcohol while in care of the children.

[199] Therefore, it is necessary to consider what, if any, risk is posed if A.P. and C.B. are in a continuing relationship. It is also necessary to determine if C.B. had been consuming marijuana throughout this proceeding.

[200] C.B.'s credibility on these and other issues before this court has been brought into question. In assessing credibility, I am mindful of the comments of Forgeron, J. in *Baker-Warren v. Denault* 2009 NSSC 5 in which she provided the following helpful comments:

> **18** For the benefit of the parties, I will review some of the factors which I have considered when making credibility determinations. It is important to note, however, that credibility assessment is not a science. It is not always possible to "articulate with precision the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events:" *R. v. Gagnon* 2006 SCC 17, para. 20. I further note that "assessing credibility is a difficult and delicate matter that does not always lend

itself to precise and complete verbalization:" *R. v. R.E.M.***.** 2008 SCC 51, para. 49.

19 With these caveats in mind, the following are some of the factors which were balanced when the court assessed credibility:

a) What were the inconsistencies and weaknesses in the witness' evidence, which include internal inconsistencies, prior inconsistent statements, inconsistencies between the witness' testimony, and the documentary evidence, and the testimony of other witnesses: *Re: Novak Estate*, 2008 NSSC 283 (S.C.);
b) Did the witness have an interest in the outcome or was he/she personally connected to either party;
c) Did the witness have a motive to deceive;
d) Did the witness have the ability to observe the factual matters about which he/she testified;
e) Did the witness have a sufficient power of recollection to provide the court with an accurate account;
f) Is the testimony in harmony with the preponderance of probabilities which a practical and informed person would find reasonable given the particular place and conditions: *Faryna v. Chorney* [1952] 2 D.L.R. 354;
g) Was there an internal consistency and logical flow to the evidence;
h) Was the evidence provided in a candid and straight forward manner, or was the witness evasive, strategic, hesitant, or biased; and
i) Where appropriate, was the witness capable of making an admission against interest, or was the witness self-serving?

20 I have placed little weight on the demeanor of the witnesses because demeanor is often not a good indicator of credibility: *R v. Norman*, (1993) 16 O.R. (3d) 295 (C.A.) at para. 55. In addition, I have also adopted the following rule, succinctly paraphrased by Warner J. in *Re: Novak Estate*, *supra*, at para 37:

There is no principle of law that requires a trier of fact to believe or disbelieve a witness's testimony in its entirety. On the contrary, a trier may believe none, part or all of a witness's evidence, and may attach different weight to different parts of a witness's evidence. (See *R. v. D.R.*, [1996] 2 S.C.R. 291 at 93 and *R. v. J.H.*, [2005] O.J. No. 39, *supra*).

…

[201] In this case, C.B. admitted that, at various time, he was not truthful with the agency about his relationship with A.P. He had maintained to the agency that he was not in a relationship with A.P. and later admitted, when confronted, or of his own volition, that in fact he had been in that relationship at various time since this proceeding began.

[202] He also denied that he was holding hands with A.P. in Antigonish on August 19, 2016, thus contradicting the evidence of agency social worker Tiffany Hallett

who said she observed this. It was Tiffany Hallett's evidence that she knew both of them and had an unobstructed view of them on August 19, 2016.

[203] C.B. also denied being in a car with A.P. and his mother in mid-fall of 2016 as described by K.M. K.M. testified that he knew both parents and had known C.B. since they were in school together.

[204] C.B. admitted that he was with A.P. at the local superstore on August 8, 2015 as described by K.M. but he just ran in to her there and provided her with birthday money for gifts for I.P. whose birthday was that day. This was in contrast with the evidence of K.M. who testified he had seen birthday gifts and a card from A.P. to I.P. at the daycare earlier that day.

[205] While not directly addressing the credibility of C.B., it is relevant to note the evidence of social worker Diane Chisholm who reported that on August 22, 2016 as she was walking in the back-parking lot of the agency office in Antigonish she met C.B.'s mother, T.B., A.P. and T.B.'s daughter, S., walking in the other direction. A.P. was holding S.'s hand and put her head down when Ms. Chisholm saw her.

[206] In assessing credibility in this area of the evidence I note that Tiffany Hallett and Diane Chisholm are experienced social workers with many years in the child protection field, are accustomed to making notes of their observations and did so in this circumstance. Each was clear in her evidence. Each had clear opportunity to observe the events about which they testified and each had reason to know and recognize the parties and others involved. I also find that neither had a motive to deceive.

[207] In the case of K.M.'s testimony, he was also clear in his recollection, had known each party for many years, had a clear opportunity to make his observations and had no motive to deceive. He already has care of his daughter and this hearing had no effect on that arangement.

[208] In the case of T.B's evidence, I find that she was generally credible and she was forthcoming respecting her evidence about the violence and drug abuse by the parents in her home. She did deny being with C.B. and A.P. in a vehicle as described by K.M. and denied being with A.P. as described by Diane Chisholm.

[209] I am mindful that I may accept part of a witness's testimony and reject other parts. In considering her evidence, I accept what T.B.said about C.B.'s history and the events that took place in her home that led to her telling A.P. to leave.

[210] On the other hand, I do not accept her evidence respecting observations made by K.M. and Diane Chisholm. I note that she is C.B.'s mother and is supportive of his position that I.P. be placed in his care. They live very close to one another and such an arrangement would benefit both C.B. and herself in maintaining a relationship with him and I.P. Therefore, I find she does have a motive to deceive and where her evidence differs from that of Diane Chisholm, Tiffany Hallett or K.M., I accept their evidence.

[211] In the case of C.B.'s evidence with respect to his relationship with A.P., I find that he not credible. He was dishonest several times in his discussions with the agency and though he did admit to such a relationship on occasion, thus making an admission against his interest, I find he was generally dishonest about this matter. When he maintained he ran into A.P. at the Superstore, I find this to be inconsistent with the evidence of K.M. respecting the gifts and card left at the daycare earlier that day by A.P.

[212] C.B. has a clear motive to deceive and his consistent pattern of deception with the agency, not only about his relationship with A.P. but his ongoing use of drugs, leads me to conclude he is not credible in this area. Thus, where his evidence differs from that of Diane Chisholm, Tiffany Hallett or K.M., I accept their evidence.

[213] Thus, I find that, on the balance of probabilities, the Minister has established that C.B. had on ongoing relationship with A.P., that they spent time together with the children despite the expectations of the agency and that this was the case throughout the proceedings, except when he was away in Ontario.

[214] I also find that C.B. is not credible in his evidence that he stopped abusing marijuana some time ago. He in fact admitted on at least two occasions to agency workers that he had lied about stopping. His inconsistent evidence, which he contradicts at times, is simply not believable. I therefore find that the Minister has proven, on a balance of probabilities, that C.B. has been consuming marijuana throughout most of these proceedings. I do note that, in the early period of the proceedings he did receive clean drug tests but his own testimony made clear he was using, both alone and with A.P., for much of the time.

Substantial Risk Finding

[215] It is necessary that the Minister prove that substantial risk of physical harm to I.P. pursuant to s.22(2)(b) or substantial risk of emotional harm to I.P. pursuant to s.22(2)(g) existed at the date of the hearing.

[216] Much of this case centres around whether the identified risks have been adequately addressed by these parties. This is usually accomplished though participation in appropriate services. As noted by the Court of Appeal in *Nova Scotia (Minister of Community Services) v. L.L.P*. 2003 NSCA 1

> **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.

[217] I find that both grounds have been proven. In the case of physical harm, the evidence is clear that both A.P. and C.B. engaged in physically abusive behavior toward each other in the presence of the children on more than one occasion. This was established in the evidence of each of them and of T.B.

[218] It is also clear on the evidence that A.P. did not address the issue of domestic violence in any meaningful way. She ceased participating in services at an early stage. She did not complete any such services. She did not provide any evidence that she had alleviated the concern at the hearing.

[219] C.B. began to address this concern through New Leaf and, indirectly, though addiction services. But the evidence, I find, is clear that he did not adequately address this issue. With New Leaf, he did not meaningfully engage until after his return form Ontario. Even then, he was slow to fully engage. Cathy Grant testified that six months to one year is required for a client to gain benefit from the program and though C.B. was engaging well before he stopped attending, it was clear from her evidence that he had some distance to go.

[220] Unfortunately, C.B. ceased contact with New Leaf as soon as he was informed by the agency it would not support his plan to have his daughter placed with him. This was despite the encouragement of the agency worker that he continue with New Leaf and that the agency was not the final decision maker in the matter.

[221] With respect to drugs, the evidence is clear that C.B. and A.P. had a long history of drug use. They used marijuana together, C.B. admitted to a long history of use and to using acid on one occasion while in care of his daughter.

[222] It is also clear that C.B. continued to use marijuana for significant periods during these proceeding despite orders that he cease doing so and that he lied to the agency repeatedly about this.

[223] While consumption of marijuana does not automatically indicate a protection concern for parents, it does depend on the context of that consumption. In this case, there is clear evidence these parents consumed marijuana while they were in care of the children. It was a long-standing pattern. In the case of A.P., it led to her being asked to leave T.B.'s home. For C.B., he admitted he used marijuana to self-medicate for many years.

[224] The issue in this context is that consumption of marijuana impairs judgement and puts children at risk if caregivers are impaired while caring for them. I find this to be the case in this matter.

[225] The evidence is also clear that A.P. continues to pose a real risk of physical harm that is apparent on the evidence because she did not address the risks of domestic violence and drug abuse before she disengaged from this process and there is no evidence before me to indicate she did so after she disengaged.

[226] C.B. did begin addressing his drug issue through addiction services but the evidence is clear that he was sporadic in his attendance at times and I find he did not appropriately engage with services to alleviate that risk.

[227] As well, having found that A.P. and C.B. continued their relationship, including being together in the presence of the children, throughout these proceedings, I find that A.P. poses a risk to the child, I.P., throughout this time.

[228] Likewise, I find that C.B. continues to pose a real risk of physical harm, that is apparent on the evidence for several reasons. He has not addressed his violent behavior and long history of violence though New Leaf or other services. He continued to use marijuana throughout these proceeding which poses a risk to the child. Finally, he has maintained a relationship with A.P., thereby exposing I.P. to her and thus to the risk of harm from her mother.

[229] I also find that each of A.P. and C.B. continue to present a real risk of emotional harm that is apparent on the evidence. Their history of domestic violence and drug abuse is left unaddressed. It is well accepted that exposure to

such domestic violence and related drug use can often cause emotional harm to children. The effects are long-lasting and may affect these children throughout their lives, causing problems for them in relationships, emotional and psychological problems, sometimes social challenges and can affect them adversely as parents. I find that such a risk is present in this case with respect to I.B.

Physical or Emotional Harm Finding

[230] I find that the Minister has failed to prove physical or emotional harm to I.B. While she was clearly exposed to domestic violence and drug abuse, there is no evidence before me to prove that such exposure caused her emotional harm. Likewise, there is no evidence before me that she was physically harmed by either of her parents.

Services to Promote the Integrity of the Family Finding

[231] I find that the Minister has established that less intrusive measures, including those promoting the integrity of the family under s.13 of the *Act*, have been attempted and failed or refused by the parent or would be inadequate to protect the child.

[232] All reasonable services have been provided to ensure the integrity of this family. In the case of A.P., she disengaged from services early on and did not involve herself thereafter. I have already found that C.B. did engage but inadequately in such services. There is no evidence before me of any other services which could have been employed to address this issue.

Prospects for Change Finding

[233] As this matter proceeded beyond the statutory timelines, the Court of Appeal has made clear that at this stage, there are only two options: Permanent care or return of the child to the parent. [T.B. v. CAS (2001) N.S.R. (2d) 139 (CA)]. Thus, I find there is no prospect for change in this matter as there is not time left to effect such change.

Family or Community Placements Finding

[234] Other than C.B.'s plan, there is no other family or community placement before me. It is not a requirement that the Minister seek out such plans or placements.

[235] With respect to C.B.'s plan, I have already found that he is a substantial risk to I.P. and I, therefore, find his plan is not appropriate to meet her best interests. In doing so, I have considered the provision of s.3(2) of the *Act* which sets out various factors I must consider in assessing I.B.'s best interests. I find that her best interest can only be addressed by an order of permanent care to the Minister.

Decision on Placement and Access

[236] I have carefully reviewed and considered all the evidence and having applied the law to that evidence, my findings lead me to conclude that what is in the best interest of I.P. is that she be placed in the permanent care of the Minister with a plan for adoption.

[237] Whether there should be access granted to C.B. now that permanent care has been ordered, I take into account s. 47 of the *Act* as follows:

> 47(1) Where the court makes an order for permanent care and custody pursuant to clause (f) of subsection (1) of Section 42, the agency is the legal guardian of the child and as such has all the rights, powers and responsibilities of a parent or guardian for the child's care and custody.
>
> (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 an order unless the court is satisfied that
>
> (a) permanent placement in a family setting has not been planned or is not possible and the person's 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.

[238] In dealing with this section it is helpful to note the comments of the Court of Appeal in *Children and Family Services of Colchester County v. K.T.*, 2010 NSCA 72:

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

> focus shifts. Any hope of preserving the family within the legislated time limits is presumably lost and the focus becomes a stable alternate plan. Thus, upon securing a permanent care order, the Agency under the *CFSA* effectively becomes the parent:
>
> …
>
> **39** Therefore, from my reading of s. 47, three conclusions relevant to this appeal are clear. First, the Agency effectively replaces the natural parents. This puts the onus on the natural parents (or guardian) to establish a special circumstance that would justify continued access. Second, by virtue of ss. 47(2)(a) and (b), an access order must not impair permanent placement opportunities for children under 12. Section 47(2)(c) is consistent with this. It provides that if no adoption is planned then access will be available. This highlights the importance of adoption as the new goal and the risk that access may pose to adoption. Third., for children under 12, the "some other special circumstance" contemplated in s. 47(2)(d), must be one that will not impair permanent placement opportunities.
>
> **40** Therefore, to rely on s. 47(2)(d) as the judge did in this appeal, the (special) circumstances must be such that would not impair a future permanent placement. When then would s. 47(2)(d) apply? Consider for example a permanent placement with a family member which will involve contact with the natural parent. Presuming that the adopting parents would be content with that arrangement, the adoption would not be deterred. See **Children's Aid Society of Cape Breton-Victoria v. M.H.**, 2008 NSSC 242 at para. 35.
>
> **41** In short, access which would impair a future permanent placement is, by virtue of s. 47(2), deemed not to be in the child's best interest. This represents a clear legislative choice to which the judiciary must defer.

[239] The Minister takes the position that if permanent care is ordered, there should be no order for access. I also take into account in assessing this issue the evidence of the adoption social worker, Suzanne Gardiner, that such access would have an adverse effect on adoption.

[240] I decline to order access for either C.B. or A.P.

Timothy G. Daley, JFC