

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *KG v. HG*, 2021 NSSC 335

**Date:** 20211207

**Docket:** *Hfx.* No. SFH 1201-071597

**Registry:** Halifax

**Between:**

KG

*Applicant*

v.

HG

*Respondent*

**Judge:** The Honourable Justice John Keith

**Original Written** October 6, 2021

**Submissions:**

**Final Written** November 29, 2021

**Submissions:**

**Parties:** KG, self-represented Applicant  
HG, self-represented Respondent

**By the Court:**

[1] On October 6, 2021, KG filed a notice of motion and his own affidavit (the “**Original Affidavit**”) in support of a request that Justice Theresa Forgeron recuse herself from a matrimonial dispute involving Mr. G. and his former spouse, HG.. Also on October 6, 2021, Mr. G. filed written submissions in connection with the recusal motion.

[2] Mr. G. seeks to subpoena certain individuals to testify at the recusal motion. On November 23, 2021, Mr. G. filed subpoenas for the following five individuals:

1. Associate Chief Justice Lawrence O’Neil of the Nova Scotia Supreme Court (Family Division);
2. Associate Chief Justice O’Neil’s judicial assistant, Trish Thompson;
3. Justice Theresa Forgeron’s judicial assistant, Tanya McCarthy;
4. Denise Crowell, a Social Worker Specialist with the Department of Community Services; and
5. Kathryn Giacomantonio, who works with the Department of Community Services.

[3] Mr. G.’s recusal motion was originally scheduled to be heard on Monday, December 6, 2021. As indicated, the requested draft subpoenas were filed on Friday, November 26, 2021.

[4] Mr. G. is self-represented. I wrote him on November 26, 2021 and offered the opportunity to file additional information. Any such additional information would supplement the original affidavit and submissions originally filed on October 6, 2021.

[5] On Tuesday, November 30, 2021, Mr. G. filed:

1. A letter dated November 29, 2021 which provided a further explanation for the individuals who Mr. G. seeks to subpoena; and
2. A supplemental affidavit from Mr. G. which provides further evidence regarding his request for these subpoenas (the “**Supplemental Affidavit**”).

[6] On December 3, 2021, I wrote to Mr. G. confirming that:

1. I denied Mr. G.'s request to subpoena Associate Chief Justice O'Neil, Associate Chief Justice O'Neil's judicial assistant, Trish Thompson, and Justice Forgeron's judicial assistant, Tanya McCarthy;
2. I granted Mr. G.'s request to issue a subpoena for Kathryn Giacomantonio so that she might provide evidence regarding a note which is contained with the Department of Community Services records and transcribed at paragraph 6 of Mr. G.'s Original Affidavit. The note says:

A letter was received from Justice Theresa Forgereon [sic] on today's date noting concerns for the children of [HG] and [KG]. Follow-up occurred with Justice Forgeron [sic] secretary who provided a copy of a recent order from Justice Forgeron outlining the children's visitation with their father which she wanted the agency to be aware of. Justice Forgeron requested the Agency be aware of paragraphs 115 – 116 (noted below)

Ms. Giacomantonio was also directed to bring a copy of the note in question because Mr. G.'s affidavit quoted, but did not attach, a copy. Ms. Giacomantonio was also directed to bring any other documents which are relevant to this note to ensure proper context. Finally, I confirmed that this decision was subject to any issues regarding privilege, confidentiality, or other exclusionary concerns that Ms. Giacomantonio may raise;

3. I had difficulty with the requested subpoena for Denise Crowell but, out of caution, granted Mr. G.'s request to issue a subpoena for Ms. Crowell so that she might provide evidence regarding the allegations made at paragraphs 6 - 8 of Mr. G.'s Supplemental Affidavit filed November 30, 2021 which state:

6. Denise Crowell, a Social Work Specialist with DCS, had done a review into our family's file and determined that the initial child protection investigation into our family undertaken in December 2018 did not follow policy. On December 22<sup>nd</sup>, 2020 in a meeting she told me the findings of her review and that she recommended that a new investigation be opened.

7. Child Protection opened the third investigation into our family on January 14<sup>th</sup>, 2021. Denise Crowell is noted as one of the referral sources for this investigation. The following is from the child protection files:

Jan 14, 2021 Activity Type: Decision Point 1 (Whether to investigate)

Associated Note: CP Decision Point 1 (Whether to investigate)

Relevant Definition with the CFSA: 22 2 g

Source of the Referral: Mr. G. and Child Welfare Specialist Denise Crowell

Reliability of the Complainant: High

8. The child protection investigation was ongoing from January 2021 until June 2021. It was closed immediately following the communication from the Courts.<sup>1</sup>

I directed that Ms. Crowell bring a copy of the January 14, 2021 note quoted at paragraph 7 of the Supplemental Affidavit. Ms. Crowell was also directed to bring any other documents which are relevant to this note to ensure proper context. I also confirmed that this decision is subject to any issues regarding privilege, confidentiality, or other exclusionary concerns that Ms. Crowell may raise.

[7] While subpoena requests do not normally attract written reasons, this case is somewhat unique and exceptional. Among other things, Mr. G. seeks to subpoena a justice of the Nova Scotia Supreme Court. In addition, the proceeding generally has been fractious and acrimonious. I indicated that I would be releasing reasons. These are my reasons. Where necessary, I will provide such additional background to better illuminate the context in which Mr. G.'s subpoena requests arise and the connection to the recusal motion.

### **Subpoena Requests for Associate Chief Justice O'Neil, Trish Thompson, and Tanya McCarthy**

[8] The essence of Mr. G.'s allegations giving rise to the subpoena requests is that in June, 2020 Justice Forgeron improperly interfered with a child protection investigation involving Mr. G. which, in turn, gives rise to a reasonable apprehension of bias and constitutes grounds for recusal. Mr. G. argues that these individuals have information which is relevant to that allegation.<sup>2</sup>

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<sup>1</sup> The communication from the Court relates to a letter dated June 3, 2021 sent by Associate Chief Justice O'Neil to the Department of Community Services. The letter is attached as Appendix "B" and addressed in greater detail below.

<sup>2</sup> Mr. G. raises other arguments in his motion for recusal. For example, he notes that Justice Forgeron should recuse herself because she is named in various proceedings (including a judicial complaint) which Mr. G. himself launched. In his written submissions filed October 6, 2021, Mr. G. also alleges that Justice Forgeron failed to properly respond to "fresh" evidence confirming that his children "have been diagnosed, by an expert qualified to do so, with severe parental alienation" which, he says, amounts to "child psychological abuse." The expert who provided this diagnosis is Steven Miller, M.D. from Waltham, Massachusetts. As part of motion filed September 15, 2021, Mr. G. provides a copy of Dr. Miller's report dated September 10, 2021. Dr. Miller opines that HG is "aggressively alienating" the



[11] A copy of this note was not attached as an exhibit to the affidavit. It is problematic for other reasons. For example, contrary to Mr. G.'s statement, the January 14, 2021 note does not actually say that a new investigation was "opened". Rather, it clearly states that the decision points were "**whether to investigate**" (emphasis added).

[12] In any event, it is clear that Mr. G. was engaged in discussions with Ms. Crowell immediately after a 7-day hearing before Justice Forgeron ended on December 17, 2020, and while her decision was still under reserve. Indeed, Mr. G. is identified as a "Source of the Referral". He clearly participated in, and helped initiate, this "new investigation" by the Department of Community Services. In sum, Mr. G. was the only common link between the proceeding before Justice Forgeron, on the one hand, and the alleged "new" investigation opened by the Department of Community Services (Child Protection), on the other.

[13] On February 16, 2021, Justice Forgeron released her Decision, as indicated. The Decision is now final and binding.<sup>3</sup>

[14] As indicated, Justice Forgeron's Decision deals squarely with the sort of parenting issues that were under investigation by the Department of Community Services. As important for the purposes of this matter, Justice Forgeron was critical of Mr. G. in her Decision. Paragraphs 58 – 64 and 115 – 116 of the Decision summarizes Justice Forgeron's conclusions regarding Mr. G.. They are attached at Appendix "A".

[15] The evidence submitted by Mr. G. in connection with this recusal motion is silent on whether he ever advised Ms. Crowell (or anyone else at the Department of Community Services) that:

1. Mr. G. recently completed a hearing before Justice Forgeron where issues regarding parenting and Mr. G.'s accusations of parental

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<sup>3</sup> On July 2, 2021, Mr. G. filed a Notice of Appeal with a single ground of appeal "Failure of the Courts to follow Court Rule 89.07". Rule 89.07 relates to the process for contempt and its connection to the appeal is uncertain. In fairness, Mr. G. would have been entitled to amend the Notice of Appeal to provide additional clarity. However, there was a more significant problem: Mr. G. failed to file his appeal prior to the deadlines set out in the *Divorce Act*. Mr. G. sought leave to extend the time for appealing Justice Forgeron's decision. On July 21, 2021, Justice Bourgeois of our Court of Appeal heard Mr. G.'s motion. Ms. G. opposed the motion. Both parties were self-represented. On August 16, 2021, Justice Bourgeois dismissed Mr. G.'s motion to extend the time to appeal. Her reasons are cited at 2021 NSCA 61. As part of that decision, Justice Bourgeois concluded, among other things that: "Mr. [G.] has not articulated a clear error. The trial judge's thorough analysis and strong factual conclusions do not disclose one. Mr. [G.] has not demonstrated the proposed appeal has merit" (at paragraph 16).

alienation were front and centre (see, paragraphs 2 – 3; 32 – 43; 50; 55 – 56; 84 – 87 of the Decision); and

2. Justice Forgeron’s Decision was initially under reserve or that the Decision was eventually released on February 16, 2021.

[16] Similarly, there is nothing in Mr. G.’s evidence to suggest that he passed any information along to Justice Forgeron or any other member of the Court regarding this “new investigation”.

[17] The Department of Community Services’ investigation (which Mr. G. helped initiate) continued. At paragraph 8 of Mr. G.’s Supplemental Affidavit, he states: “The child protection investigation was ongoing from January 2021 until June 2021.”

[18] While Mr. G.’s evidence does not expressly address this fact, it is reasonable to infer that he allowed the Department of Community Services’ investigation continue without volunteering the Decision. For obvious reasons, Mr. G. would not be anxious for the Department to see Justice Forgeron’s negative findings.

[19] Having said that, I acknowledge that Mr. G. suggests another rationale as to why Justice Forgeron’s Decision should not be provided to the Department of Community Services (Child Protection). In his Original Affidavit, Supplemental Affidavit and written submissions, Mr. G. argues:

1. The Department of Community Services (Child Protection) “intake investigation” was separate from the Court process. Mr. G. describes the investigation as “independent”; and
2. Justice Forgeron’s findings and conclusions should have no bearing on the Department of Community Services (Child Protection). More than that, Mr. G. goes so far as to argue that providing the Decision to the Department of Community Services (Child Protection) constitutes deliberate inference with an “active, independent intake investigation”. As will be seen below, Mr. G. became incensed to discover that a member of the Court provided a copy of Justice Forgeron’s Decision to the Department of Community Services (Child Protection). This forms a critical component of his subpoena request and the underlying motion for recusal.

I return to these arguments below.

[20] On June 3, 2021, Associate Chief Justice O’Neil provided a copy of Justice Forgeron’s decision to “Intake” at Nova Scotia’s Department of Community Services. A copy of this letter is attached as Appendix “B”.

[21] Associate Chief Justice O’Neil’s June 3, 2021 letter was referenced in a Court Running File note created by Associate Chief Justice O’Neil’s assistant, Trish Thompson. Mr. G. had a copy of the Court’s Running File when filing his materials in support of this recusal motion. Indeed, at paragraph 9 of Mr. G.’s Supplemental Affidavit, Mr. G. acknowledges the Court’s Running File and copies the following excerpt from that file:

**Event Date:** June 3, 2021

**Event:** LETTER

**Document** DCS/Court

**To/From**

**Owner:** THOMPSTM

**Created by:** Trish Thompson

Letter sent via E-mail to cst.part@novascotia.ca

[22] In Associate Chief Justice O’Neil’s June 3, 2021 letter, he directs the Department of Community Services to paragraphs 58 – 64 and 115 – 116 of Justice Forgeron’s decision which, again, are reproduced at Appendix “A”. Associate Chief Justice O’Neil writes:

Evidence in this matter raised serious concerns about the safety and well-being of the children. Justice Forgeron expressed concerns in her decision. I reference, in particular, paragraphs 58 – 64 and 115 – 116.

[23] In the recusal motion, Mr. G. expresses the following concerns about Associate Chief Justice O’Neil’s June 3, 2021 letter:

1. He did not receive notice of the communication. He describes it as “*ex parte*”;
2. He questions whether, beyond Associate Chief Justice O’Neil’s June 3, 2021 letter, there are separate communications between Justice Forgeron and the Department of Children Services (Child Protection). The basis for this uncertainty is:
  - a. Mr. G. found a note in “child protection records” which is transcribed at paragraph 6 of his Original Affidavit, as follows:

A letter was received from Justice Theresa Forgereon [sic] on today’s date noting concerns for the children of



[H] and [KG]. Follow-up occurred with Justice Forgeron [sic] secretary who provided a copy of a recent order from Justice Forgeron outlining the children's visitation with their father which she wanted the agency to be aware of. Justice Forgeron requested the Agency be aware of paragraphs 115 – 116 (noted below).

Mr. G. attributes this note to Ms. Giacomantonio. It suggests that there is some communication from Justice Forgeron and her assistant – not Associate Chief Justice O'Neil.

b. In his Supplemental Affidavit, Mr. G. says that he reviewed the Court file on November 15, 2021 and could not find either the June 3, 2021 letter from Associate Chief Justice O'Neil or any email from Trish Thompson (Associate Chief Justice O'Neil's assistant) transmitting that letter to the Department of Community Services (Child Protection) or any other communication to the Department of Community Services.

3. Perhaps more importantly for the recusal motion, Mr. G. states that the child protection investigation described above "was closed immediately following the communication from the courts." (Mr. G.'s Supplemental Affidavit, paragraph 8). Mr. G. concludes:

a. If Justice Forgeron communicated with the Department of Community Service (Child protection), Mr. G. describes it as an "ex-parte communication with a 3<sup>rd</sup> party and is grounds for recusal." He further argues that "with drafting and sending the letter [Justice Forgeron] intended to interfere with an independent child protection investigation".

b. Even if Justice Forgeron did not directly communicate with the Department of Community Services (Child Protection), she knew of these communications. He writes: "No matter if it was Justice Forgeron, or Justice O'Neil who made the communication, Justice Forgeron was aware of it, and did not bring it to the attention of the parties. She did not distance herself from this conduct, before it was brought up in Court." Mr. G. concludes that, by itself, this constitutes grounds for recusal.

[24] In short, Mr. G. seeks to subpoena Associate Chief Justice O’Neil, his assistant (Trish Thompson) and Justice Forgeron’s assistant (Tanya McCarthy) to clarify who communicated with the Department of Community Services (Child Protection) in June 2020 regarding his file; and to determine Justice Forgeron’s role, if any, in these communications. As Mr. G. writes in his November 29, 2021 letter: “There is evidence to support Justice Forgeron communicated with child protection. These subpoenas are needed to determine what happened in accordance with the motion for recusal.”

[25] Mr. G. suggests it would be especially problematic if Justice Forgeron communicated with the Department of Community Services (Child Protection). However, for the purposes of this motion, he ultimately concludes that it doesn’t matter because Justice Forgeron knew about the communication and failed to take sufficient steps to avoid an apprehension of bias sufficiently serious to justify recusal.

[26] There are preliminary problems with Mr. G.’s arguments:

1. During a hearing on September 27, 2021, Justice Forgeron assured Mr. G. that she did not communicate with the Department of Community Services on this matter. Rather, Associate Chief Justice O’Neil did, as demonstrated in the June 3, 2021 letter. Thus, Justice Forgeron said, the note attributed to Ms. Giacomantonio is inaccurate. Justice Forgeron’s assurances are entitled to deference and corroborated by the Court’s Running File. It indicates that the only communication with the Department of Community Services was Associate Chief Justice O’Neil’s June 3, 2021 letter created by his assistant, Trish Thompson. There is no indication that Justice Forgeron wrote separately to the Department;
2. The note which Mr. G. relies upon to say that there were other undisclosed communications between Justice Forgeron and the Department of Community Services was not actually attached as an exhibit to Mr. G.’s Original Affidavit. Moreover, it contains vague and confusing information. For example, the note offers no clue as to when it was created other than an oblique reference to “today’s date”. Similarly, the phrase “noted below” is left hanging at the end. It is unclear what note is being referenced because Mr. G.’s Original Affidavit neither attached a copy of the note itself nor any other relevant information from the records.

3. Finally, the note in question contains information that appears clearly linked to Associate Chief Justice O’Neil’s June 3, 2021 letter, and not some other communication. The last sentence mentions the same paragraphs in the Decision which Associate Chief Justice O’Neil specifically highlighted.

[27] Having said that, in my view, Mr. G. raises a legitimate issue in terms of reconciling the contradictions between Justice Forgeron’s statement in Court and the Department of Community Services (Child Protection) note. Mr. G. should be afforded the opportunity to call evidence on the alleged investigation to ensure the integrity of the Court record by addressing any inconsistencies between the Court record and relevant notes contained in the Department of Community Services records. For that reason, I have decided to issue the subpoenas for Kathryn Giacomantonio and Denise Crowell. Issues of admissibility, relevance, weight, and the ultimate impact of Ms. Crowell’s and Ms. Giacomantonio’s evidence are matters for the presiding judge. I return to this matter below.

[28] However, Mr. G.’s requests to subpoena Associate Chief Justice O’Neil, his assistant (Trish Thompson) and Justice Forgeron’s assistant (Tanya McCarthy) are dismissed for the following reasons:

1. Associate Chief Justice O’Neil was, at all material times, acting in a judicial capacity. The case law is replete with examples of judges relaying information related to child protection to the appropriate agencies. See, for example, *S.D.B. v. L.D.B.*, 2008 NSSC 142, para 185; *C.C. v. L.B.*, [1995] N.J. No. 386 (Nfld. S.C. (U.F.C.)), para. 159; *Y.M.M. v. D.W.M.*, 1998 ABQB 1049, para. 21; *D.P.J. v. Y.P.*, [2001] O.J. No. 5118 (Ont. Sup. Ct. J.), para. 48; *Ryan v. Bellefeuille*, [2009] O.J. No. 5637, para. 23; *R.B. v. J.W.*, 2012 ONCJ 798, para. 122; *M.C. v. N.M.*, 2014 ONSC 2048, para. 361; *Ciarlaricillo v. Luele-Ciarlariello*, 2014 ONSC 5097, para. 218; *Meade v. Latouche*, 2016 ONCJ 272, para. 86; *T.E.H. v. G.J.R.*, 2016 ONCJ 156, para. 489; *S.R.V.M. v. J.S.*, 2020 ONCJ 573, para. 156; *M.B. v. D.B.*, 2020 ONSC 790, para. 147; *W.S. v. P.I.A.*, 2021 ONSC 5976, para. 318; *M.P. v. N.J.*, 2020 NLPC 0120PA00346 (Nfld. Prov. Ct.), para. 65; *A.R.C. v. K.M.M.*, 2020 SKQB 340, para. 3; *I.S. v. J.W.*, 2021 ONSC 1194, para. 189; *W.H.C. v. W.C.M.C.*, 2021 ONCJ 308, para. 126; *Bond v. Jackson*, 2021 SKQB 158, para. 33. There is nothing in Associate Chief Justice O’Neil’s June 3, 2021 letter to suggest that it was inappropriate or involves actions outside his role as a judge;

2. As to Justice Forgeron, the only evidence that Justice Forgeron was communicating with the Department of Community Services is a single note in the child protection files. There is nothing in the actual Court record to confirm any such communications. In any event, for the sake of the argument, any such communications from Justice Forgeron would similarly have been in connection with her role as a judge;
3. Both Justice Forgeron and Associate Chief Justice O’Neil are entitled to judicial immunity for the policy reasons recently summarized in the Nova Scotia Court of Appeal’s decision in *Keleher v Attorney General (Nova Scotia)*, 2021 NSCA 77 at paragraph 35; and
4. There is no evidence that Associate Chief Justice O’Neil’s judicial assistant (Trish Thompson) and Justice Forgeron’s judicial assistant (Tanya McCarthy) were acting in any way other than in the ordinary course of their employment, exclusively to facilitate the ability of Associate Chief Justice O’Neil and Justice Forgeron to perform their judicial functions. Mr. G. is not entitled to circumvent the principle of judicial immunity by doing indirectly what he cannot do directly; or sidestep judicial immunity by demanding information from those whose jobs are entirely dedicated to helping judges fulfil their roles and responsibilities.

[29] Beyond the principle of judicial immunity, Mr. G.’s subpoena requests are premised upon two related propositions:

1. That the Department of Community Services has undertaken an “active” investigation beginning in January, 2021 which was terminated in June, 2021; and
2. That the alleged investigation commenced by the Department of Community Services in January, 2021 is somehow “independent” and entirely detached from an ongoing judicial proceeding. As such, Mr. G. argues, providing Justice Forgeron’s Decision to the Department of Community Services (Child Protection) amounts to improper interference and, by extension, grounds for recusal.

[30] As to the first proposition (the alleged “independent investigation”), the evidence which Mr. G. provides in support of his subpoena request is flawed. The January, 2021 note only confirms that there was an outstanding “decision point” as to **whether** to investigate – not that there was an actual decision to investigate.

[31] The second proposition is more critical to Mr. G.'s request for subpoenas. Mr. G. offers no law for the notion that investigations by the Department of Community Services must be kept separate and disconnected from relevant judicial decisions. There is no such law.

[32] Justice Forgeron's decision forms part of the public record. If the Department of Community Services was investigating matters connected to the same issues before Justice Forgeron, it is entirely appropriate that the Department be made aware of Justice Forgeron's findings. Put slightly differently, Mr. G.'s arguments are premised upon the notion that he might ignore or subvert the judicial process by initiating an "independent" investigation in which court decisions are excluded or somehow considered irrelevant. Again, it is telling that Mr. G.'s evidence is completely silent on the question of whether, between February 16, 2021 – June, 2021, he candidly volunteered Justice Forgeron's decision to the Department of Community Services (Child Protection). As mentioned above, it is reasonable to infer that Mr. G. decided not to provide Justice Forgeron's Decision to the Department of Community Services, despite its obvious relevance. It is similarly reasonable to infer that Justice Forgeron's findings critical of Mr. G. explain his reticence. Mr. G.'s submission that the investigation should be insulated from an obviously related judicial decision is without merit.

[33] Mr. G. is undoubtedly entitled to fight for his children's best interests firmly and resolutely. He is equally entitled to disagree with adverse judicial findings. However, Mr. G. still must properly acknowledge the judicial process, respect judicial decisions, and operate within the bounds of the law. He is not entitled to expect that relevant, binding judgments are extraneous to "intake investigations" initiated by the Department of Community Services – or that such judgements be ignored or remain secret under the guise that Department investigations are "independent". On the contrary, the Department of Community Services would be obliged to recognize and respect relevant court decisions. To conclude otherwise would undermine the administration of justice and the legitimacy of judicial findings.

[34] Moreover, it could lead to abuse if litigants attempt to avoid the certainty and finality of Court orders by engaging government departments in parallel proceedings with a view to reintroducing old grievances, resurrecting old evidence, relitigating decided issues and/or improperly reserving adverse findings. Indeed, that risk arises here when considering the fact that Mr. G. helped initiate an investigation by the Department of Community Services almost immediately after the hearing before Justice Forgeron ended and her decision was under reserve. He

continued that investigation after Justice Forgeron released her Decision. All while not making full disclosure around the judicial proceedings to the Department.

[35] As to Mr. G.'s complaint that Associate Chief Justice O'Neil's June 3, 2021 letter was sent "*ex parte*" or without notice to him, it is clear based on the Court record that Mr. G. was not provided with a copy of this letter – and that Mr. G. learned about it through the Department of Community Services. The requested subpoenas are not required to prove that fact.

**Kathryn Giacomantonio and Denise Crowell**

[36] As indicated, I am prepared to issue subpoenas for Kathryn Giacomantonio and Denise Crowell. Despite certain evidentiary concerns mentioned above, Mr. G. legitimately raised inconsistencies between the Department of Community Services records and the Court file. He should be given the opportunity to address these issues and better ensure confidence in the Court file. For that reason, I am prepared to issue these subpoenas although I have equally directed that these individuals bring copies of all relevant documents so that their evidence might be considered in the proper context.

[37] As indicated, issues of relevance, admissibility, weight, and the impact (if any) of this evidence are for the presiding judge to determine.

Keith, J.

## APPENDIX “A”

“ . . .

### Father’s Behavior and Lack of Insight

[58] Throughout the marriage, the father did not manage his frustrations and anger in a healthy fashion. He was volatile. He was irritable. He was agitated. He was anxious. He was sullen. He was impulsive. These moods were not always predictable or short-lived. The father often escalated without any discernable trigger and remained upset for lengthy periods. I make this finding despite the father’s protestations to the contrary for the following reasons:

- The father attended a mood disorder clinic for four years. He did so because his negative behaviours were disrupting his marriage and family life. Although Dr. Uher did not diagnose the father as having a mood disorder, he nonetheless confirmed that the father had subthreshold symptoms which included anxiety, irritation, agitation, poor sleep habits, impulsivity, and anger.
- Dr. Uher had difficulty reaching a diagnosis for the father. He ruled out a diagnosis of intermittent explosive disorder,<sup>7</sup> because the working definition requires the patient to display explosive anger in multiple settings. Dr. Uher said that the father displayed anger only in the home setting. Dr. Uher also ruled out ADHD, noting that the father had subthreshold symptoms which were successfully treated with medication. Dr. Uher ruled out bipolar disorder because the father did not have major depressive or hypo-manic episodes and because the father reported episodes of irritability lasting only two to four days which was less than the number of days necessary to meet the formal definition.
- The children consistently reported concerns about the father’s temper and anger. I accept that the professionals who interviewed the children accurately recorded and assessed the children’s comments.
- The children E and T told Ms. Bower-Jacquard that they did not spend much family time with the father before separation because of his work schedule and habit of staying in the basement playing video games. They also noted that before separation, they didn’t invite friends for many sleepovers because they couldn’t predict their

father's moods. The child E recalled taking her younger siblings into a room to hide when the father was angry and yelling. The child A recalled the father being "mad a lot" and noted that the father would yell and throw things. The child A recalled being frightened when the father pushed the mother out the door.

- The children made comparable disclosure to protection worker, Kelsie Maloney in 2018 and protection worker, Bhreagh McKinnon in 2020.
- The children expressed their fears to Dr. Potter and to the father in Dr. Potter's presence, including E and T recounting how the father started "freaking out" by yelling and throwing things when they were putting up a tent while camping. After the children went to the waiting room, Dr. Potter stated that the father was defensive and agitated when discussing the children's claims. He used body language in an unsuccessful attempt to intimidate. The father escalated and left. Dr. Potter was so concerned that she contacted the mother to drive the children from the appointment. I accept Dr. Potter's evidence and description.
- The mother's sister was a credible witness. She too reported personal knowledge of the father's anger, upset, and inappropriate behaviour before and after separation. An example included the father's expression of anger during a 2017 family camping trip where the father escalated because one of the people took pictures of the children. He felt that the person was taking pictures for sexual gratification.
- The mother described the father's unpredictable volatility and anger throughout much of their relationship. Although the mother is quick to exaggerate and to interpret events in a negative light, I nonetheless accept the mother's evidence that the father frequently escalated without warning, screamed, on occasion threw objects, and remained angry for long periods of time.

[59] I accept that the father's behaviour negatively affected the children. The children regularly observed their father being angry, irritable, and volatile. They were also present when the father pushed the mother out the door of their home. The children confirmed their fear of the father to professionals such as Dr. Potter, Ms. Bower-Jacquard, and child protection social workers.



[60] Unfortunately, the father lacks insight into the nature and extent of his issues. Three examples illustrate this conclusion. First, the father is fixated on his alienation claim. When asked why no professional had validated his concerns, the father blindly dismissed their opinions by stating that they were not qualified, skilled, or knowledgeable. The father cannot fathom an alternative perspective. The father cannot admit the probability or even possibility of error.

[61] Second, when asked about his anger, the father advised Ms. Bower-Jacquard that it was the mother, not he, who lost her temper during the marriage. He denied having difficulty managing his anger or frustration. The father provided Ms. Bower-Jacquard and the court a recording to support his position. The recording does little to aid the father for the following reasons:

- The father was secretly recording the conversation and thus adapted his own presentation.
- While the mother's voice was heightened, she did not resort to foul language, although she did call the father a "jerk."
- The mother's remarks underscore her concerns about the father's conduct, including, "stop criticizing me"; "start taking responsibility for your life"; "you blame things on other people"; and "my children are not going to see their father get up every day and come in and put their mother down".
- Ms. Bower-Jacquard assigned little weight to the recording in her assessment.

[62] Third, the father's lack of insight is seen in his confrontational reaction when others do not accept his position. Rather than pausing and reflecting, the father tends to blame and report, hoping to neutralize or remove the offender from their sphere of influence as evidenced by the following:

- Constable Webber initiated an investigation about whether the father was harassing the mother. The mother was given a panic button because of the gravity of the situation. Once the father realized that Constable Webber was not supporting him, the father filed a police complaint against the officer thereby ensuring the officer's removal from the case.
- The father contacted the Department of Community Services.<sup>8</sup> When he did not receive a favourable response, the father requested the

manager's contact information and demanded detailed follow-up. When the detailed follow-up was not forthcoming, the father contacted the Minister of Community Services, the Deputy Minister of Community Services, and the Associate Deputy Minister of Community Services.

- The father raised consent issues once it became apparent that Dr. Potter was not adopting the father's alienation claims. Despite having an excellent therapeutic rapport with the children, Dr. Potter discontinued her services because of the father's alleged concerns.
- The father wanted to contact the teacher of child E, then her principal, and then the principal's "manager and their manager" to discuss policy and procedure despite the child E being an excellent and well-rounded student.

[63] In summary, the children were regularly exposed to the father's volatility, anger, irritability, agitation, anxiousness, and emotional impulsivity. The father's negative moods would appear without trigger and would last for long periods. The father often confined himself to the basement. The father's temperament negatively affected the children. Although the children love their father, they become anxious and fearful when he acts out or when they believe he will act out.

[64] The father lacks insight into his significant issues. He does not accept responsibility. He does not understand how his behaviour impacts the children. Instead, he blames the mother and dismisses professionals who refuse to adopt his theory. The father's lack of insight hinders positive change and so the unfortunate parenting dynamic continues.

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<sup>7</sup> Dr. Uher stated that intermittent explosive disorder was a rare and not a particularly useful diagnosis because there is no established treatment

<sup>8</sup>As did the mother.

• • •

*Safety Plan, Check List, and Contract*

[115] In keeping with pages 119 to 121 of the Bower-Jacquard assessment, a safety plan, check list, and contract will be incorporated into the provisions of the CRO including confirmation of the following:

- That the children will have their cell phones at all times when

they are with the father.

- That the father will exercise his parenting time in a public space or with other people with whom the children are comfortable and as approved by the mother.
- That the father will immediately return the children to the mother if requested by the children and if the support person is unable to resolve the parenting issue.
- That the father will immediately return the children to the mother if he is unable to regulate his emotions or if the children feel that he is unable to regulate his emotions. The children and father will use a prearranged word to advise the father when the children are uncomfortable with the father's emotional regulation.
- That neither party will communicate anything negative about the other to the children.
- That the mother will not schedule an activity or event that will compete with the father's parenting time.

#### Father's Parenting Time

[116] Pending therapeutic advancement, the father will have parenting time with the children according to the following:

- Parenting time will consist of at least one in-person visit between each child and the father every week which can be exercised individually or as a group, depending on the needs and schedule of the children. The father's parenting time will include time during holidays, his birthday, and Father's Day. The father's parenting time will not include overnight visits or visits outside HRM unless the mother specifically otherwise agrees based on the children's wishes and needs and as communicated by the mother in the Parenting App.
- In-person parenting time may be expanded if therapeutic interventions lead to better insights and improvements in the parenting dynamic and if the parties consent or a court so orders.
- Each Friday, the mother will confirm the children's availability for parenting time based on the schedules of the children for the following week.

- Each Saturday, the father will select at least two options for his parenting time with each child from the times provided by the mother. The father will advise the mother of his planned public outings and activities for the children during each of the selected options.
- Each Sunday, the mother will confirm which of the options will constitute the father's parenting time for each of the children for the following week.
- The father will have such other reasonable telephone or electronic communication (Zoom, facetime, messenger, etc.) with each child at reasonable times in keeping with the children's wishes and schedule.

. . .”

# APPENDIX "B"

Supreme Court of Nova Scotia  
Associate Chief Justice Lawrence I. O'Neil



NOVA SCOTIA

Family Division  
3380 Devonshire Ave.  
Halifax, Nova Scotia  
B3K 6R5

June 3<sup>rd</sup>, 2021

Department of Community Services  
Children & Family Services  
2131 Gottingen Street, 2<sup>nd</sup> Floor  
Halifax, NS B3K 5Z7  
VIA E-Mail: [cst.part@novascotia.ca](mailto:cst.part@novascotia.ca)

Attention: Intake

RE: 1201-0 [REDACTED]

The above referenced matter was recently concluded by Justice Forgeron. Her decision on costs and on the parenting issues have been rendered. These are reported as *K.G. v. H.G.*, 2021 NSSC 142 and *K.G. v. H.G.*, 2021 NSSC 43 respectively.

Evidence in this matter raised serious concerns about the safety and well being of the children. Justice Forgeron expressed her concerns in her decision. I reference, in particular, paragraphs 58-64, and 115-116.

I draw the foregoing to the attention of your office to ensure it is informed of the circumstances to which these children are subject.

The contact information for the parties is as follows:

[REDACTED]

[REDACTED]

The children's dates of birth are as follows:

[REDACTED]

[REDACTED]

Lawrence I. O'Neil  
Associate Chief Justice  
Supreme Court of NS (Family Division)

LON/tt