SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *G.V.A. v. Nova Scotia (Community Services)*, 2017 NSSC 14

Date: 20170119
Docket: SFHCFSA-095359
Registry: Halifax

Between:

G.V.A.

Applicant

v.

Nova Scotia (Community Services)

Respondent

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

> Section 94(1) provides:
>
> "No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding pursuant to this Act, or a parent or guardian, a foster parent or relative of the child."

Judge: The Honourable Justice Beryl A. MacDonald

Heard: May 10, 2016

Counsel: Donna Franey, counsel for the Applicant;
Amy Sakalauskas, counsel for the Respondent

By the Court:

Background

[1] 29 years ago, when he was 21 years old, G.A. was in a relationship with a young woman and they had a child together. They were both immature and were known to physically lash out when frustrated. While he did not always admit this, G.A. did hit his infant child on the face with his hand. He admitted that in this proceeding. At the time the event occurred G.A.'s name was placed on the Child Abuse Register. Both parents were under the scrutiny of Children's Aid of Halifax. They had regular contact with social workers. These young parents were not often honest about what was happening in their life. Their child had, on occasion, been removed from their home.

[2] In May, 1987 G.A's 19-month-old son died. Both parents were charged with second degree murder. The mother plead guilty to illegally causing the child's death. G.A. was convicted of manslaughter. The findings of fact from the appeal decision were:

> On Thursday, May 21, 1987, (G.A.) had been temporarily employed. When he returned home he found that his evening meal had not been prepared and the apartment was untidy. An argument occurred between G.A. and (the mother). During the course of the argument, (she) went into the bedroom because (the child) was crying. She lost her temper and forcibly struck the (child) with a karate-type chop to the midsection. She picked him up off the floor and placed him in his crib and then left the bedroom and explained to G.A. what had happened. Later that night (she) noticed that (the child's) abdomen had become

> distended but nothing was done for the child. For the next two days, as (the child's) condition worsened due to a perforation of the bowel which was gradually causing blood poisoning and eventually death. (the mother) and G.A. discussed taking (the child) for treatment several times but decided not to do so. They were afraid that they might get in trouble with the authorities if it was known that the child had been injured again. It is quite possible that they might not have expected him to die as a result of his injuries but when the danger signs became very evident they ignored them and the death that could have been prevented was allowed to occur.

[3] As a result of this finding G.A.'s name was again placed on the Child Abuse Register.

[4] G.A disputes that he knew the child's mother had hit the child in the stomach. I am not here to retry the case against him. These findings of fact may have been made because of what the mother may have said in her testimony or his interpreted admissions. I cannot undo those findings. The evidence does reveal that often G.A has not been truthful. He will rationalize what is happened in his life. I understand that phenomenon. Sometimes we want to shield ourselves from events we do not want to remember. It may be that G.A did not know about the injury to his son until she admitted her role in causing that injury. His past propensity to be less than truthful lead to the result he faced at trial and before me. I must evaluate his evidence today in light of the findings I have just described.

[5] G.A. spent 7 years in prison because he failed to report the injury to the child and failed to seek medical attention for the child. There is no evidence before me

that he subsequently physically harmed a child or failed to protect a child from physical harm. G.A. wants his name removed from the Child Abuse Register.

[6] I can authorize G.A.'s removal from the Register (often also called the Child Abuse Registry) if I am satisfied he does not pose a risk to children. (Children and Family Services Act s. 64) The burden of proof is upon G.A. The Minister of Community Services has argued that G.A. has failed to prove he does not pose a risk to children. This is because he has not:

- provided any indication of any lessons learned or his current approach to child management
- provided information about any time he might have spent with young children
- provided evidence about his approach to calling authorities such as police, paramedics, or child protection
- provided information from third parties in support of his claim that he poses no risk to children
- provided evidence to convince the court he has "changed" and now appreciates both his societal and parental responsibility to ensure the protection of young children
- engaged in "intense treatment" and provided a report which showed his rehabilitation was successful
- accepted the enormity of his act and his problems and express remorse and sorrow
- applied for and received a pardon.

[7] The Minister also points to many decisions of judges over the years refusing him contact with his then partners' children. Much of that material dealt with the illusive "risk of emotional harm". In this case I am to assess his "risk" against the

"finding" that led to G.A.'s name being recorded on the Child Abuse Registry. That recording was made because of his potential to physically harm a child or fail to protect a child from physical harm.

[8] G.A. faces a difficult burden of proof. He must prove a negative. He must prove on a balance of probabilities that he "does not pose a risk to children".

[9] The essence of the Minister's argument appeared to be that he poses a risk now and always has been a risk to children because:

- He will be unable to control his temper when frustrated by his family or his life situation and will lash out at a partner or a child with whom his is living causing them physical harm.
- He is a selfish person and will ignore the needs of others using them to advance his own agenda causing them emotional harm.
- He is a person who does not respect women and expects them to minister to his whims; if they do not he will abuse them and their children may be harmed as a result.
- He will ignore injuries to children and fail to assist them if he has caused injury to a child or fears he will be blamed for the child's injuries.
- He has never admitted these personality defects nor sought "counselling" to eliminate these from his life and so he remains a risk to children.

[10] The evidence from which I am to assess these arguments consists of:

- Exhibit 1, a compilation of material, prepared by G.A., from prison records, file notes from social workers and others employed by the Minister, assessment reports and a letter from G.A.'s employer.

- Exhibit 2 a case recording made by a person employed by the Minister, submitted by the Minister.
- Exhibit 3 the transcript of the evidence given by G.A. at the criminal trial, submitted by the Minister.
- Exhibit 4 a decision rendered in 1996 when G.A. sought to have access with a child of his relationship with D.G., a person with whom he had become involved after his release from prison. This decision was provided by the Minister.

[11] Neither party objected to any of this material. No person other than G.A. testified.

[12] I had discussions with the parties at the pre-trial about what evidence I could expect to have before me. The Minister suggested that was entirely up to G.A. because it was his case to prove. I had thought the Minister may have had some responsibility to clearly set out what the risk was and why it existed. The Minister's summation suggested I should find the risk obvious based upon the material that was provided. The problem is much of that material has not been filtered by the rules of evidence. The most damaging information comes as a result of several assessments that have been used to determine his risk level but I have considerable reservation about placing reliance on these assessments. I will discuss this later in this decision.

[13] The bulk of the material before me may be considered to be business records, but much of it is not. Am I to use it all for the truth of its content because it has been produced by G.A.? Am I bound by the decisions of other judges?

[14] The assessments before me, with the exception of those prepared when he was in prison, were prepared to be used in protection proceedings. The records do not clarify whether the judges involved made decisions based upon those assessments. The assessment prepared in 1996 was prepared for a *Maintenance and Custody Act* proceeding. The judge in that proceeding did make findings about the "best interest of a child" based upon that assessment. That decision suggests the judge was making a finding that G.A. posed a potential risk to the child, but I must determine whether the risk is a "substantial risk".

[15] The suggestion of the Minister is that because the assessments have been before other judges G.A.'s risk to children has repeatedly been examined. He has done nothing to alleviate that risk with the passage of time. The suggestion further appears to be that I must accept their findings in respect to his risk.

[16] I have difficulty with this latter suggestion because:

- I do not have the findings before me except for the findings in the decision rendered in the *Maintenance and Custody Act* case.
- The decision under the *Maintenance and Custody Act* was about best interests. The risk G.A. presented was a repetition of what is presently

asserted by the Minister, a risk I must independently examine in this proceeding.

- In the protection cases the women involved were told their children would be taken out of their care by the Minister if they allowed G.A. to continue to live with them. Eventually they had little interest in defending him. As a result, no "hearings" were held to give G.A. an opportunity to contest the analysis made about the risk he presented. I recognize that G.A. likely consented to various "findings" during the course of the protection proceedings but that consent is always given with a condition that everything can be later contested in a final proceeding. There was nothing for him to accomplish by requesting a "final hearing" when the women involved no longer intended to continue their relationship with him.

[17] The best I can do is analyze what has been placed before me keeping in mind the frailty of much of the material before me and the comment of Justice Jones, who discussed the application of section 7 of the Charter to protection proceedings:

> … The principles of fundamental justice are clearly inconsistent with the admission of potentially unreliable, untestable evidence, when such important issues are being determined. The admission of such evidence puts the fairness of the trial process and the result in question. (*Catholic Children's Aid Society of Toronto v L. (J.)* 2003 CarswellOnt 1685 at paragraph 33)

Assessments

[18] The assessment of G.A.'s risk has always been heavily influenced by the circumstances leading to the death of his son. This potentially created a bias against considering alternate explanations for his behavior. But social science

assessments can be flawed. The tests used have been under scrutiny and may still be called into question. Judges are not compelled to rely on these reports and should maintain a healthy skepticism when dealing with this type of "expert evidence". I remember the damage done when the "false memory syndrome" was accepted as evidence that an offence had occurred.

[19] The fact that G.A. incurred no disciplinary charges while in prison, upgraded his educational level from grade 10 to grade 12, had his work performance described as excellent, attended a 12-week life skills course, and completed a cognitive skills course were of no assistance in convincing those who prepared assessments that contact between him and children would be risk free.

[20] The report prepared in response to G.A.'s application for parole in June 1993 provides the basis for the concerns about G.A. that have continued to be expressed by everyone who has assessed his personality. From that report the following is instructive:

> …. In 1989, while incarcerated within Dorchester Penitentiary, Pierre Ouelette completed Psychological Assessment…. To quote from the report of 07APRIL89,
>
> > "G.A. has an excellent record in the institution and certainly does not appear as an escape risk nor is he a risk for society in general… G.A.…requires programming to learn to deal with his emotions instead of bottling them up. He needs to gain some insight into his behavior, the effects it has on others and on his own personal and vocational adjustment. He also has to understand and accept his family's background and start to be more open about it to himself."

[21] Dr. Akhtar, a psychiatrist, met with this offender in July of 1991 for the purpose of conducting a psychiatric evaluation. In the final analysis, he comments:

> "…his potential for committing predatory antisocial acts is low. However,… in intimate interpersonal situations he has a high potential for losing his judgment and control over his angry impulses."

[22] Dr. Akhtar recommended programs such as Anger Management and prolonged individual therapy/counselling in order to further develop insight and control. The report concludes by noting that:

> "...after he is granted community privileges, it would be of utmost importance to monitor his relationship with the opposite sex, particularly if there are young children involved, because it is mostly in such situations that he is likely to experience psychological stress."

[23] During his short release on day parole and Statutory Release Dr. Litvin, a psychologist, met with this offender. In his report of 16APRIL93 it is noted that the he did some work with subject in the areas of anger management, relationships and dynamics of his crime but Dr. Litvin did not believe that much headway had been made and thus sessions were terminated. Nevertheless, he made note of the fact that although G.A. was: "eccentric in many ways and immature and inexperienced in his dealings with the world (e.g. relationships and money) he seemed intent on making a life for himself in the community and doing so without

crime. Therefore, while I feel that he is a person for whom counselling would not be productive, I did not see him as a significant risk."

[24] Notwithstanding this latter risk assessment, the report author, who was not a psychiatrist or a psychologist, stated:

> …the writer is of the opinion that, as a minimum, this offender should be prohibited from entering into relationships where young children are present. G.A.'s original offence occurred in such a relationship and there is concern, including professional psychiatric opinion, that he may not be able to cope successfully in such arrangements. People who have dealt with this offender over the years also believe that the subject should be required to enter into counselling in order to deal with emotional issues. However, the subject has always resisted such efforts in any kind of meaningful way, both within the institution and in the community and thus such a condition would probably serve as more of a hindrance to a supervisor than it would as an aid to the offender and thus it is not recommended. With subject's present mindset, the emphasis must be on control rather than treatment.

[25] The report does not state who the "people" were who "believe" G.A. should "enter into counselling". Dr. Akhtar is the only person mentioned in the report who recommended counselling. G.A. did accept counselling from Dr. Litvin who did not assess him as "a significant risk". The report does not record the counselling opportunities offered to him within the institution that he refused. Dr. Litvin was clear that, in his opinion, counselling would not be productive.

[26] To understand why this statement was made, the report does give some assistance. The author of the report complained:

> "Throughout his entire institutional sentence G.A. has continued to maintain that it was not he who was responsible for the death of his young son but that it was…. At the worst, he acknowledges that he should have brought the youngster to the hospital sooner than he had and therefore he is probably guilty of failing to provide the necessities of life ….All things considered, the writer's opinion is that subject accepts little or no overall blame for his part in the death of his young son but has insulated himself from taking responsibility by rationalizing his behavior and deflecting blame onto his spouse."

[27] Also instructive is the report prepared by others in the parole system – a report dated March 1993 that provides a further quote, reportedly from Dr. Akhtar, and more detail about Dr. Litvin's counselling. In that report the following appears:

> Doctor Akhtar …. noted in part "the inmate does not have a high potential for committing deliberate acts in general. In intimate interpersonal situations, he has a high potential for relinquishing his judgment and control over his angry impulses. Thus, his potential for committing acts against females and children, similar to those which led to the instant offence is high. The inmate should be engaged in Anger Management and intensive psychological exploration of his attitude toward women and children. This requires prolonged psycho-therapy or counselling. Close supervision of his interpersonal situation after he is granted parole would be particularly important if young children are involved in the relationship."
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> ….. G.A. finally got to see Dr. Litvin in early December (1992). G.A. was of the opinion that he did not have problems which needed attention…. On January 4, Dr. Litvin told his supervisor that subject didn't feel that he had problems that need to be dealt with although the doctor was of the opinion the G.A. had a lot of anger bottled up inside of him and might be volatile. The Doctor did "not see subject as a threat to the community at large since he felt that he could handle things on his own. There were some problems, however, but not serious ones."

[28] The assessors who have prepared subsequent reports have had access to the material generated by the Correctional Service including the reports mentioned above. The most recent assessment report was prepared in 2001 by psychologist

Suzanne Eakin. Her recommendation was that if he wanted to be permitted contact with children he had to "involve himself seriously in therapy and otherwise meet the criteria for his removal from the Child Abuse Register…There is a specific need for him to work on his interpersonal relationships with women as the children of these women will be at risk of emotional harm if exposed to a coercive controlling relationship."

[29] Ms. Eakin had hearsay information that G.A. would be a coercive, controlling partner in relationships. Unnamed collaterals provided information that might suggest this was so. However, they remain unnamed and may have a reason to be untruthful. I could not put any weight on their information. Ms. Eakin did not explain what other basis there may be for her understanding that G.A. would be a coercive, controlling partner in relationships. It is likely her understanding about his relationship with the mother of his deceased child is the foundation for this opinion.

[30] Ms. Eakin did report about a charge of assault involving P.H. sometime in 1999. There were no details provided. P.H. confirmed she remained "on cordial terms" with G.A. and confirmed G.A. exercised some control in the situation. He "put his hand to her throat in anger although he removed it at her request."

[31] Although many who have assessed G.A. had suspicions or opinions that he may be coercive and controlling in relationships there are no factual, non-hearsay findings in any of the material I have read to confirm those suspicions or opinions. Certainly, an assessor may rely on information received from credible, reliable sources but unnamed collaterals cannot be considered to be “credible and reliable”.

[32] There is credible and reliable information provided by one of the social workers involved with G.A. and the mother of his child. He did report that they were in an abusive relationship. G.A. did appear to be a demanding individual and when things did not go his way he and his partner would get into arguments that did result in physical interaction. G.A. suggests that interaction was not one sided. Given the mother’s admission that she, “forcibly struck the (child) with a karate-type chop to the midsection” her propensity for violence should not have been overlooked in trying to help G.A. accept his role in this tragic event. It was overlooked, and this no doubt contributed to G.A.’s anger at those who would not consider this dynamic and talk about it. The approach used by professionals was counterproductive and further alienated him from therapy.

[33] The dynamic between him and the mother of his child does not excuse his role in the death of his son. However, the conclusion that he was likely to be so violent against women that all women would be at risk, and thus their children

would be at risk, was a “label” he has not accepted. This is what is expected of him. He must admit he is a man who is controlling, coercive, selfish, and impulsive and therefore can be violent. He must then examine how he came to be such a person and be counselled about how to remove these attributes from his personality. Of course, he could also learn to control his reactions. This is what he says he has achieved. No one believes him because he has not had “an assessment” confirming his ability to control his personality deficits so that they do not result in his causing physical harm either directly or indirectly to a woman or child. He has the potential, because of his personality, to cause emotional distress in others but his name was not placed on the Child Abuse Registry for that reason.

Definition of Risk

[34] Although section 64 of the *Children and Family Services Act* uses the word “risk”, the definition of risk in this section is to be defined as it is in section 22; the risk must be “substantial” there must be a “real chance of danger that is apparent on the evidence.” [*M.H. v. Nova Scotia (Minister of Community Services),*1993 NSFC 1; *R.C.C. v Nova Scotia (Community Services)*, 2008 NSFC 8]

[35] A suspicion does not meet the definition of a substantial risk. A possibility does not meet the definition of a substantial risk.

[36] As I have indicated there have been assessments that suggest G.A. is a person who might become frustrated or angry in intimate partnerships, lose control, and harm a child. The assessments also suggest he is selfish, manipulative, and can be untruthful. As a result, he may not admit actions or acknowledge events leading to a potential to harm a child. These predictions, at least to date, have not come to fruition. That may be because, as soon as the Minister was informed that G.A. was involved with a female partner who had young children, it stepped in. The ultimate result was the breakup of those relationships because the mothers involved did not want to be under protection proceedings. An agreement to have nothing to do with G.A. resolved their problem.

[37] Am I free to make a different finding about “risk” in this proceeding without an expert report?

[38] The expert assessments prepared, upon which the Agency has acted, have been attached to G.A.’s affidavit.

[39] I have examined the reports to understand why he has continued to be considered a person who poses a substantial risk of harm to children. I have determined this is because G.A will not admit the role he played in his child’s death in the way assessors and the Minister require. His efforts to explain himself are viewed as rationalizations. His failure to accept the labels others have used is

accepted as evidence about his lack of emotional control, of his impulsiveness, of his untrustworthiness, of a likelihood he will be involved in episodes of domestic violence and harm or fail to protect children. The structure of the assessments does indicate those who assessed G.A. determined the domestic violence between he and the deceased child's mother was within his control not hers. G.A. disagreed. As I understand his responses to the assessors, they were defensive. He could not admit what they wanted him to admit. This did not produce positive results for him. No one believes he can regulate his emotions or deflect anger rather than strike out. Because he cannot speak in a way to convince others he will not repeat the conditions resulting in the death of his child, assessors have been unwilling to suggest he no longer poses a risk of harm to children. This assumption is clear in the reports I have reviewed.

[40] I have no doubt that G.A will never be able to admit, in the way in which assessors and the Minister requires, a mea culpa about what happened so many years ago. I can understand why he has not sought out another assessment in this proceeding. Although he told Ms. Eakin his decision not to take his son the doctor was "…a stupid, immature decision on his part and not what a father should have done and …he was to blame for not seeking medical help…", that was not satisfactory because he "feels that the child's mother, and others, must share the blame". Thus his response was insufficient. But what would be wrong with

confirming to him that both he and the mother were to blame? This was the fact of the situation.

[41] Ms. Eakin makes much of his apparent lack of empathy and sadness about his son's death. In this observation, she chooses to ignore the named and unnamed persons who reported he visits the child's grave site and gets tearful. She wanted to see emotion but concluded he was "much more invested in exonerating himself than in acknowledging or despairing over the needless loss of his child". However, given the purpose of the report it is not surprising that he was attempting to exonerate himself so he could be permitted contact with the children of his partners.

[42] I am not satisfied I need another assessment of G.A. in coming to my determination about his application. I do not consider myself compelled to accept the decisions of previous assessors or a 19 year old judicial decision in a *Maintenance and Custody Act* case although each should be accorded due respect and I have attempted to do so.

[43] The assessments and counselling involved in other similar cases, brought to my attention by the Minister, were in respect to applicants who had sexually abused a child. I can accept that risk analysis in this context may require expert assistance because of the propensity of persons who commit these offences to be

sexually attracted to children. One must understand what mechanisms these offenders have learned to put in place to avoid acting on his or her desires. Learning to control anger and frustration; learning how not to use physical force when angry and frustrated are skills that can be learned through life experience. Expert help may be required to learn how to control a desire to have sexual relations with children.

[44] The Minister complains about G.A. bringing forward no evidence about his contact with children but, given what has happened every time he had contact with children, that is not surprising. The evidence about the positive contact he has had was dismissed because those assessing him considered that evidence to have resulted from his manipulation of the children and their mothers.

[45] G.A has taken parenting courses over time but none of these have been satisfactory to convince the Minister that he no longer poses a substantial risk to children because of lack of impulse or emotional control particularly when in an intimate relationship. It is unclear to what extent the various assessors have examined the type of programming he has undertaken and many appear fixated upon the nature of his original offense. The implications in the reports I have reviewed would suggest that none of the assessors would likely ever be prepared to suggest he no longer poses a risk because he is a man whose child died as a result

of his inaction. This comes even in the face of the utilization by Suzanne Eakin of a Child Abuse Potential Inventory which “yielded no scores within the clinically significant range”.

[46] G.A. is and has been in a relationship with a female partner for 5 years. She does have a son but that child is parented by the child’s father and she has regular access on the condition that G.A. not be present. That condition is there because of his registration on the Child Abuse Registry. I have been given no evidence to suggest otherwise. That child is now 14 years old. I have no information to suggest G.A. has not complied with the condition the court imposed. I have no information that there is domestic violence between he and his partner. I have no information that he has committed acts of intimate partner violence. The information I do have about previous protection proceedings suggests he has been in relationships where there has been a lack of appropriate problem solving that caused arguments and shouting but that information does not suggest he is at substantial risk of committing intimate partner violence in the course of which a child will be harmed either directly or indirectly.

[47] Given that since his release from prison, G.A. appears to have controlled his temper, his anger, and his frustration so as to avoid further offence. The complaint against him in protection proceedings was always about his risk, not about physical

harm he caused to a child either directly or indirectly. This suggests the predictions about his risk level may now be questioned as to their reliability today.

[48] The Minister argues that the passage of time does not matter in these proceedings. But yet the Minister often relies on past behaviour as a predictor of likely future behaviour. Since the death of his son the evidence is clear. G.A. has not been the cause of physical harm to a child nor has he failed to protect a child. I accept that being incident free for so long is relevant in these proceedings. Although he has not asked for and received a pardon for his offense I do not take his failure to do so as a reason to refuse his request.

[49] The Minister has suggested we do not know whether G.A. has had children in his care so we cannot evaluate whether he could avoid doing harm. This is speculation and, given the Minister's actions in "protecting" those children they knew he came into contact with, there really is no reasonable means by which he could satisfy this expectation.

Self-Knowledge – Lying Behaviour

[50] What can we know about ourselves? What can others know of us? We humans do avoid admitting what we cannot face to protect ourselves. Often that self-protection does us harm because we are branded as liars and sometimes we are

liars. We lie to protect ourselves and others as often as we lie to deceive. Unfortunately, the difference does not usually matter to those in authority.

[51] Sometimes we humans we do not see what others expect us to see and they cannot believe that we have not seen what to them is obvious. Sometimes when we tell what we have seen we are not believed or are later accused of telling what we saw too late and are told we must only have done so because it suited our purpose. Those who analyze us and give us psychological tests find traits that explain us. So they believe. They use words like defensive, manipulative, in denial, angry, unremorseful. They tell us that because of our personalities we cannot be trusted. Without agreeing with their definition, we will never be allowed to escape the labels we are given.

[52] The death of a child because a parent failed to seek medical care will cause many people to call that person a murderer, a child abuser. The person who failed so miserably to protect a child may never be able to accept those labels although they do know they failed. They will point to the primary cause of death and not understand that their action was as much a cause of death as the primary cause. For many a refusal to understand the distinction between primary and secondary cause is a distinction without a difference. They cannot put themselves in the shoes of the offender. They feel compelled to judge harshly.

[53] G.A. has often lied to try to protect himself. Whether he lied to protect others, particularly the mother of his son, is unknown. That conclusion is speculative as is the suggestion he deliberately, with forethought, lied about much of what happened during the days leading up to his son's death. There was a trial about just this issue and he was found not guilty of "unlawfully causing the death" of his son. He was found guilty of manslaughter because he did not get medical treatment for his son. But those who have dealt with him do not make this distinction. To them he just made excuses and a jury believed him. They want him to admit "his guilt" but this is not a guilt he can admit. I understand that.

[54] Those who have assessed G.A. want him to participate in very intrusive, lengthy "counselling" the outcome of which is unknown. He has experienced some counselling and formed his own opinion that it is not going to be a productive exercise. Dr. Litvin would agree with him.

[55] G.A. knows he did not obtain medical attention for his son. He says he did not know his partner hit the child in the stomach. He says he thought the child was suffering from the flu. He admits the child had some bruises on his body and because he and his partner were under the Minister's scrutiny, he did not want to take the child to see a doctor because the child might be taken from their care as he had been earlier. Because of the different stories he told over time, he has not been

believed. What is known is that his partner struck the killing blow and he did nothing about the resulting illness suffered by the child. He may never be able to accept “blame” for this event as others have required. Can he move on with his life having learned not to repeat such an event or an event that would cause a child physical harm?

[56] Much of what is known about G.A. comes from the observations of others. But he has also revealed himself through his conversations with others. His actual behavior has received less attention. When it is referenced there is no consideration of the dynamic that may exist in particular between him and his female partners. They are always considered to be vulnerable and susceptible to his manipulation. Perhaps they were. G.A. is a person who does not want to be defined as a child abuser. He does not want to be defined as a person with a violent uncontrollable temper. He will not agree to these definitions of his character and as a result has not co-operated with those who demand that he accept these definitions. By insisting that he accept his “guilt” as defined by others they have failed to help him in his quest to have a “family” and be declared a safe person to be around children.

[57] The Minister was convinced and remains convinced that G.A. has a propensity for violence not only toward children but also toward women with whom he may have a relationship. This conviction is primarily based upon reports

conducted by psychologists. The experts repeatedly informed the Minister that without completion of an anger management program and intensive psychological exploration through prolonged psychotherapy or counselling children in his care would be at risk.

[58] Although G.A. has engaged in and completed some programs involving anger management and in developing parenting skills none of these have been satisfactory to the Minister. G.A. believes he has engaged in sufficient programming. He has not participated in the type of programs and counselling requested by the Minister.

[59] Many of the women and children who had relationships with G.A. liked him. Some of his female partners appear to have reported him to have been argumentative leading to suggestions of domestic violence. None of the material provided to me provides any definitive answer about whether there was serious domestic violence in any of his relationships. This is not to downplay verbal aggression between partners. Many couples are poor problem solvers and they engage in very loud and often frightening arguments. This may have been the reality of some of G.A.'s relationships but these events usually do not cause one to conclude he would be a risk to children of the same magnitude that one would expect of a person who was found to be guilty of intimate partner violence.

[60] There is no question that G.A. has in various conversations admitted to slapping his son over a diaper on his buttocks, to hit him on the face, to throw him into his bed and to hold him tightly enough to leave marks around his stomach area. These admissions are sufficient to confirm that when he was 22 years of age he could harm a child and he did harm his son through these actions. But there is also little question on the information before me that his then partner was abusive as well.

[61] Society has a difficult time accepting the fact that there are violent women and there are men who might protect them. We have no difficulty feeling empathy for women who do not report their violent partners nor the harm they may perpetrate upon their children. We will still place their children under protection but we do so often believing they are also victims. Of men. This is not to say women aren't frequently victims but we must not be blind to the fact that they can also be serious perpetrators of violence without any prompting from a male partner.

[62] Has G.A. been misunderstood? Possibly in some way because the evidence I have read does not satisfy me, at least upon its reading, that he was the violently out of control individual depicted in some of the reports. In fact, in his workplace and throughout his life, this would not be the definition of his behaviour. Prison

reports indicate that he was a very co-operative and diligent worker. Given the type of work he has pursued, if he was inclined to “lose control of his temper” one might have expected him to be unable to constrain himself although we do know perpetrators of domestic violence can limit their assaults to their partners.

[63] Now at 51 years of age living with a woman who has an older child with whom she has regular access and some grandchildren whose exact ages I do not know what is the probability that he presents a significant risk to children? The suggested risks appear to be that he will engage in episodes of domestic violence with his partner which a child in their presence will overhear or may come between. I have no evidence before me suggesting his relationship with his present partner is subject to the type of domestic violence that would raise a concern in the circumstances. The Minister would argue this does not matter because he may seek out a new partner who has younger children or who may be vulnerable to him and he will present a risk to them. But that is based on the speculation that he has not learned to control his temper sufficiently to prevent such an eventuality and that the evidence he has been violent with women in the past is sufficiently strong to continue to raise this is as a probable risk. Speculation does not satisfy the substantial risk analysis.

[64] The Minister suggests, because nothing has changed in G.A.'s circumstances over time, he has not proven that he poses no substantial risk to children. The change the Minister is seeking primarily relates to his undergoing the therapies that have been recommended in the assessments. G.A. argues that there has been a change because he has proven the assessors wrong in their assessment of risk. He points to the fact that there is no evidence that he has engaged in episodes of coercive domestic violence since he has been released into the community nor has he physically harmed any child either directly or indirectly. It was the combination of these 2 issues that resulted in his name being placed on the Child Abuse Register. He asserts that he has learned self-control and how to modulate his frustrations and anger so they do not result in harm to any persons and given the evidence before me that is a reasonable proposition to put forward. The Minister replies that I cannot rely on this reality of his life. He must do more than this. He must provide some independent verification of his ability to control himself. G.A. is a person who has given inconsistent accounts of information often enough to have been labelled as a liar and a manipulator. These labels may be correct but I cannot act on suspicion of bad behaviour and his history since he served his full sentence reveals no further actual physical harms perpetrated by him upon others.

[65] The Minister argues that his continuing failure to obey the direction of the Minister by seeking out young partners who had children and entering into

relationships with them should have significance in a decision about whether he represents a substantial risk of harm to children. I do not draw this conclusion from the evidence before me. G.A. has been quite open to everyone who has dealt with him even while he was incarcerated that what he wanted more than anything was to be part of a family. Because of what happened when he was 21 years old he has never been given this opportunity. While I do not condone his stubbornness and his rigidity, given his personality, I am not surprised by that behaviour. What might be considered surprising is that there is no evidence of the type of abuse predicted within his relationships during the time they did exist. That is not to say that there may have been a risk in those relationships that he would be demanding, would be argumentative, would be dismissive of his partners. He does not present with a kind, compassionate, loving personality. Life is “all about him and his needs”. But this does automatically lead to the conclusion that there is a “real chance of danger” that he will cause harm to others or fail to protect a child.

[66] I accept that G.A. has learned to control himself to avoid causing physical harm to others. He does know his son died, among other reasons, because he failed to take the sick child to a doctor or to a hospital. He has not accepted “blame” for this as others have required but he knows his failure to do seek that medical help resulted in his spending 7 years in prison. The Minister suggests to avoid prison or personal responsibility is why G.A. would “hide” or “ignore” any injuries he or

another caused to a child. This is what he did in the past and the Minister submits he would likely respond in a similar fashion in the future. I disagree. Ignoring his son's sickness, and either lying, or spreading confusion, about what happened resulted in his conviction and incarceration. His present risk of repeating such an offence is not "substantial". His name is to be removed from the Child Abuse Registry.

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Beryl A. MacDonald, J.