

Citation: ☼ Director v. C.A.G.
2023 BCPC 236

Date: ☼ 20231103
File No: F 44850
Registry: Surrey

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

**IN THE MATTER OF
THE *CHILD FAMILY AND COMMUNITY SERVICE ACT*, R.S.B.C. 1996 c. 46
AND THE CHILDREN:**

**M.A.G., born [omitted for publication]
A.E.G., born [omitted for publication]**

BETWEEN:

DIRECTOR OF CHILD, FAMILY AND COMMUNITY SERVICE

APPLICANT

AND:

C.A.G.

PARENT

AND:

C.M.O.G.

PARENT

**ORAL DECISION
OF THE
HONOURABLE JUDGE K. ARTHUR-LEUNG**

Counsel for the Director:

M. Diehl and A. Thorpe

Counsel for the Parent:

M. Dhillon, for the Mother

Counsel for the Parent:

Z. Ali, for the Father

Place of Hearing:

Surrey, B.C.

Dates of Hearing:

June 1 & 7, July 18 and September 25, 2023

Date of Judgment:

November 3, 2023

[1] Counsel for the Ministry of Children and Family Development, (“MCFD”), filed both a Presentation Form in Form 1 on May 10, 2023 and an Amended Report to Court on June 7, 2023 seeking an Order under Section 41 (2.1) of the *Child Family Community Service Act*, (“CFCSA”), that the Children remain in the custody the Mother under the supervision of the Director under terms and conditions a) to g).

[2] Most regrettably, this file has sustained a significant number of errors on the part of MCFD with the inaction on the part of various social workers and a large failure to properly monitor this file all of which actions I find have been contrary to the best interest of the Children. The Children are entitled to better and so, too, is the public in general.

[3] At the outset, I wish to say that this is not a failure on the part of counsel, but a significant failure on the part of MCFD staff. I have expressed concern about the errors made and I have been repeatedly assured that those would be rectified; however, this has been an ongoing example of how parents, children and the community should not be receiving a delivery model from MCFD and more particularly, a lack of services alongside accurate and wholesome information provided to a judge under affirmation.

[4] By way of background, the facts are as follows:

- MCFD first became engaged with the G. family in or about June 2021 when a report was made that the Father had been acting inappropriately towards a 14-year-old family member including concerns about physical touching and anger. The individual making such a report disclosed that the Mother was aware of the two occasions that this had occurred.
- The MCFD social worker interviewed both the Mother and the Father on June 24, 2021 wherein the Father admitted to the incidents, however, noted that it was done in an accidental as opposed to a sexual nature. The Mother confirmed witnessing both events and did not express any concerns. The Father has a family member whom had historically sexually offended against children, so the social worker at the time asked the Father if he had any such feelings and he responded in the negative. I will refer to this as the 2021 Report.
- The Father self-reported on June 30, 2022 that on June 10, 2022 that he was in the shower with his [omitted for publication] daughter; that the [omitted for publication] daughter poked at his penis, kissed his penis, and that the Father started touching himself in the presence of the [omitted for publication] until he

ejaculated on the [omitted for publication] daughter while with the Child in the shower of the family home. Additionally, the Father disclosed that at times in the past that the [omitted for publication] son would sit on his lap and the Father's penis would become erect. The Father, during the same disclosure, admitted that he has had some inappropriate thoughts towards his Children, however, denied being sexually attracted to them. I am struggling with this given the physical admissions that have been made by the Father.

- A Report was received on June 30, 2022 wherein both MCFD social workers and the RCMP attended in response to an after-hours report. The Father was read his *Charter* rights by the attending peace officers and a MCFD safety plan was put in place including that the Father had to reside outside of the family home and that he was not to communicate to the Children. The Safety Plan was to expire on July 7, 2022.
- A Stepwise interview was conducted at Sophie's Place prior to the expiration of the first Safety Plan for the young son. The daughter was too young to be interviewed. The Social Worker reminded both parents that the Safety Plan would be extended month by month. Those were renewed on a monthly basis until April 2023, which will be addressed later herein. The Father would see the Children twice per week supervised by personal and Church family and friends at MCFD offices. The Mother was not approved as a supervisor due to her admission to allowing the Father to be alone with the Children and being very much aware of the disclosure including historical disclosure.
- MCFD received communication from Crown Counsel on November 18, 2022 that charges had been approved against the Father for sexual interference. Concurrently, the Father agreed with the MCFD SW that he would obtain a professional report from a registered psychologist, which was completed.
- A risk assessment report was provided by the Father to MCFD in April 2023 which noted that the Father had disclosed a sexual attraction to prepubescent females between the ages of 10 to 12 years of age, that the writer of the report found that the Father was at an average risk to re-offend, recommendations were made by the writer of the report including medication for the Father, to engage in therapy and that his access to such possible victims should continue to be monitored until the Father has undertaken and completed counselling.
- On June 1, 2023, a Section 810 of the *Criminal Code* peace bond was voluntarily entered into by the Father with terms and conditions for a 12 month period, which remains in place at this time.
- A Supervision Order is currently being sought by MCFD until the Father has completed the treatment plan recommended to him by the psychologist.

[5] On May 18, 2023, an Order was made before the Honourable Judge Cohen. To date, this Court is perplexed as to why this Order remains outstanding and has not been finalized and entered by the lawyers. This must be followed-up with immediately. The

Family Law Act has a fourteen-day requirement for the submission of an Order and while such requirement does not exist in the *CFCSA*, in the best interest of the Children, Orders must be entered in a timely manner. This remains outstanding.

[6] I rendered a decision in this matter regarding the Father on June 1, 2023. That detailed Order was made pursuant to Sections 60(3) and 41 (2.1) of the *CFCSA* regarding the Father with a significant number of terms and conditions. I was unable to put in place an Order regarding the Mother due to the significant concerns of the Court regarding the failure of a reasonable standard of care on the part of MCFD in terms of the absence of a delivery of services to the Mother and to the Children. Similarly, this Order of June 1, 2023 remains outstanding and has not yet been entered. Again, this Court is similarly perplexed as to why this Order has not yet been finalized and entered by the lawyers. This, too, must be followed-up with immediately.

[7] It was not until June 7, 2023 that extremely relevant information was filed in the form of an Amended Report to Court in this matter by MCFD pertaining to the safety and well-being of the Children formally being disclosed. Again, there is no reason that this Court is aware as to why and how MCFD significantly failed to protect the Children.

[8] The Amended Report to Court was filed only after the Father's matter had been resolved both in criminal proceedings and MCFD proceedings. The amendments made in the Report are startling and in hindsight may or could have significantly altered the path taken regarding the Father. The complete failure on the part of MCFD to disclose this readily available information failed to protect the Children.

[9] That Amended Report to Court filed on June 7, 2023 disclosed that the MCFD first became involved with the family in 2021 following a report that the Father had been behaving inappropriately towards a [omitted for publication] family member. The young family member made a disclosure that the Father was acting inappropriately, that the Father had a violent temper and that the Father had allegedly said to that young person that they were "not a good Christian".

[10] This young person was interviewed and continued with consistent disclosure including that the Mother was aware of the allegations at that time. Both the Mother and the Father were interviewed by MCFD in 2021 wherein the Father admitted to both incidents including touching the young person, however said that the nature of the touching was not sexual and was accidental.

[11] The Mother admitted to seeing both events. The Father was asked by MCFD at that time if he had any sexual feelings towards children and he denied such. That was not true. He lied to the Social Worker. None of this readily available information was produced to this Court regarding the Father's files. This is a significant file management error on the part of MCFD and to date, no explanation has been provided as to why this extremely relevant historical material was not disclosed to the Court.

[12] This matter was before me once again on July 18, 2023 and to the credit of counsel for MCFD at that time, Ms. Diehl, she was candid in telling the Court that as counsel there had been a "thorough practice analysis of what had occurred on this file. There were additional concerns that have arisen from that practice analysis." (Transcript, July 18, 2023, page 2, lines 22 – 26). This Court thanks Ms. Diehl for being candid in the significant practice failings on the part of MCFD social workers and the team leader. Regrettably, as I will note below, despite Ms. Diehl no doubt being assured internally by MCFD staff that the file had been rectified and thus, she advised this Court, in fact more failings on the part of the social worker and the team leader continued.

Evidence

[13] In this matter, the Court heard testimony from MCFD Team Leader ("TL"), Kajla, who testified that she is a delegate, that she has been employed as a social worker ("SW") for the past 18 years of which for the past five she has been employed by MCFD as a Team Leader. She assumed conduct of the file on July 4, 2022.

[14] She acknowledged the Safety Plan dated June 30, 2022, that the Mother has been cooperative and that she is aware of the *Criminal Code* Order in place regarding the Father.

[15] She expressed concern about the Mother's ability to protect and supervise the Children. However, that being said, as a TL she offered no reason as to why MCFD had not offered any services to the Mother. She then testified that the intent was to engage the Mother in the Family Enhancement Programme and sexual abuse counselling for the family with the goal to support the Children to learn why the Father was not in the home at this time and to educate the Mother on sexual abuse and safety measures including play and art therapy with the Children.

[16] What is a clear failure on the part of MCFD and the TL in this is that when asked by the Court why, in excess of one year from the date of disclosure, no services had been put in place, she admitted only when pressed by the Court that those services "should have been provided". Most certainly, those services should have been provided and provided many months ago.

[17] The complete failure on the part of MCFD and the TL is, quite honestly, incredulous. It has left both the Mother and the Children exposed and has left this Court with significant failure on the part of MCFD staff to provide services to the Mother and the Children to which MCFD is legally mandated to offer. This TL, by her own admission, has had conduct of the file since 2022, however, at no time in the course of her testimony did she disclose that no services have been put in place and it was only upon questioning by this Court that she disclosed nothing had been put in place to guide and support the Mother and the Children.

[18] Safety Plans mean that both the parents or caregivers and MCFD are signatories and are committed to carrying out the terms of the Safety Plan and the best interests of the Children in any MCFD file. Regrettably, there are countless court files wherein there are allegations of one or more parent or caregiver failing to abide by the terms of a Safety Plan, however, this file reveals a long-standing historical epic failure on the part of MCFD to not only provide services but also ensure the best interests of the Children. There is no excuse for this being consistently a failure on the part of MCFD for this family.

[19] It was only upon pressing by this Court that services were commencing including counselling for the Mother, re-integrating the Father into the home with guidelines for assessment, ensuring professional counselling is in place for the Mother to address her relationship status, the stressors in the home with the absence of the Father, her fear that she will lose the Children and to have her better understand the severity of what transpired in the home by the Father. All that being said, the TL under affirmation admitted that no services had been offered for the Children.

[20] Ms. Kajla as TL has had conduct of the file and undertook an analysis of the practice that has occurred internally within MCFD since her initial appearance on behalf of the Director on June 1, 2023. In the words of Ms. Kajla, she testified that the Ministry:

....did look at strategizing, looking at the best pathways forward to support this family. We also held a complex case consult on June 20th. We discussed matters of moving the file forward in the matter of transferring and completing outstanding tasks such as, you know, completing an interview [with the Father], a reintegration interview, completing a family plan for both [the Mother and the Father], interviewing the visit supervisors who are visit – who are supervising the visits and completing home visits, as well.

(Transcript, July 18, 2023, page 3, lines 13 – 24)

[21] The Children were also interviewed. As a result of this, she admitted under affirmation that in her words, “there were issues that were identified that fell below our practice standards”. (Transcript July 18, 2023, page 3, lines 30 – 31)

[22] It was only after prompting by this Court that the TL undertook an internal analysis and, as a result, she admitted the following:

- a failing of practice standards by MCFD;
- insufficient record keeping and documentation;
- a failure to execute safety plans;
- a failure to monitor safety plans;
- visit supervisors were not communicated with; and

- the Children were not seen as required in the time period and there was an epic failure in the delivery of services for the family and the Children.

[23] By admission, services to the Children including an interview was not offered until June 2023, despite this family being in the MCFD system regarding this disclosure in June 2022. All that I heard was that the TL had rectified the matter, after significant prompting by the Court, however, at no time was an apology offered nor any explanation for how an entity that is legally responsible for the protection of Children consistently failed repeatedly for this family. That is entirely not acceptable.

[24] There was a review of a safety plan prepared by the Social Worker wherein one child was identified as having ADHD. All that the TL could offer in the course of her testimony was that the Mother identified a need that the child needed support in school and that there would be assistance offered to the Mother to hopefully secure a designation for the one child. To date, none of that had been done. To date, again, it was only in the intervention of the Court in asking questions was there an admission that there is no formal diagnosis of ADHD nor had MCFD offered any services to the Mother to have the Child assessed.

[25] What became more baffling was that on the prompting of the Court, the TL stated when asked if there was a medical confirmation of the diagnosis, the TL in her affirmed testimony to the Court said, "Yes" (Transcript, July 18, 2023, page 7, line 40). However, when asked by the Court when that diagnosis was done, her response was "I do not know" (Transcript, July 18, 2023, page 7, line 42). I am unable to reconcile such a gap in accurate testimony and how the best interests of these Children has been completely ignored and forgotten. The TL did not know where the assessment was done.

[26] Confusion thereafter continued when counsel for the Mother advised the Court that there was a formal diagnosis for the Child of having ADHD, however, no one had any report. I am unable to ascertain how anyone can believe that there has been a formal diagnosis with no report and no testing being done.

[27] Again, in the course of her testimony, the Court made inquiries and again another misstep by MCFD staff was that a meeting was held with the Mother but without her counsel being made aware of her being present. Counsel for MCFD apologized and acknowledged that it was, in her words, “was also missed” (Transcript, July 18, 2023, page 8, and line 34). It is simply baffling how, despite the TL and MCFD staff knowing about the litany of failures on the part of MCFD staff in this file flagged by the Court that they then had a meeting solely with the Mother and had her sign a safety plan without her counsel being advised, having the opportunity to attend, or to review it with her client prior to signing. That is poor practice and most certainly opens up that safety plan to be null and void.

[28] Exhibit 1 in this proceeding is the safety plan in question. It was signed by the Mother without the benefit of her speaking to her counsel. That should never have occurred. This has been a clear case of MCFD not offering services nor putting services in place for this family and the Children. It was only after multiple queries by this Court that MCFD took steps to rectify their failure to fulfil their legal obligations. To date, none of the testimony has offered any explanation as to why MCFD has failed and failed so significantly.

[29] The Family Plan for the Mother included that the household was to receive clinical counselling for sexual intrusion through Options, that to address the Mother’s mental health and coping skills, TL Kajla, in her testimony, said that it would be through Crime Victim Assistance and she would have to apply through Legal Aid. This should have been done immediately in the summer of 2022.

[30] The Family Plan for social supports included Church supports but there was no evidence that the Church is aware of what transpired in the family home, that there would be a paediatrician to assist the one Child, and it notes “ADHD”, however, there never has been such a diagnosis.

[31] Testimony from the TL continued into September 2023 wherein she admitted that she had reached out to the doctor for the one Child in August 2023 but that she was

unable to reach the doctor. That was one month before her continued testimony. There was no explanation why she did not follow up.

[32] The social worker followed up at the Child's school on September 14, 2023, wherein the school correctly was not satisfied with a family doctor who was not qualified to diagnosis ADHD provide a more comprehensive testing and report for the Child. The TL testified that the Mother was directed to meet again with the doctor for a better referral. The TL was aware that the Child saw a counsellor once, but could not advise the Court what the purpose was, with whom or when. This is yet another example of a failure on the part of MCFD staff to ensure the safety and wellbeing of the Children.

[33] Since the TL testimony of July 18, 2023, MCFD stepped up its random visits of the family home that had not been occurring for two years and noted no concerns nor that the Father was present.

[34] The Mother had now finished the family enhancement programme and was completing six of ten counselling sessions. That had not been put in place until prompted by the Court. The TL testified that the Mother has been fully engaged and has been learning about sexual abuse.

[35] Due to the failure of not placing the Children on any service wait lists the past two years, as of September 2023 the Children were on a wait list, however, the TL said that while there is no "evidence" (her word to which she is not qualified) of any concerning behaviours, the Children can be seen as needed. She then said that a specialist might not even see the Children, as in her words, "there is no evidence" of concerning behaviours.

[36] The TL made a referral to the Crime Victim Assistance Programme for the Mother and the Children, however not until August 24, 2023. This permits the Children to obtain counselling as they age and offers financial benefits to assist resources.

[37] Exhibit 2, tab 3, is the document prepared by MCFD to determine if the Father can be reintegrated into the family unit. The assessment was completed July 17, 2023. There was no explanation for the delay. The Report at tab 3 notes a report from Eagle

Landing wherein the Father disclosed that his penis would get erect when his son sat on his lap but said that it was due to his addiction to masturbation and not being sexually attracted to his son.

[38] As for the admission of masturbating and ejaculating in the shower on his child, he said that “his mind and body were disconnected.....and no sexual attraction.” (Exhibit 2, tab 3, page 1). The difficulty with Exhibit 2, tab 3, in drafting a Family Plan for the Mother is as follows:

- that the Father denied any “previous abuse” (page 2);
- notes that he has “weird sexual concerns” (page 2);
- that the Father had not received any treatment as of July 2023;
- that it was only the Father who reports that he allegedly self-disclosed his behaviours to the Mother;
- that as of July 2023, the Father was “still dealing with addiction to porn at that time due to stress” (page 2);
- that as of July 2023, he admitted to continuing to access pornography; and
- he has difficulty with anger.

[39] Most troubling, the Father reports that this was the only incident wherein MCFD knowingly would have had documentation to support another historical report. There is a question on page 5 asking, “does the offender fully recognize the consequences of the past abuse to the child and family” and shockingly this and many other questions are not answered. There are, in fact, pages upon pages with questions not answered. No explanation has been provided to the Court why this has not been completed.

[40] Exhibit 2, tab 4 is the Family Enhancement Initial Report dated June 2023. Exhibit 2, tab 5 is the closing report dated September 8, 2023. I am unable to reconcile how this is defined as a “closing report” when the Children remain on a wait list for counselling, that the Mother has not received all resources nor has she completed all counselling. Again, I am unable to reconcile how a report can be deemed closed. No explanation was provided.

[41] Exhibit 2, tab 6 is a letter from Options from the clinical counsellor confirming that the Mother is engaged in counselling as of July 4, 2023, that this is weekly and that as of September 21, 2023 she had completed six sessions. This only commenced after I urged MCFD to engage and review their delinquency. Further, I have not been provided any explanation how weekly counselling since July 4, 2023 has only six sessions as of the latter portion of September. The writer of this letter failed to provide any explanation nor did the TL in the course of her testimony. Again, the pattern continues of a significant disconnect in the communication and delivery of services for this family.

[42] The TL testified that a referral was made to Project Parent, however, it was not made until August 14, 2023 and there is a significant waiting list. That lapse is not acceptable.

[43] The TL provided testimony that all seven of the supervisors had now been interviewed. She confirmed that they were interviewed to ascertain what they knew and who had informed them and most perplexing is that MCFD had agreed for these persons to be supervisors but all of the information that the supervisors had received was solely from the Father. The TL took no steps, or any MCFD staff, to determine if any of the information provided to them by the Father was accurate.

[44] On cross-examination, the TL confirmed that there are seven approved supervisors; however that from July 2022 until at least May 2023, none of the supervisors that had been supervising had ever been interviewed by any MCFD staff. Again, there was a distinct absence of any apology or explanation on the part of the TL as to how someone could be approved as a supervisor without a social worker interviewing any of those persons. Sexual actions on the part of the Father occurred in the home in and on the physical presence of a minor child of the Father's. This Court is completely at a loss what more is required for MCFD to protect these children and ensure their safety and well-being.

[45] Exhibit 3 in this proceeding are copies of the safety plans. There are 40 plans, some unsigned, some pertaining to one parent only, from June 30, 2022 until May 12, 2023. This excludes the Family Plan most recently signed by the Mother without her

speaking with her legal counsel. Again, there was no explanation provided to this Court by the TL or any social worker why there were so many safety plans and why services were not provided until prompted by the Court in 2023.

[46] More so troubling is that despite the cautionary words set out in the decisions of *British Columbia (Director of Child, Family and Community Service) v F.J.V. and J.P.D., 2023 BCPC 28* and *British Columbia (Director of Child, Family and Community Service) v M.L., 2005 BCPC 77*, the concerns of this Court regarding informed consents continues to be not put into practice by social workers and team leaders.

[47] Safety and Family Plans, particularly when the parents and or caregivers have counsel, should not be entered into lightly and parents should be afforded the opportunity to review with their respective legal counsel. Some 40 plans presented as Exhibit 3. There is no evidence that counsel was part of the process and most certainly the current Family Plan signed by the Mother was this past summer in the absence of her counsel.

[48] The Mother signed many plans and she was held to those high standards, however, in turn, MCFD failed to provide services and now there are significant wait lists. This must be a two-way path when expectations are placed on parents. Therefore, too, MCFD must come with clean hands and both engage and protect the Children. They have failed to do so.

[49] On cross-examination, the TL admitted that there is no counselling in place for the Children, that there has been no conversations with the Children to ascertain if there is any evidence or signs of concern. The Options wait list is currently two years. There have been no steps taken or any conversation to prioritize this file for Options on the part of the MCFD staff, despite their glaring omissions in this and many other facets of this file in terms of providing services to the family.

[50] She admitted that there have been no conversations to secure an academic assessment for the Child and has placed this entirely on the Mother to contact her family doctor. She admitted that assessments are very pricy and said for MCFD to

engage that she would have to speak to her supervisor, of which nothing has been done. Sunnyhill has an 18 – 24 month wait list.

[51] On cross-examination by counsel for the Father, the TL admitted that the Father has been diligent now in counselling and that it has been recommended that the Father take the Project Parent programme.

[52] On re-direct, Director's counsel asked of the TL about counselling and said that the Mother has learned now about sexual safety and warning signs. Again, no apology provided nor any explanation why this took some two years to put in place. The TL testified that the possible ADHD is not related to the safety of the children and that there is no MCFD funding available.

[53] The Order currently in place for the Father expires on December 1, 2023.

Decision

[54] As with every child protection decision, the starting point is Section 2 of the *CFCSA* which contains the guiding principles wherein the Act itself must be interpreted and administered focussing on the safety and well-being of a child taking into consideration that children are entitled to be protected from harm, that the family is the preferred environment, that support services when available to the family should provide a safe and nurturing environment for a child, that ties to family are to be considered and that decisions must be implemented in a timely manner.

[55] From that flows Section 3 of the *CFCSA* addressing the service delivery principles wherein families and children should be informed about services available to them and encouraged to participate in that process that impacts them, services planned and implemented must take into consideration the individual needs of the family, services should be integrated within service providers, and the community in its general sense should be involved in the planning and delivery of services to a family and the children.

[56] Section 4 of the *CFCSA* requires that everyone, including the court, social workers, MCFD staff, counsel for all parties including MCFD and parents and caregivers are to ensure that at all times the best interest of the Child is paramount including being mindful of the child's safety, the physical and emotional needs of the child taking into consideration the child's age, the importance of continuity of care, the quality and nature of the relationship that the child has and the impact any delay has upon a child if there is a delay in making a decision. To that, a delay in making a decision logically should include the delay in making a decision to provide services and what services are to be provided.

[57] Section 4 is not a complete list but is fulsome and can be expanded upon depending upon the cultural needs of the family and ultimately the individual needs of the family to ensure the best interests of the child. In the decision of *British Columbia (Child, Family and Community Service) v S.H.*, 2020 BCPC 82, the Court noted that the best interests of the child are to be taken into consideration in the entire application before the court. Therefore, too, as a file evolves, there is an obligation upon MCFD to constantly assess and re-assess services and decisions for the best interests of every child. It constantly evolves.

[58] Section 5 of the *CFCSA* permits a Director (or in the simplest of terms, a social worker) to enter into a written agreement with a parent or parents of a child for the provision of services to assist the family. I broadly interpret this to include Risk Reduction Plans, Safety Plans and Family Plans.

[59] I find based on the evidence before me that MCFD failed to ensure the best interests of the children, failed to provide services to the Mother and the Children and in fact, continues to do so. Decisions were not based on information wholly available to the social workers. That specifically included a shocking failure on the part of the social workers in court documents and in providing services to disclose that historically there was an allegation against the Father regarding an allegation of inappropriate sexual touching of a minor child who was a family member outside of the home. I am confident that had this properly been disclosed the path taken in the legal process involving both

parents could have been vastly different or alternatively, a timelier implementation of services to protect and ensure the safety of the Children would and should have been put in place. It was not until the conclusion of the Father's court proceedings was this historical disclosure made to myself. That is unacceptable.

[60] There was a failure to protect these Children by the very service providers who are legally required to ensure the safety and well-being of the children in this province. To date, no reason has been given for this and every other failure that followed. To date, no sincere apology has been given.

[61] To date, despite initial Director's counsel being assured that the TL and the social workers did a deep dive analysis into their failures had been fully addressed, failures continued in this hearing even after such. That is no fault of Director's counsel. The TL and those social workers who have been assigned to this file all failed to protect these Children repeatedly and it was only at the insistence of this Court when time after time services were not being put in place that they were. That is wholly unacceptable. There should be legal, ethical and moral consequences for the failure on the part of MCFD to fulfil the terms of the *CFCSA*.

[62] Court documents are replete with errors and omissions. The Form F, Report to Court filed May 10, 2023 in which a judge relied upon, has no file number. It failed to disclose the historical allegation of sexual touching on the part of the Father to a family member outside of the home, and advised the Court on page 3 that both the Mother and the Father "have participated in Safety Planning". Some 40 safety plans is not what the legislation anticipated to be defined as "safety planning" when services were not put in place. Paying lip service to merely signing repeatedly plan after plan after plan with no services to assist the family is a failure.

[63] When this hearing commenced on June 1, 2023, it became quickly very clear that MCFD had not followed requirements nor put services in place. Thus, an Amended Application, Form F, was filed on June 7, 2023, this time making the historical allegation disclosure; however, again, there is no file number on the document, and despite the

written statement that MCFD and Crown counsel had worked closely, the historical allegation was not made known to Crown counsel.

[64] On June 10, 2022, the Father was having a shower with his minor daughter in the shower of the family home. The child allegedly poked the penis of the Father. The Father began to masturbate and ejaculated on the Child. The Father disclosed this to the Mother. They took no steps to report this to the police or MCFD. Instead, after meeting with their pastor, it was only disclosed by the Father to MCFD when he self-reported the incident.

[65] In the course of the investigation, the Father admitted that when his son has sat on his lap he got an erection, but denied being sexually attracted. Regrettably, both the RCMP and MCFD failed internally in its investigation techniques. Those reasons shall not be addressed herein.

[66] From therein, there commenced the some 40 family plans since 2022 for the family. These plans mean nothing if the services to carry out the expectations placed upon the parents is not being offered to the parents. This was a consistent failure on the part of MCFD.

[67] Repeatedly, every plan places expectations upon each of the parents, however, it is simply not fathomable how MCFD and its social workers reasonably believed that they were fulfilling their legal obligations as I have addressed in the *CFCSA* legislation when services were not put in place for the parents.

[68] To date, counselling is not available to the Children. MCFD approved supervisors to permit reintegration for the Father to the Children; however, it was not until the mid-portion of 2023 after queries by myself that the TL undertook interviews of the supervisors already in place to determine if they were aware of their expectations and what information they knew. The Father only disclosed anything that the supervisors knew about what had transpired.

[69] Until mid-2023, not one single social worker interviewed supervisors but permitted these persons to supervise. Supervisors signed a plan acknowledging that the

Father could not be left alone with the Children; however, there was a failure on the part of MCFD prior to permitting these persons to supervise to ensure that they were aware of the background. That is a significant failure to protect the Children. Safety plan after safety plan after safety plan was renewed with no services put in place.

[70] The most recent plan signed by the Mother was done without her counsel being present or the Mother having the opportunity to review it with her own counsel. That is an imbalance of power between MCFD and the parent. That negates any assumption of informed consent. To date, there has been no explanation why some 40 safety plans were put in place.

[71] In April 2023, with the consent of the Father, MCFD received the professional risk assessment report pertaining to the Father who had voluntarily disclosed a sexual attraction to prepubescent females and that safety measures were to be put in place to address the sexual actions of the Father.

[72] I find that the late disclosure on the part of the Mother and her historical knowledge has failed to protect the Children. I do, however, note that the family is the best environment for the Children and note that there has been a constant failure on the part of MCFD to ensure that services are made available to both the Mother and to the Children, particularly given the scarcity of resources and wait lists. It has only happened because of my prompting and queries that services are now in place for the Mother. The Children remain on a long wait list. That is due to the inaction of MCFD and is not acceptable.

[73] Children are entitled both legally and morally to be protected from harm. Children are entitled to be kept safe. Family is instinctively the best environment for the Children, but as in this instance, it required the implementation of support services. MCFD failed to put those services in place for this family leaving the Mother largely having to source out assistance through family, friends and the Church.

[74] I am satisfied that it is appropriate to Order what the Director is seeking, however, in doing so, there must be a clear message delivered to MCFD staff that this

cannot happen again. There must be a full, frank and proper investigation and reckoning on how so many failures to protect the Children and reintegrate the family with the provision of services has consistently and systemically failed since 2022. That is unacceptable.

[75] Accordingly, the following Order is made:

[76] There is an Order pursuant to Section 60(3) of the *CFCSA* dispensing of the written consent of the Mother and the Father.

[77] There is an Order pursuant to Sections 60 and 41 (2.1) of the *CFCSA* that the Children remain in the custody of the Mother under the supervision of the Director for a period of six months with the following terms and conditions:

- a) The Mother must allow the Director or the Director's agents to visit and inspect the home and meet directly and privately with the Children at any time, whether scheduled in advance or not, and as often as the Director deems necessary to ensure the safety and well-being of the Children;
- b) The Mother must continue to reside at her current address and must not change her place of residence without first informing the Director of any proposed change at least 7 days in advance of such change;
- c) The Mother must ensure that the Children are always under the supervision of a responsible caregiver who has been pre-approved of by the Director;
- d) The Mother must attend all counselling appointments as directed by the Director, to address issues of child sexual safety;
- e) The Mother must ensure that the Father has contact with the Children only as approved of in advance by the Director;
- f) The Director must remove the Children if the Mother fails to comply with supervision term e) of this Order; and
- g) The Director may remove the Children if the Mother fails to comply with terms a), b), c) and d) of this Order.

[78] Additionally, I will impose an Order that the Director must undertake a regular review of this file with the Mother and her counsel to ensure that the Director is providing services to both the Mother and to the Children in order to fulfil the best interests of the Children and the timely delivery of services.

[79] These are my Reasons, all of which are respectfully submitted.

The Honourable Judge K. Arthur-Leung
Provincial Court of British Columbia