FAMILY COURT OF NOVA SCOTIA

Citation: *Nova Scotia (Community Services) v. R.D.* , 2016 NSFC 1

Date: 20160112
Docket: FNGCFSA-091946
Registry: Pictou

Between:

Minister of Community Services

Applicant

v.

R.D. and T.W.

Respondents

Editorial Notice:	Identifying information has been removed from this electronic version of the judgment.
Judge:	The Honourable Judge Timothy G. Daley
Heard:	June 15, June 17, July 13, and July 20, 2015, in Pictou, Nova Scotia
Counsel:	Patricia McFadgen, for the Applicant Shawn MacLaughlin, for the Respondent R.D. Respondent T.W., self-represented

By the Court:

[1] This case is about two children, A.W., born April […], 2010 and R.W., born October […], 2003 and whether it is in their best interest that they be placed in the permanent care and custody of the Minister of Community Services (the Minister) or returned to the care of their mother, R.D.

[2] The Minister seeks an order for permanent care and custody pursuant to the *Children and Family Services Act* (the *Act*), based upon concerns that the mother, R.D., cannot effectively parent the children as a result of her lack of insight into the children's needs. Specifically, the Minister says that R.D. has been diagnosed with a personality disorder, is not seeking treatment for that disorder, has failed to engage with the Agency and its Case Plan, has been inappropriate and aggressive with staff and service providers, has a recent history of drug and alcohol use, is not appropriately engaged with service providers to mitigate the concerns raised by the Agency and thereby cannot ensure that the children can be safely and appropriately parented by her.

[3] With respect to the father of the children, T.W., he did attend at various times and did attend throughout the contested hearing in this matter. He was not represented and at no time sought to provide evidence, question any witnesses or present a Plan of Care. He did indicate on the record that he was supportive of R.D.'s Plan of Care for the children.

Summary of Proceedings

[4] The Minister and this Court have had involvement with this family since February of 2012. Given that there is consent of all parties to the admission of evidence of prior proceedings pursuant to section 96 of the *Act*, and given the continuity of the involvement of the Minister and this Court with the family since February of 2012, I believe it appropriate to review the proceedings since that time forward.

[5] The Minister filed a Protection Application and Notice of Hearing on February 9, 2012, in which the Minister sought an order that all four children of the parties, T.W., M.D., R.W. and A.W., remain in the care and custody of R.D., subject to the supervision of the Minister. The Minister sought the finding that the children were in need of protective services pursuant to paragraph 22(2) (b), (d), (f), (g), (j) and (ja) of the *Act*.

[6] The initial, five-day hearing took place on February 14, 2012. At the conclusion of the hearing, the court made the finding that there were reasonable and probable grounds to believe that the children were in need of protective services and the Minister's request for an initial supervisory order was granted, placing the children in the care and custody of R.D., subject to supervision by the Minister and with access for T.W.

[7] The interim hearing was completed on February 23rd, 2012. The respondents consented to the finding. The court made a finding that the children were in need of protective services and granted a continuation of the Minister's supervisory order. The matter was adjourned for a combined protection pre-trial and protection hearing on May 3, 2012.

[8] On March 1, 2012, all four children were taken into temporary care by the Minister. On that day, R.D. was served with a Notice of Taking Into Care.

[9] An Application and Notice of Hearing was filed by the Minister on March 7, 2012, seeking an order that the four children remain in the temporary care and custody of the Minister and that the respondents have supervised access as arranged by the Minister. The Minister also sought an order for the preparation of a parental capacity assessment and that the respondents be referred for the preparation of the psychological or psychiatric assessment.

[10] The matter was brought before the court on March 8, 2012. The court made the finding that all four children were in need of protective services and granted a variation order placing the children in the temporary care and custody of the Minister.

[11] On March 15, 2012, the matter returned before the court. The court made the finding that all four children remained in need of protective services and that there was a substantial risk to the children. The court continued the order of temporary care with the Minister, access to the respondents and ordered services for the respondents, including the preparation of a Parental Capacity Assessment, psychiatric report, individual counselling for R.D. and family support services.

[12] The matter returned before the court for a combined protection pre-trial and protection hearing on May 4, 2012. The respondents consented to the finding. The court made the protection finding, and in particular pursuant to section 22(2), paragraphs (b), (d), (f), (g), (j) and (ja) of the *Act*. The initial order was continued and R.D. was ordered to take part in hair follicle testing for drug and alcohol use.

[13] A combined disposition pre-trial and disposition hearing was held on July 26, 2012. The parties consented to the disposition and the court continued the order for temporary care and custody with the Minister.

[14] On October 2, 2012 the Minister filed a Review Application and Notice of Hearing seeking an order that all four children be placed in the permanent care and custody of the Minister. The review hearing was scheduled for October 4, 2012.

[15] The matter came before the court on October 4, 2012. The court continued the temporary care and custody order. The matter was set over for a contested review hearing on January 21, 23, 24 and 25, 2013.

[16] A contested hearing was held in January 2013 and at the conclusion of the evidence, the court found that while the children remained in the need of protective services, the court was not satisfied that the respondents' circumstances could not change within a reasonably foreseeable timeframe. The court ordered the children to remain in the temporary care and custody of the Minister and a continuation of the existing services.

[17] On April 25, 2013, the matter came before the court for a review disposition hearing. All parties consented to the continuation of the existing order and the court ordered same.

[18] On June 27, 2013, the matter returned to the court for a review disposition hearing. Proceedings involving the child, A.W., were terminated due to the expiration of the timeline under the *Act*. The Order for Temporary Care and Custody with the Minister for the remaining three children was consented to by the parties and continued by the court.

[19] The matter returned before the court on September 23, 2013 for a review disposition hearing. With the consent of the parties, the court granted an order continuing the temporary placement of the child T.W. with the Minister and placing the children R.W. and M.D. in the care and custody of R.D. subject to the supervision of the Minister and ordered continuation of services.

[20] The matter returned before the court on October 28, 2013 for a review disposition hearing. With the consent of all parties, the court placed all three children in the care and custody of R.D. under the supervision of the Minister and ordered continuation of services.

[21] On January 23, 2013, the matter returned before the court for a review disposition hearing. With the consent of the parties who appeared, the proceedings with respect to the child, R.W., were terminated due to the expiration of the timeline under the *Act*. The supervision order respecting the children, T.W. and M.D., was continued as was the order for services.

[22] On April 28, 2014, the matter came before the court for a review disposition hearing. The supervision order with services was continued with the consent of the parties. Counsel for the Minister indicated an intention to terminate the proceedings respecting M.D. and T.W. at the next appearance, unless new protection concerns arose. The matter was set for a review disposition hearing on July 21, 2014.

[23] On July 7, 2014, all four children were again taken into care by the Minister. Given M.D.'s age, she was given the option to remain with her mother or return into the care and custody of the Minister. M.D. chose to come into the care and custody of the Minister.

[24] On July 11, 2014, the Minister filed a Protection Application and Notice of Hearing seeking a finding that the children, A.W. and R.W., were children in need of protective services. On the same date, the Minister filed a Review Application and Notice of Hearing seeking an order that T.W. and M.D. be placed in the care and custody of the Minister.

[25] On July 14, 2014, the matter came before the court. The court made a finding that on reasonable and probable grounds the two younger children, M.D.. and T.W., were children in need of protective services and found that there was substantial risk. Access with the children was ordered subject to the supervision and at the discretion of the Minister. The court confirmed the existing order respecting the two older children, M.D. and T.W., and they were placed in the temporary care and custody of the Minister. The respondents did not consent to the order and sought a contested interim hearing which was scheduled for July 31, 2014.

[26] An Application for Standing was filed by S.M.D., the mother of R.D., on July 31, 2014 in relation to the proceedings affecting all four children. The Application was made pursuant to both the *Children and Family Services Act* and the *Maintenance and Custody Act*.

[27] On July 31, 2014, the matter came before the court. S.M.D appeared with counsel to address the Application for Standing. The Minister indicated it had just been notified of the Application for Standing by S.M.D. and could not take a positon at that time and that matter was adjourned. An interim hearing was held and the social worker for the Agency and R.D. testified. The court confirmed its earlier finding that there were reasonable and probable grounds to believe that the children, A.W. and R.W., were in need of protective services and there was a substantial risk to the children which could not adequately be protected by an order pursuant to paragraphs (a), (b) or (c) of section 39(4) of the *Act*. Supervised access for the respondents was ordered as approved by the Minister. Services were ordered for the respondents including individual counselling for R.D. and that R.D. participate in an updated parental capacity assessment. R.D. was also ordered to co-operate with and participate in random urinalysis and hair follicle testing for drug and alcohol use. M.D. and T.W. were allowed to return to the care of R.D. under the Minister's supervision as they were old enough to self-protect.

[28] On October 6, 2014, the matter returned to court for a combined protection pre-trial and protection hearing and standing hearing. R.D. consented to the protection finding on a reservation of rights basis. The court made the protection finding with respect to the children A.W. and R.W., pursuant to sections 22(2)(b), (f), (g) and (ja) and confirmed that they would remain in the care of the Minister. The court confirmed that the two older children, M.D. and T.W., would remain in the care of R.D. under the supervision of the Minister. The services, testing and assessments contained in the previous order were continued. The matter was set over for a combined disposition pre-trial and disposition hearing on December 18, 2014. The Standing Application of S.M.D. was also adjourned to that date.

[29] On December 18, 2014, the matter returned to court for combined disposition pre-trial and disposition hearing and standing hearing. R.D. consented to the disposition sought by the Minister on a reservation of rights basis. The respondent, T.W., did not appear. The court issued a Disposition Order on the same terms as the Protection Order. Counselling for the children was ordered to be reinstated. Access for the younger two children, A.W. and R.W., was expected to expand. The matter was set over for a review disposition hearing, on March 18, 2015, and the Standing Application was adjourned to that date

[30] On March 12, 2015, the Minister filed a Review Application and Notice of Hearing seeking an order that the younger children, A.W. and R.W., be placed in

the permanent care and custody of the Minister. On March 13, 2015, the Minister filed a Notice to Foster Parent respecting the same matter.

[31] On March 20, 2015, the matter returned to court. Counsel for the Minister indicated the Minister could not support the Plan of Care of S.M.D. and sought permanent care of A.W. and R.W. on the basis of expert reports and M.D.'s own reporting. The Supervision Order for M.D. and T.W. was continued. R.D. confirmed she was contesting the application of the Minister and was seeking the return of the children to her care and custody. The court ordered limited disclosure to S.M.D for her Standing Application. A settlement conference was scheduled for May 26, 2015 and a contested review hearing and standing application hearing for S.M.D was scheduled for June 15, 17 and 18, 2015.

[32] On May 26, 2015, a settlement conference took place with the parties which was unsuccessful.

[33] On June 4, 2015, the Minister filed a Review Application and Notice of Hearing seeking an order terminating the disposition orders with respect to the older children, T.W. and M.D.

[34] On June 5, 2015, the Minister filed a Review Application and Notice of Hearing providing notice the Minister was seeking an order for permanent care and custody with respect to the children, R.W. and A.W., and that the Minister was seeking an order admitting evidence of prior proceedings respecting the respondents, R.D. and T.W., and the children, A.D., R.W., T.W. and M.D.

[35] On June 10, 2015, the court held a telephone pre-trial conference. The third day of the hearing was changed and the new dates for the hearing were confirmed as June 15, 17 and July 13, 2015.

[36] On June 15, 2015, the matter returned to court for hearing. The court granted the Minister's application to terminate proceedings with respect to the older children, T.W. and M.D. with consent and on the basis that these children were old enough to self-protect. The court then heard in a *voir dire* the evidence respecting the application of S.M.D. for standing. The application for standing was dismissed. By consent of the parties, the evidence from the *voir dire* was admitted in its entirety in the contested hearing for permanent care of the children, A.W. and R.W. Evidence was taken on June 15, 17 and July 13, 2015. Submissions were heard on July 20, 2015. The court reserved its decision in the matter.

The Law

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

> **Purpose and paramount consideration**
>
> 2 (1) The purpose of this Act is to protect children from harm, promote the integrity of the family and assure the best interests of children.
>
> (2) In all proceedings and matters pursuant to this Act, the paramount consideration is the best interests of the child.
>
> …
>
> **Interpretation**
>
> 3 (2) Where a person is directed pursuant to this Act, except in respect of a proposed adoption, to make an order or determination in the best interests of a child, the person shall consider those of the following circumstances that are relevant:
>
> (a) the importance for the child's development of a positive relationship with a parent or guardian and a secure place as a member of a family;
>
> (b) the child's relationships with relatives;
>
> (c) the importance of continuity in the child's care and the possible effect on the child of the disruption of that continuity;
>
> (d) the bonding that exists between the child and the child's parent or guardian;
>
> (e) the child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs;
>
> (f) the child's physical, mental and emotional level of development;
>
> (g) the child's cultural, racial and linguistic heritage;
>
> (h) the religious faith, if any, in which the child is being raised;
>
> (i) the merits of a plan for the child's care proposed by an agency, including a proposal that the child be placed for adoption, compared with the merits of the child remaining with or returning to a parent or guardian;
>
> (j) the child's views and wishes, if they can be reasonably ascertained;
>
> (k) the effect on the child of delay in the disposition of the case;

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

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

(n) any other relevant circumstances.

…

Child is in need of protective services

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

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

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

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

…

(g) there is a substantial risk that the child will suffer emotional harm of the kind described in clause (f), and the parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;

…

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

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

…

Disposition hearing

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

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

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

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

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

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

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

> (i) an explanation of why the child cannot be adequately protected while in the care of the parent or guardian, and a description of any past efforts to do so, and
>
> (ii) a statement of what efforts, if any, are planned to maintain the child's contact with the parent or guardian; and

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

…

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

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

(b) the reasons for its decision, including

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

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

Disposition order

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

(a) dismiss the matter;

(b) the child shall remain in or be returned to the care and custody of a parent or guardian, subject to the supervision of the agency, for a specified period, in accordance with Section 43;

(c) the child shall remain in or be placed in the care and custody of a person other than a parent or guardian, with the consent of that other person, subject to the supervision of the agency, for a specified period, in accordance with Section 43;

(d) the child shall be placed in the temporary care and custody of the agency for a specified period, in accordance with Sections 44 and 45;

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

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

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

(a) have been attempted and have failed;

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

(c) would be inadequate to protect the child.

(3) Where the court determines that it is necessary to remove the child from the care of a parent or guardian, the court shall, before making an order for temporary or permanent care and custody pursuant to clause (d), (e) or (f) of subsection (1), consider whether it is possible to place the child with a relative, neighbour or other member of the child's community or extended family pursuant to clause (c) of subsection (1), with the consent of the relative or other person.

(4) The court shall not make an order for permanent care and custody pursuant to clause (f) of subsection (1), unless the court is satisfied that the

circumstances justifying the order are unlikely to change within a reasonably foreseeable time not exceeding the maximum time limits, based upon the age of the child, set out in subsection (1) of Section 45, so that the child can be returned to the parent or guardian. 1990, c. 5, s. 42.

…

Duration of orders

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

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

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

from the date of the initial disposition order.

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

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

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

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

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

…

Permanent care and custody order

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

> (2) Where an order for permanent care and custody is made, the court may make an order for access by a parent or guardian or other person, but the court shall not make such an order unless the court is satisfied that
>
> (a) permanent placement in a family setting has not been planned or is not possible and the person's access will not impair the child's future opportunities for such placement;
>
> (b) the child is at least twelve years of age and wishes to maintain contact with that person;
>
> (c) the child has been or will be placed with a person who does not wish to adopt the child; or
>
> (d) some other special circumstance justifies making an order for access.

Standard of Proof

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

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

Burden of Proof

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

Continuing Need for Protective Services

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

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

Substantial Risk

[41] The Minister must also prove that the children, A.W. and R.W., remain at substantial risk as it maintains that its position to seek permanent care is grounded, in part, in sections 22(2) (b),(g) and (ja) of the *Act*, each of which requires proof of substantial risk to the children.

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

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

[43] Though that case was in the context of an allegation of risk of sexual abuse which is not applicable in this case, it does makes clear that in this matter, the Minister must prove that there is a substantial risk of physical harm (s.22(2)(b)), emotional harm (s.22(2)(g)) or physical harm by chronic or serious neglect of the parent and that the parent refuses or is unable to consent to services or treatment to remedy or alleviate the harm (s.22(2)(ja)). The Minister does not have to prove that such harm will occur in the future, only that there is a substantial risk of such harm occurring.

Services to Promote the Integrity of the Family

[44] Under s.42(2) of the *Act*, I cannot grant an order for permanent care unless I am satisfied that less intrusive measures, including those promoting the integrity of the family under s.13 of the *Act*, have been attempted and failed or refused by the parent or would be inadequate to protect the children. But this must be seen in context as noted in *Nova Scotia (Minister of Community Services) v. L.L.P.*, 2003 NSCA 1, at paragraph 25:

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

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

> The starting point for the Agency's provision of appropriate services is the identification of areas of concern. The assessments by Melissa Keddie and Dr. Hastey were critical to this process. The fact that D.A.B. refused to fully cooperate with Dr. Hastey spoke volumes both as to his commitment to the

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

Prospects for Change

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

[47] In this case the time limit for A.W. is December 18, 2015, based on s.45(1)(a) of the *Act* which allows 12 months from disposition for him, as he was under six at the time the proceedings commenced.

[48] For R.W., the time limit is June 18, 2015, based on s.45 (1(b) of the *Act* which allows 18 months from disposition for her.

[49] The hearing was commenced on June 15, 2015 and, therefore, there was virtually no time remaining for R.W. and some time for A.W. At this time both timelines have expired though I have extended the timeline for the purpose of completion of the hearing and the provision of this decision.

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

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

Family or Community Placements

[51] Under s.42(3) of the *Act*, I must also be satisfied whether it is possible to place the children with a relative, neighbour or other member of the children's community or extended family. But as noted in *Children's Aid Society of Halifax v. T.B.*, 2001 NSCA 99, at paragraph 30 and 31:

> Justice Cromwell's words should not be interpreted as imposing either upon the agency or the court a statutory burden to investigate and exhaust every conceivable alternative, however speculative or fanciful. He spoke of reasonable family or community options. Neither the agency nor the court is obliged to consider unreasonable alternatives. Their statutory obligation is nothing more than to assess the reasonableness of any family or community alternatives put forward seriously by their proponents. By "reasonable" I mean those proposals that are sound, sensible, workable, well-conceived and have a basis in fact.
>
> The onus of presenting such a reasonable alternative must surely be upon the person or party seeking to have it considered. It is haR.D.ly the responsibility of the agency or the court to propose the alternative, provide the resources for its implementation, or shepherd the idea through to completion.

[52] I note that in this case the only alternative Plan of Care presented was put forward by R.D.'s mother, S.M.D., and it was rejected by me after a hearing in a *voir dire* on standing for S.M.D. The father, T.W., did not choose to present a Plan of Care at any point throughout the proceedings.

[53] Neither the father, T.W., nor R.D. put forward any other alternative Plan of Care or suggested to the court in the hearing any other possible alternative placement. No one else in the extended family or community offered a Plan of Care.

The Evidence

[54] I will now review the relevant evidence and then provide my analysis of that evidence in the context of the legislation, burden and standard of proof and in the context of the case law reviewed herein.

Section 96 Evidence

[55] At the commencement of the hearing of this matter, the Minister sought to introduce materials constituting the entirety of the prior proceeding evidence the Minister intended to call. This evidence consisted of pleadings and affidavits covering the period February 9, 2012 to March 20, 2015, Agency Case Recordings for the time period of July 27, 2011 to May 14, 2015, Child-In-Care Agency Case Recordings for each of the children, T.W., M.D., R.W. and A.W., for the periods March 1, 2012 to March 3, 2015 and various expert and progress reports.

[56] At the direction of the Court, the Minister has provided correspondence dated July 22, 2015 setting out the specifics of the prior proceeding evidence it wished the court to consider. I have set out below the most relevant portions of that evidence which I accept and incorporate it into my analysis for the purpose of this decision.

[57] Carolyn Scott provided evidence. Ms. Scott is a psychologist who provided counselling to R.D. as part of the services provided by the Minister in support of the family. At trial, Ms. Scott was qualified to give expert opinion evidence in the area of adult psychology with a particular expertise in addictions.

[58] In her evidence, Ms. Scott testified that, R.D. did not agree with the stated concerns of the Minister resulting in its intervention and did not believe the concerns were valid.

[59] Ms. Scott formed the impression that R.D. considered the use of alcohol and marijuana to be normal, while at the same time R.D. recognized that she needed to stop the consumption of alcohol and other substances as part of a plan to have the children returned to her care.

[60] Ms. Scott said that she had only had five sessions with R.D. but based upon that time, R.D. was only in the beginning stages of therapy, that it takes a while to develop a good therapeutic relationship and therapy would be required to assist R.D. in developing a lifestyle free from substance use and abuse before moving into the area of developing coping skills to compensate.

[61] Ms. Scott confirmed that the only issues raised by the Minister that were accepted by R.D. were those concerning substance abuse and the presence of individuals in her life who were inappropriate. Ms. Scott went on to provide her

view that she and R.D. had not gone on to the other issues respecting emotional dysregulation or attachment.

[62] When asked about dialectical behavioral therapy, Ms. Scott provided her view that such therapy can take up to a year to show effect. It was her opinion that treatment of 5 to 6 months would be required if a person were truly invested in the process and practicing the skills outside of the sessions. She would expect to see change within six months and major change within a year.

[63] Dr. Phillip Wornell, a pediatrician, provided a testimony at trial. Dr. Wornell was qualified to give opinion evidence in the area of general pediatrics. Dr. Wornell testified that he had seen A.W. on three occasions and as a result had generated a series of reports. His first appointment with A.W. in March of 2012 was as a result of a referral by the family physician. A.W. attended at his office with the foster parents who raised a number of concerns about A.W.

[64] When he met with A.W. for the first appointment, the child was 23 months old. Dr. Wornell formed the view that A.W. was developmentally delayed and suggested a referral to the feeding clinic at the IWK Hospital in Halifax. Based on his observation, he also suggested a referral to a speech pathologist and hearing assessment. He also formed the view that there might be presence of autism and referred A.W. to the regional autism team.

[65] When A.W. returned to his office and July 2012, Dr. Wornell observed that there was a substantial improvement in A.W. This was also confirmed by the foster mother who attended. There was much success in feeding A.W. solid foods and a greater variety was being introduced. He was doing so well respecting foods that the foster mother took the decision to turn down the referral to the IWK feeding clinic.

[66] A.W. was progressing in terms of communication. Although he was not talking, he was communicating non-verbally. He also demonstrated he could understand what was being said to him.

[67] Respecting his general behavior, this was improved by report of the foster mother but still a challenge. Based on his observations, Dr. Wornell confirmed the reports of the foster mother.

[68] By the final visit in November 2012, Dr. Wornell had formed the view that A.W. was progressing well in all areas of concern. He was feeding himself solid

foods, was saying some words and his behavior was becoming less challenging. Dr. Wornell no longer believed that A.W. was autistic, though he felt the referral to the autism team might be worthwhile. He did not need to see A.W. any further.

[69] Psychologist Valorie Rule also provided testimony. She was retained by the Minister to conduct a parenting capacity assessment. At trial Ms. Rule was qualified in the area of psychology with a particular specialization in parental capacity assessments, child development and needs, as well as addictions.

[70] Ms. Rule's psychological and parental capacity assessment, dated August 30, 2012, was admitted into evidence. In her *viva voce* evidence Ms. Rule provided her opinion that R.D.'s personality structure is extremely complex and was one of the most complex she had ever experienced in her career. Ms. Rule stated that R.D. was difficult to diagnose and that her personality structure is at the extreme end of reactive. As Ms. Rule explained in her *viva voce* evidence:

> She can be very kind, considerate. She did display an ability for empathy, um on occasion. Um, however, whenever there was a perceived stress by her or if she felt challenged or, um, if she felt threatened in any way-and that would be her perception of threat or challenge-she became extremely reactive, um, including verbal hostility, uh, physical-you know, getting up out of the chair and leaving and, um, you know, being very angry and in-your-face. And she's aware that she's like that.. And as T.W. says, that's her defense. And he's - I think he spot on. That's how she defends herself. She has a very thick wall around herself that's really hard to get through. Um, however, when she's like that she becomes reactive, which means she's got anxiety. Because anxiety is a response to threat. When somebody has anxiety or a strong emotional response, what happens is the brain doesn't need to function the way it normally does, and the chemical, um, balances of the brain change, um, hormones change in the body, and she loses her ability to think and problem solve. So during times of stress she becomes very reactive and actually reverts to a child -like state and basically has a temper tantrum like a child would have. She's aware of that. But I think she has a difficult time regulating her affect, like, her emotional state, she really has a difficult time doing that.
> …
>
> She's a very, very complex woman.

[71] When asked about R.D.'s level of insight as to why the children were in the care of the Minister, Ms. Rule provided her opinion that R.D. had "zero insight". As Ms. Rule testified:

> She felt that it was the agency's fault, that she was a perfect mom. .. She just-and I even asked her, you know, about what was going on and she--you know she was clear that it was everybody else's fault and that she had done nothing wrong and was in denial about some of the allegations that he made about her parenting and so on. So very little insight--I would see zero insight. I don't think I have ever said that before. It's pretty significant.

[72] When asked about the insight demonstrated by the father, T.W., Ms. Rule provided her opinion that there was very little insight on his part. He was protective of R.D. Ms. Rule believed that T.W. intuitively knew, but wasn't willing to say, what he really felt about the situation. He felt that R.D. was a perfect parent and the Agency was "doing her wrong".

[73] Respecting a mental health diagnosis, Ms. Rule indicated that this was very difficult to determine. She ultimately diagnosed R.D. with a personality disorder with cluster B traits which are maladaptive in nature. She testified that:

> Cluster B are the difficult ones. They are the most resistant to change. These are, um--there is four, actually four disorders in there. There is histrionic, antisocial, um, narcissistic…They are extremely resistant to change. R.D. doesn't meet a diagnosis for a specific personality disorder based on the data that I had acquired, but she does have maladaptive traits.… Borderline is the fourth one…The angry, um, hostile, aggressive, um, outward behaviors that are based in fear, rejection, depression, anxiety, that's the base of those disorders…As T.W. so aptly said, she has a wall around her that you'd have to punch through to get--to get to her, um, she is so well defended.

[74] When asked about whether this personality disorder might have an impact on the ability to parent, Ms. Rule testified:

> Absolutely…people who have difficulties regulating their emotions, if it's once in a while, you know, it certainly impacts on children. You know, if a mom yells at the child or, you know, may slap a child the odd time out of frustration or, you Know, blows up and has an argument with somebody

> once in a while, it certainly affects the child in that it's—it's shocking, it's frightening, but they get over it, because the rest of the time the mom or the dad is okay, and they're nurturing and giving them what they need to do all--to do all right. Unfortunately, with axis 2, particularly cluster B, it's chronic. It's the chronicity of the problem. It's that there are so few times when the parent is not in crisis or volatile or having an argument with somebody or whatever it is that's going on in--in their life-their life-is extremely chaotic--that they have few times when the parent is able to meet their emotional, and physical needs for that matter. So it's--it creates chronic stress. And so for children, when they're brought up with the parents or hyper--were always hyper-aroused, the child becomes hyper-aroused, and it's always waiting for the next time, um, waiting, waiting. Children tell me frequently they just wait for the next time…And it's disheartening, because it creates mental health problems for children, usually anxiety based, sometimes depressed based, but mostly they're in hyper-arousal, and, um, that will lead to personality difficulties, um, you know, it can lead to so many things, substance abuse for self, uh, self-soothing, certainly, academic problems, because you're in hyper-arousal your brain doesn't work properly, can't concentrate, so schoolwork suffers, and those kinds of things. So it has very long-lasting effects on children. But again, it's the chronicity of the problem, the constant hyper-arousal in a family that has a parent with cluster B.

[75] Respecting the importance of an ongoing therapeutic relationship with R.D., Ms. Rule testified as follows:

> And the key to good therapy is the relationship between the therapist and the client. You could be the best therapist in the universe and not do well in therapy because there might not be a click, like, a connection. The relationship is key. It will take a very long time for--in my opinion, for even the best therapist to develop a rapport with R.D., because of her reactivity and hostility. So to even get to a place where treatment could begin would take a long time.

[76] Ms. Rule endorsed dialectical behavioral therapy in a circumstance such as that found with R.D., but felt the therapy would be a significant challenge largely based on the importance of the relationship between R.D. and the therapist. She went on to testify:

> The other piece, I guess I'd like to add, is that R.D. doesn't think she has any problems. She believes she's a perfect parent and there is really nothing wrong with her psychologically. So if you don't believe there's a

> problem you have really nothing to fix. And so from her--that's why I was saying you have to look at it from her perspective. From her reality there is nothing wrong, it's everybody else who's wrong, and so she really has nothing to fix. So she really has no stake in doing therapy. And--and she may enter therapy at the insistence of others, but as the testing even shows, it's going to be probably very difficult to get anywhere. I think it would take a very long time. And personality traits are resistant to change anyway over time.…It's her way of--of protecting yourself. And we are asking her to take away her own protection, and to do that we'd better be ready to give her something else to protect yourself with that's healthier.

[77] Ms. Rule provided her further opinion that R.D. was diagnosed with alcohol abuse and cannabis dependence.

[78] When asked about R.D.'s prognosis for change, Ms. Rule provided her opinion that the prognosis is very poor.

[79] Kerstin Schauss also provided evidence. Ms. Schauss was retained by the Minister to initially observe access visits between R.D. and her three children, A.W., R.W. and T.W., with a view to improving the quality of the visits. At trial, she was qualified as an expert to give opinion evidence respecting child development with attachment and attunement.

[80] Early on, it was determined that the best way forward was for Ms. Schauss to observe access visits between R.D. and A.W., and this was agreed by R.D. Unfortunately, early in the process it became clear that this service would not be of assistance to R.D. or A.W. As Ms. Schauss testified:

> …The sessions became, um, what I described in my report later, not helpful for A.W. When I, um, started to challenge R.D. or basically--not to challenge her, just to give her recommendations or suggestions, which is the goal. I mean, you observe so long and then you have--you offer help to the parent…So the moment I started…to give her some input…it wasn't helpful for her at all.…Well, it wasn't helpful because she didn't, accept my recommendations. And--and that's okay too. And I have no problem that, uh, clients challenge clinicians or whatever. The concern I have was--the level of aggression, her tone of voice, and that we had a two year old child in that room, this--this was my concern.

[81] As a result, Ms. Schauss' services were terminated based on her advice to the Minister.

Current Court Proceedings

Carolyn Scott

[82] At the hearing in the current proceeding, the Minister called several witnesses including Carolyn Scott. She was qualified as an expert in psychology with a particular expertise in the treatment of addictions and psychological disorders. Her evidence was provided in the *voir dire* respecting the application for standing by R.D.'s mother. By agreement, the entirety of her evidence was admitted in the hearing respecting permanent care.

[83] Ms. Scott was retained to provide psychological and therapeutic services to R.D. and provided the services from November 5, 2012 through to and including May 6, 2014. It was her evidence that R.D.'s engagement varied throughout the course of their relationship.

[84] Ms. Scott testified that the primary focus initially of her work with R.D. was in the area of addiction recovery. Later, she added they focused on skills for managing R.D.'s personality traits using dialectical behavioral therapy (DBT).

[85] In taking this approach, she relied upon and accepted the diagnosis provided by Valorie Rule in her earlier work with R.D. in which Ms. Rule found that R.D. exhibited borderline, narcissistic and anti-social personality disorder traits and exhibited rigid thinking. It was Ms. Scott's evidence that DBT was the gold standard for treatment of personality disorders and while the best version of DBT therapy was not available in Nova Scotia, she was satisfied that the benefits of DBT could be provided to R.D. with the resources and experts available.

[86] The skills worked on with R.D. included distress tolerance, mindfulness, emotional regulation and interpersonal effectiveness skills. Ms. Scott testified that DBT would be a long-term process for R.D. and required motivation and engagement to be successful. She further testified that if there is no acknowledgement of the need for change, DBT would be far less effective.

[87] Ms. Scott testified that initially it was difficult to find a starting point with R.D. as she rejected the diagnosis provided by Ms. Rule. R.D. had limited insight

into both her conditions and the impact they had on herself and her family. While she appeared to understand that she was engaged in an unhealthy lifestyle with the use of alcohol and drugs and associating with people who use such substances, she likewise had difficulty in accepting the diagnosis provided by Ms. Rule and did not connect the parenting challenges and the challenges faced by her children with her own behaviors.

[88] It was Ms. Scott's testimony that with such limited insight respecting the diagnosis and parenting challenges, it would be difficult and was difficult to make gains with R.D.

[89] Ms. Scott testified that she did detect the smell of alcohol on R.D. during two sessions in April or May 2014, and in the latter session, R.D. described her involvement in a party at her house and a bar fight involving another woman. This provides some context for Ms. Scott's belief that R.D. lacked insight into her difficulties.

[90] Ms. Scott went on to describe a gradual decline in the therapeutic relationship concurrent with an increase in the maladaptive coping mechanisms of R.D. and in particular her return to substance abuse and difficult interpersonal relationships. She connected this to a declining community support.

[91] As noted earlier, Ms. Scott did acknowledge that R.D. exhibited some level of insight. For example, she sought out acupuncture as an adjunct to treatment for addiction but noted it was not effective as a single treatment. As well, at the beginning of the therapy, R.D. did rid herself of alcohol and cut off contact with people in her life that were associated with the dysfunctional lifestyle she was living in.

[92] Unfortunately, over time she regressed back into those lifestyle choices. As well, Ms. Scott notes that R.D. regularly indicated she would attend for Alcoholics Anonymous to assist in her care and recovery, but this was never done.

[93] It was Ms. Scott's opinion that over time R.D. felt overwhelmed by her stressors, lacking the ability to control her behaviors, disconnected with services and failed to exercise the skills learned in the DBT work.

[94] Unfortunately, Ms. Scott's professional relationship with R.D. ended after R.D. missed many sessions. Despite offering a closure session with R.D., R.D. did not take up that opportunity until she requested same just before the hearing.

[95] Ms. Scott agreed that she had a good rapport with R.D. but that in the fall of 2013 R.D. began "disintegrating". She did complete the homework requested to be done as part of the DBT work and completed work on the other technique of a model of empowerment.

[96] Respecting DBT, Ms. Scott confirmed that this began in January and February 2013 and that the work was not completed. By the fall of 2013, little progress was made.

[97] In discussing community support, Ms. Scott agreed that R.D. had engaged with the Women's Centre, was reluctant to engage with Alcoholics Anonymous, and had self-referred to Addiction Services. She had also engaged with services for acupuncture.

Ms. Scott said that she would not re-engage in counselling with R.D. as they both need to believe that the client is motivated for the right reasons. On this, she noted that R.D. had informed her that she was only engaged in the process to bring her kids back home and did not demonstrate a significant level of insight into her challenges or the reasons for her work with Ms. Scott.

Dr. Allister Webster

[98] Dr. Allister Webster testified. He is a psychologist and he was qualified by consent to give expert opinion evidence in the area of psychology including the diagnosis and treatment of psychological disorders.

[99] Dr. Webster was retained in or around June of 2012 by The Minister to conduct a psychological assessment of R.D. to determine her current levels of intellectual, emotional, and personality functioning to assist in determining an intervention strategy. Dr. Webster reviewed the background material including affidavits in the proceedings and interviewed and conducted standardized psychological testing on R.D.

[100] In his report letter to the Minister, dated June 6, 2012, he notes in part:

> R.D.'s presentation over several hours of clinical interviews did yield considerable information in terms of her background. Per her report, R.D.'s early childhood and adolescent home life featured little nurturance and considerable isolation. Friendships and education were not supported within the familial structure/culture. R.D. perceived her childhood position as that of servant and

> whipping post for the family. R.D.'s current level of anger, distrust of authority, and sense of disenfranchisement appear to be a natural trajectory given her childhood experiences.
>
> In terms of her associates and friends, R.D. appeared to have formed connections with others who have also appeared to have been disenfranchised…And, without exception, her acquaintances have left her with access to neither current nor positive sources of support.
>
> With minimal familial support, and no identified pool of friends lining up to support her, R.D. presented as one left to stand alone in the world. Her distrust of authority is reflected in her view of the Agency's involvement in her life. On interview, she appeared to feel threatened and she carried a possible sense of fear that manifested itself through outbursts that featured significant anger towards the Agency and its representatives. During our scheduled meetings, R.D. frequently appeared to assume the defiant stance of one who perceives herself as hunted and cornered; finally feeling that she has nothing to gain or lose, her tendency appeared to be one of squaring off against those whom she experienced as a threat. In my clinical opinion, it is this "stance of the damned" that represents one of R.D.'s biggest challenges if her goal is to move forward.

[101] Dr. Webster was later consulted in 2014 to determine if he could assist in repairing the therapeutic relationship between R.D. and Carolyn Scott, R.D.'s therapist, which had broken down in the fall of 2014. He recommended that R.D. meet with Ms. Scott to determine if there could be anything done to repair that therapeutic relationship. Failing that, he recommended a closure session with Ms. Scott and that R.D. determine if further therapy was something she wished to engage with. He explained that this would allow the person to understand what caused the breakdown to avoid the same problem in any new therapeutic relationship.

[102] Dr. Webster did confirm that his recordings in 2012 of R.D.'s recounting of her experiences as a child in her family were accurate.

[103] When asked if he would be willing to take part in therapy with R.D. if she had a closure meeting with Ms. Scott, Dr. Webster said he would not do so until he knew what had happened in the relationship with Ms. Scott. As well, though he is trained to provide DBT he noted clients sometime engage in "therapist shopping" in DBT circumstances. He had concerns about this and felt maintaining existing therapeutic relationships is valuable in DBT work.

Kerstin Schauss

[104] Kerstin Schauss, clinical therapist, testified. She was qualified as an expert to provide opinion evidence respecting the provision of therapy to children including theraplay, attachment-based interventions and trauma-based interventions.

[105] Ms. Schauss had been retained to work with all four children in this family and spent approximately three years in that work. She also worked with R.D. throughout, consulting with her, providing and obtaining feedback over those years.

[106] Written reports were entered into evidence, and she also provided *viva voce* evidence at the hearing.

[107] Ms. Schauss described her work with the family. Initially she was retained in 2012 and 2013 to work with the child, A.W., with the goal to provide him with a more secure attachment with R.D. Unfortunately the therapy was unsuccessful and was brought to an end. The failure of therapy at the time was attributed to resistance by R.D. to the therapeutic efforts.

[108] For example in her report letter of June 28, 2012, she says:

> During the last session, R.D. was abrupt and asked how long the sessions would continue. I asked her what she wished, and she said she wished it were over long time ago. She advised that she “sees no sense in coming here”. This discussion took place in the presence of A.W.. A.W. responded by pulling her hair aggressively and, when she took his hands off her hair, and she said, “I’ll kick your butt. You do not pull my hair.” She said stated this on 2 occasions, in a matter of fact tone. It is my conclusion that she interacts with A.W. in a manner that does not promote his healthy development in order to have her emotional needs met.
>
> R.D. has been consistently resistant to therapeutic suggestions, and insists that she knows best. It is evident that R.D. is not engaging in the intervention that was intended to help her enhance her relationship with A.W.. It is my opinion, that the current intervention is not meeting A.W.’s best interests and in fact, is harmful as he is exposed to his mother’s resistance to the process, verbal aggression, and her lack of motivation to make change.

[109] In 2013, Ms. Schauss began to work again with the family and described it is a different experience. R.D. was willing to receive suggestions and there was some level of success obtained. Specifically, R.D. was able to be more tuned into the needs of A.W. and this was a successful intervention.

[110] In describing her work with attachment and attunement, Ms. Schauss described attachment as a special bond between the child and a caregiver. It is the template for all future relationships with the child and is a critical component in the child's development.

[111] She described attunement as the ability of a person to put him or herself in the shoes of another and to be aware of and be sensitive to the needs of the other person. She described it almost as if the parent can read the mind of the child. It was in these areas that her work was focused with his family and in particular R.D.

[112] In preparation for therapeutic work, Ms. Schauss attended at the home of R.D. and observed A.W. and R.W. She described her observations of A.W. and R.D. as concerning. The fact the A.W. did not attend daycare was concerning as such an environment would be good for him. R.D. refused to place him there. When at the home she observed A.W. was seeking attention and R.D. was not able to recognize his needs.

[113] With respect to R.W., Ms. Schauss identified that she suffered from an attachment problem with her mother. Despite this, when Ms. Schauss recommended joint therapy for R.D. and R.W., the mother flatly refused to participate. Ms. Schauss said that it was R.D.'s belief that only R.W. needed to be fixed.

[114] Ms. Schauss testified that R.W. told her some of her history of trauma. She told her that her mother got mad at her and yelled at her, though denied R.D. hit her. She also described being ignored by her sisters. Ms. Schauss described this as trauma over time and what R.W. experienced over her life.

[115] R.W.'s current challenges were described as feeling unsafe. She is safe in her foster home but feels uncertain about her future and this makes her feel unsafe. Once a decision is made regarding her future, hopefully she can overcome her other challenges.

[116] Ms. Schauss testified that if R.W.'s needs are not met regarding safety and a meaningful connection to others, she is at risk and may look outside to inappropriate relationships. This is a concern particularly as she matures.

[117] Ms. Schauss feels her work with R.W. is not complete and must continue. She has no timeline to provide.

[118] Though they are no longer subject to these proceedings, Ms. Schauss did discuss M.D. and T.W. In doing so, Ms. Schauss described coming home form a good session with M.D. and M.D. picked up a cat. R.D. was in a good mood. When M.D. made an innocent comment to the cat, R.D.'s face became very frightening and she criticized M.D. for her innocent comment. M.D. was meek in her reply. It was Ms. Schauss's opinion that R.D.'s reaction was inconsistent with what had happened and this reflected the children's experiences of never knowing what to expect from R.D. If R.D. is in good cheer things go well, but there is an "atmosphere of fear" in that home.

[119] When asked about R.W.'s reaction when told that the Minister was seeking permanent care, she confirmed that R.W. was upset with the news. She was crying when she got in the car with Ms. Schauss and was very upset. She said her mom deserved a second chance and had done everything asked of her. She has maintained this view that she wants to return to her mother's care since then.

[120] Ms. Schauss also testified that R.W. does continue to enjoy her visits with her. She does not recall, but it is possible, that R.W. believes that if the Minister is no longer involved with family that R.W. would no longer see Ms. Schauss. She is prepared to continue to work with R.W. and believes R.W. needs that support.

[121] When asked about R.W.'s honesty, she acknowledged that R.W. is so afraid of the world she acts almost submissively and can assess what each person needs form her and tries to provide this. She does so to meet her needs. She is not lying so much as trying to meet her needs.

[122] She agreed that R.W. is fond of her siblings, particularly her brothers, and that if these relationships end that will have to be dealt with as it would be another loss and another hurdle or barrier to R.W.

[123] Finally, Ms. Schauss agreed that R.W. speaks highly of her father, T.W., and is excited to see him. Unfortunately, that relationship is not predictable or reliable as she does not know when she will see him.

Rachael Tree

[124] Rachel Tree, a clinical therapist with the Nova Scotia Health Authority, Addiction Services, provided evidence. She was qualified as an expert to provide opinion evidence regarding treatment of addictions.

[125] Ms. Tree testified that she had worked with R.D. for approximately three years in total. Her work began when R.D. self-referred to Addiction Services. R.D. identified alcohol and marijuana as concerns and described to Ms. Tree that emotionally stressful circumstances are triggers for her use of these substances.

[126] Addiction Services provided assistance to R.D. in the form of one-on-one counselling sessions, group therapy, relapse prevention and detox services. Ms. Tree provided one-on-one therapy and acupuncture treatments to R.D.. Though she was not directly involved, she was able to confirm that R.D. completed an in-house detox program in the fall of 2014.

[127] Ms. Tree agreed that any information she had was solely from the self-report of R.D. and she had no outside confirmation of R.D.'s addiction issues or any other behavioral or family circumstances.

[128] Overall, Ms. Tree described a positive therapeutic relationship with R.D. She was co-operative, engaged and open with information. Ms. Tree described that recently R.D. was using better communication techniques, improving her ability to engage in relaxation techniques and was prepared to reach out for support sooner.

Angela Ellsworth

[129] Angela Ellsworth testified. She is a psychologist who conducted a Needs Assessment with respect to the child, R.W., at the request of the Minister. By agreement, she was qualified to give expert opinion evidence in psychology with a particular expertise in child psychology, trauma informed treatment and assessing psychological cognitive and social needs of children.

[130] Ms. Ellsworth conducted her Assessment in September of 2014. This involved standardized psychological testing of the child, an interview of the foster

parent and a standardized survey of the foster parent respecting R.W. It did not include any interviews of the parents.

[131] Ms. Ellsworth testified that R.W. was very interested in how Ms. Ellsworth perceived and felt about her. She considered this important as it did not appear to be a natural behavior and suggested an insecurity with her responses. She was not secure and confident in her own performance.

[132] In her report of January 2015, she noted various intellectual and academic deficits of R.W. She also provided the following opinions:

> Behaviorally, R.W. reportedly struggles to navigate daily experiences with confidence and trust likely stemming from early trauma with the primary caregiver. She demonstrates a number of maladaptive coping strategies when experiencing heightened stress, poor social relationships extending to peer groups, and poor sense of self [e.g. self-esteem and locus of control] as she internalizes her experiences in a negative manner. With this, R.W. requires significant individual support and therapy in order to explore the impact of early and extended trauma, address self-esteem, and foster adaptive social skills and problem-solving abilities. However, in order to maximize the effectiveness of individual therapy, specifically relating to the trauma piece, R.W. needs to have a concrete understanding of her living situation as she believes the current situation is temporary and she will return to live with her biological mother. Without addressing this, trauma-based interventions will likely not be effective.
>
> …
>
> Collective reports from R.W. and her foster mother indicate R.W. has low self-worth, struggles with peer relationships, and tends to employ maladaptive problem-solving strategies when facing dilemmas. The combined stressors of trauma, poor social relationships, and poor school performance [especially from R.W.'s perspective] places her at greater risk of developing a mental health condition such as depression.

[133] Among her recommendations, Ms. Ellsworth includes trauma-focused, individual therapy as a strong recommendation to support R.W. She notes "she struggles to navigate the relationship she has with her mother and connecting to the long-term impact of parental choices".

[134] In her *viva voce* evidence, Ms. Ellsworth described R.W. as needing a great deal of support from her caregivers. This includes a great deal of patience with her needs. This would also require co-regulation, which describes how children learn

how to operate the world including dealing with stressors and that they look to adults to provide check-in and guidance in developing the skills required. This includes the foundational requirement that parents provide modeling of such behaviors in managing themselves and responding to stressors.

[135] Ms. Ellsworth found that R.W. tends to turn to maladaptive strategies to deal with stress such as pulling her hair or picking her skin. A supportive parent can offer support, acknowledge the stress and providing healthy ways to adapt to the stress. If there is no time spent on healthy co-regulation skills, she is more likely to demonstrate unhealthy coping strategies.

[136] Ms. Ellsworth found that R.W. did suffer from trauma. This trauma was experienced over time by being exposed to the stress of the mother and others over time in many ways which impacted R.W.

[137] R.W. would be an excellent candidate for individual therapy and trauma-based therapy. Such trauma-based therapy requires an attuned caregiver who is tuned into the behaviors and emotions of the child so re-direction, reassurance and support can be provided.

[138] Ms. Ellsworth felt R.W. needs a secure, safe and consistent environment where she feels safe so she can deal with her emotions and learn healthy behaviors. If her needs are not met, Ms. Ellsworth had serious concerns that R.W. could experience depression. She could also experience a great deal of conflict. As well, without a consistent and supportive environment her academics will suffer and she may be at risk to drop out of school.

[139] Ms. Ellsworth agreed that the trauma R.W. has experienced included being taken into care on two occasions and being in foster care, her poor self-image, being bullied at school, being sexually touched, change in her school and community, the loss of her grandfather and her academic struggles. She testified that some of R.W.'s stressors are normal and it depends on how her caregiver supports her with these that matters. In addition, there were other stressors from parenting and she is not sure how much co-regulation took place at those times. It is the response by the parent to misbehavior that matters and can contribute to trauma over time.

Heather Power

[140] Heather Power testified. She was qualified to give expert opinion evidence in the area of psychology with a particular expertise in the conduct of Parental Capacity Assessments (PCA) including parent and child relationships.

[141] She was retained by the Minister to conduct a PCA and psychological assessment on R.D., with a specific focus on R.D.'s ability to parent. Ms. Power filed the PCA, dated February 2nd, 2015, which was admitted into evidence by consent.

[142] In commenting on R.D.'s presentation, Ms. Power noted that she was co-operative but crass. Initially she was defensive and quite steadfast in her approach to life. It was difficult for her to be open and honest respecting her own self-assessment.

[143] In discussing the family of origin of R.D., Ms. Power expressed a number of concerns. There were a lot of difficulties in R.D.'s upbringing, including feelings of being isolated by the family, being treated as a scapegoat and not supported. R.D. described her family as "mean". It was Ms. Power's opinion that this family circumstance would impact on R.D.'s current ability to parent. It would affect her ability to form and continue healthy relationships and would present a difficulty for R.D. in getting close to others.

[144] Ms. Power testified that the attachment of R.D. with R.W. and A.W. was not secure and that she was unable to have a secure attachment with her children. She described the different types of attachment including a secure attachment which would provide an environment where child is feels supported and loved by the caregiver. It would provide the child with a home base to always return to in the event of any difficulties or challenges.

[145] In discussing R.D.'s attachment with the children and they with her, she described this is a difficult problem. She indicates that R.D. protects herself first and is guarded and defensive. This would make it difficult for her to recognize the children's needs. R.D. had no role models. She avoids intimacy and relationships and would struggle to meet the needs of the children.

[146] The needs of the children include both physical and emotional needs. Children need to know they are "okay" despite anything going on around them.

Ms. Power was particularly concerned about R.W. having a high probability that she will experience attachment challenges.

[147] Ms. Power reviewed the 2012 Valorie Rule PCA and the report of Dr. Webster, and found that her findings were consistent in large part with their observations and conclusions.

[148] Ms. Power diagnosed R.D. as meeting the criteria for Other Specified Personality Disorder namely “mixed personality features” of anti-social, narcissistic and borderline personalities. She also found R.D. possesses characteristics of Avoidant Personality Disorder.

[149] When asked about treatment, Ms. Power indicated psychotherapy would be required but that R.D. would likely be resistant to change. To be successful, in this circumstance a patient would need to have motivation and good insight and Ms. Power feels that R.D. has neither.

[150] For example, she noted the interaction by R.D. with mental health service providers in the past, including Ms. Scott and Mr. Webster, and noted that with Ms. Scott there was regression after initial successes.

[151] Given that R.D. expresses no goals for therapeutic intervention, Ms. Power did not know why anyone would conduct therapy with her as she showed no interest in such help.

[152] As to how her psychological circumstance impact parenting, Ms. Power explained that R.D. would be very entrenched in her views of parenting and would find it very difficult to change her behaviors.

[153] Given that she has traits of Avoidant Personality Disorder, this would include a fear of rejection and would avoid relationships as a means of self-protection. This can even include avoiding intimate relationships with her children.

[154] Ms. Power emphasized that R.D.’s mental health status was her primary concern. She described R.D. as self-focused and engaged in behaviors that were the opposite of healthy goals in parenting , as expressed at page 51 of her report:

> R.D.’s mental health status is considered to be a primary concern in this case. She evidences highly dysfunctional attitudes and behaviors that interfere with her day-

to-day functioning in a wide range of domains, and conclusion also made by Ms. Rule in her 2012 parental capacity assessment of R.D..

[155] Later in her report, Ms. Power comments as follows:

> With regards to R.D.'s personality structure, she presents as an individual who is highly defended and unable/unwilling to identify and acknowledge her personal deficits, which is likely to be the basis of her denial and minimization of the Agency's concerns. … Ms. Rule described R.D. as "extremely guarded", a "rigid thinker" and an individual with a "low frustration tolerance". The undersigned would concur with these conclusions…. R.D. can behave in aggressive and hostile ways towards others, has been described as non-amenable to feedback.
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> …
>
> On the positive side, she does present as an individual who can be caring towards others and is willing to help those with whom she aligns. Unfortunately, this does not appeared to consistently include her children; R.D. also presents as highly distrustful of others and yet seems to align herself with individuals who are unlikely to be able to meet her emotional needs. In fact, R.D. presents as so guarded that she engages in behavior that pushes others away (and deludes herself into thinking she doesn't need others), as opening herself up to the possibility of deeper, more emotionally satisfying relationships would require that she allow herself to be vulnerable, which has the unavoidable potential of causing emotional pain, with which she is ill-equipped to cope. In that sense, it could be said that R.D. is her own worst enemy as she engages in self sabotaging behaviors that exacerbate, rather than alleviate, her emotional wounds.

[156] Ms. Power goes on to describe how these maladaptive personality characteristics interact with her day-to-day functioning and how they have affected her history and her parenting of the children. She says:

> It would appear that R.D.'s personality structure limits her ability/willingness to make decisions that consider her children's needs before her own, as her actions seem to be primarily designed to self-protect. Moreover, given her own attachment disruption and resulting maladaptive personality characteristics, she seems to have little ability to empathize with the experiences of her children, as she feels that she has resolved the parenting issue she experienced during her own childhood in parenting her own children. However, it is the undersigned's opinion that, despite perhaps making efforts to provide a different environment for her children than she had growing up, she does not actually have a good understanding of her children's needs or how to meet them.

[157] Respecting treatment, Ms. Power provides her opinion, at page 54, as follows:

> Overall, it is the undersigned's perspective that the treatment efforts targeting R.D.'s maladaptive personality structure is unlikely to be beneficial for her at this time in consideration of her history of failed services as well as a substantial lack of insight. While therapy may her be her best option for improving her own long-term prognosis, undertaking treatment efforts because they are mandated (rather than because the individual actually believes treatment is useful or warranted and is prepared to undertake the significant emotional challenges of same) is unlikely to be beneficial.

[158] Respecting substance abuse, Ms. Power notes Ms. Rule's diagnosis in 2012 of alcohol abuse and cannabis dependence. She reviews the history of admissions by Ms. Dean regarding substance abuse. She goes on to note that the interventions provided and services afforded R.D. previously were not successful in alleviating the substance abuse concern. Specifically, at page 55 she notes:

> However, it is this assessor's viewpoint that R.D.'s abstinence from substances in recent months has, again, been primarily related to the Agency's involvement and is therefore externally motivated. It appears that she has engaged in addiction treatment only during periods of involvement with the Agency, and she has readily acknowledged that she does not believe she has a substance use problem. Specifically, she stated that she only attended detox in fall 2014 because the Agency believed her drinking was a problem, although she disagreed. Furthermore despite having attended addiction treatment in 2012, she engaged in ongoing substance use after that time and has even consumed alcohol since attending detox in fall 2014. R.D.'s hair follicle test results from summer 2014 reveal chronic use of alcohol by R.D. but, nevertheless, at the time of her interview with the undersigned she minimized her substance use by suggesting that the test results were not attributable to her alcohol consumption but rather to "cologne" products she reportedly uses in her hair. Moreover, R.D. reportedly acknowledged to her counsellor, Ms. McKay, that she has used alcohol since attending detox, and a stated that she may use alcohol again in the future and she does not know whether or not she will use marijuana.
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> …
>
> R.D. has used substances when caring for her children in the past, she has reportedly exposed her children to other substance users and parties in her home where there was substance use, she was arrested on an alcohol-related charge in

> spring 2014, and she has attended therapy smelling of alcohol: based on all of this evidence, it is the assessor's impression that, even if presently abstinent, R.D. has (or at least has exercised) minimal control over her substance use and is limited to no insight into her substance problems (despite treatment) and therefore is likely to return to substance use in the future, which would interfere with her ability and willingness to identify and provide for the children's needs. This risk is likely to be particularly high without the presence of external inhibitors such as the Agency's involvement.

[159] In discussing R.D.'s parenting, Ms. Power notes, at page 57:

> As discussed above, it is clear that R.D. has chronic psychological maladjustment that contributes to an unrealistic view of herself and of the world around her. She has substantial difficulties identifying and meeting her own needs in a healthy way, and these difficulties have undoubtedly impacted her parenting, as she appears to be unable to empathize with the children and to appropriately identify and meet their meets (sp).
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> …
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> While access documentation reveals some positive parenting behaviors on the part of R.D., information also suggest that R.D. favours A.W and that she is engaged in problematic behaviors towards R.W. in particular. It appears that R.W. was treated as the "scapegoat" of the family and that R.D. blames her for the problems in the family and the family's involvement with the Agency, rather than recognizing her own substantial contributions to same. Moreover, she was sometimes unable to effectively manage her own negative emotions during visits.
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> …
>
> Per Ms. Schauss, these children's needs have not been met by their mother and, on the basis of all information reviewed during this assessment regarding R.D. and the children, the undersigned would concur. This deficit places all of these children at risk for future behavioral, emotional and social difficulties. In fact, it appears that R.W. and M.W. both have substantial social deficits at this time and that all of the children are functioning at a younger than expected emotional level. There is no doubt that the difficult is a related to the environment in which they been raised and that further exposure to this environment without remediation is only likely to exacerbate the problems.

[160] When discussing the prognosis for change, Ms. Power says:

> …it is this assessor's opinion that R.D.'s prognosis for sustained, positive change in both the short and long terms is considered to be poor. It is anticipated that her psychosocial, including parenting, deficits will continue to cause problems in her day-to-day functioning that these deficits will continue to negatively impact the children unless they are otherwise protected.

[161] Ms. Power recommends, among other things, that R.W. and A.W. be placed in the permanent care and custody of the Minister with a plan for adoption.

[162] Ms. Power agreed that she did not interview or observe the children's father, T.W. Likewise, she did not interview any of the children and that she put took part in one two-hour observation of the family. She did not participate in any one-on-one observations of R.W. with R.D..

[163] When asked why she did not interview the children, Ms. Power noted that Ms. Schauss described the children as guarded and defensive and were protective of their mother. Moreover, she felt she did not need to as she had appropriate third-party records respecting the children.

[164] When asked if the completion of a detoxification and rehabilitation program would be a positive sign for R.D., a fact which was confirmed in other evidence, Ms. Power agreed it would be a positive sign. She also agreed that any plan by R.D. to return to school and completion of any education program would likewise be a positive indicator for her.

[165] Ms. Power agreed that that the interruption or disruption of sibling relationships among the four siblings would be important to consider in any plan to place R.W. and A.W. and permanent care after having the other two children returned to the mother's care. She described it as a cost-benefit analysis.

Shalyn Murphy

[166] Shalyn Murphy is the Adoption Social Worker for the Minister and she provided evidence in an Affidavit, sworn June 4, 2015, and her *viva voce* evidence at the hearing.

[167] In her affidavit she confirm that there are 23 prospective homes that could take a sibling group such as A.W. and R.W.. She could not say how many would

be open to an openness agreement permitting contact with R.D. and the children's siblings.

[168] She did testify that openness is always considered as part of a review of the best interests of the children and the Minister would seek this if appropriate. Most adoption homes are willing to engage in some form of openness but cannot guarantee this for these children.

[169] She says that if access is granted after permanent care has been ordered, it would significantly reduce the pool of potential adoption homes.

Shannon MacLeod

[170] Shannon MacLeod, Agency social worker for R.D., provided evidence. She both testified at the hearing and file four affidavits in this proceeding.

[171] In explaining why the children were taken into care on July 7, 2014 Ms. MacLeod says that this was done for several reasons. She had received a report from Kerstin Schauss, who reported that when she went to the home of the family during the week of May 7, 2014, A.W. was outside and was unsupervised. A.W. ran in front of her car, she had to slam on the brakes to avoid hitting him and when she went into the home, she found R.D. laying down inside stating that she was unwell. When Ms. Schauss addressed the behavior of A.W. she says that R.D. replied that this is what A.W. does.

[172] On interviewing R.W., Ms. MacLeod reports she confirmed this concern respecting R.D. R.W. also added that her mother told her the Agency will be out of their lives in June and she didn't want this because she liked seeing Ms. Schauss.

[173] Ms. MacLeod says that R.D. continued to report financial difficulties despite being provided with significant financial assistance by the Agency. In late May 2014 R.D.'s power was cut off due to nonpayment and she continued to report she had no food in the home.

[174] In early June 2014 Ms. MacLeod met with R.D. who reported that she had stopped taking medication for anxiety and depression because it made her tired.

[175] Ms. MacLeod testified that after an anonymous referral was received, further investigation took place. The second interview of R.W. took place in early June 2014. R.W. reported that her mother and friends drank and smoked when the children went to bed. She also reported that her mother was violent towards her, including slapping her mouth and hitting her in the leg with the broom. At that time she showed Ms. MacLeod a bruise on her right thigh. R.W. also reported that R.D. slapped her brother A.W. in the leg.

[176] When R.D. was interviewed, she denied the allegations and stated that she believed that R.W. lied and she did not understand why. She wanted R.W. to attend therapy. When the child, T.W., was interviewed on the same day, he denied physical discipline by R.D. but did indicate that R.D. sometimes drank with her friends.

[177] Ms. MacLeod reports that she received a voicemail from Carolyn Scott, psychologist providing services to R.D., saying that R.D. had attended therapy on May 6, 2014 smelling of alcohol. This was the second time that this had occurred.

[178] The same voicemail from Ms. Scott indicated that R.D. was arrested the previous Saturday for public intoxication and spent the night in jail. She was reported to have been in a fight with another woman. Ms. Scott reported that R.D. had said that this woman was going to get it or that she would have someone else do it.

[179] Finally, the same voicemail message for Ms. Scott indicated that R.D. had reported that the child, R.W., was being a brat and she needed therapy or she would beat her.

[180] When asked about this, R.D. denied drinking a lot but did acknowledge the arrest for public intoxication.

[181] Following a risk management conference in which the Agency determined it could not terminate the proceedings of the next hearing, Ms. MacLeod says she met with R.D. at her home, explained the concerns and during this meeting R.D. was upset and stated all of this was due to R.W.

[182] Ms. MacLeod says that there was some delay in having the child, A.W., seen by early intervention services which had previously been terminated due to R.D.'s non-attendance with the child. The Agency had been encouraging R.D. to enroll

A.W. in daycare for several months to assist with socialization but R.D. had not done so.

[183] In June 2014 Ms. MacLeod arranged for R.W. to attend a day camp for three days a week and this was discussed with R.D.. Despite the earlier agreement, R.D. refused to allow R.W. to attend the camp if transportation was done by an Agency worker.

[184] Ms. MacLeod testified that Ms. Scott provided a progress report dated June 25, 2014 which recommended termination of therapy sessions for R.D. due to lack of active participation for some time and a lack of interest.

[185] Ms. MacLeod testified that due to the concerns of the Agency respecting substance abuse, hair follicle testing was arranged. A sample collected June 25, 2014 tested positive for cannabinoids and alcohol. The concentration of alcohol in the report indicated strong evidence of frequent excessive alcohol consumption over several months prior to hair sampling.

[186] A risk management conference was convened on July 8, 2014 and the Agency determined the children were in need of protective services and could not be protected in R.D.'s care due to concerns respecting her ability to cope with raising her children, substance abuse, lack of cooperation with services, recent disclosures of physical abuse and the risk of physical and emotional abuse. It was decided that M.D. would not be forced into care but would be provided with the choice to return to her foster placement or remain with R.D..

[187] Ms. MacLeod testified that when she arrived with a colleague and a police officer at the home of R.D. to take the children into care, the door was answered by a youth known to be in the care of the Minister and who was frequently gone without permission from her placement. R.D. was not home but arrived shortly thereafter.

[188] Ms. MacLeod says that R.D. refused to accept any responsibility with respect to the concerns raised by the Agency and refused to provide information respecting the location of the children. R.D. continued to escalate her behaviors and stated, among other things, that if Ms. MacLeod thought she was suicidal before then she should wait and see.

[189] R.D. refused to provide any location information for the children, they were not located at the residence, R.D. refuse to take a notice been served on her and closed the door on the workers.

[190] Another worker, Ms. Sutherland, attended at R.D.'s residence on the same evening and met with R.D. for several hours in an attempt to locate the children. In the course of the conversation, R.D. said she would not allow her children to be taken into care again and that she could be charged or taken to jail before she would allow that to happen.

[191] Ms. MacLeod said that R.D. did not appear to understand the concerns of the Agency and a particular the various indicators of alcohol abuse. She attributed her stress levels to the involvement of the agency and the child R.W. and her behaviors. She blamed the Agency and Agency workers.

[192] Ultimately Ms. Sutherland was able to persuade R.D. to place a call to the person who could bring the children to the home and she did so. R.D.'s mother eventually arrived with the children.

[193] Ms. MacLeod reports the conversation between a casework supervisor Ms. McDougall and R.D. on October 9, 2014 in which R.D. reported that she was very stressed out after getting the children to school that day and she went back to bed. She reported she left her detox program that Monday because the father, T.W., refused to stay with the children any longer and that because she left early, the last two days had been very rough on her. All she wanted to do was to smoke cigarettes, use marijuana and drink alcohol.

[194] R.D. reported that sometimes she felt so frustrated she felt like shooting herself in the head. She did, however, sign up for another detox program beginning in October.

[195] Ms. MacLeod says she spoke to R.D. on October 9, 2014, and R.D. reported she cannot do this anymore, and was upset and crying. She said she was overwhelmed and felt like giving up. She said if she had a gun she would blow her brains out. She spoke of attending a pain specialist on October 10 in Truro but income assistance would not pay for a cab. This was despite several conversations she had with income assistance and Agency workers in which they attempted to work with her to obtain those funds order to organize an appointment at a local pain clinic. R.D. refuse to work with income assistance at that time.

[196] R.D. reported that she had signed up for a parenting program at the Women's Centre and looked into AA meetings. She reported in a call with Ms. MacLeod the same day that she would be attending the detox program on October 14.

[197] Ms. MacLeod reported on two telephone conversations with R.D. on October 14 and 15 in which they discussed R.D.s access with the children when she was attending the detox program. In these conversations R.D. became very upset, at one point threatening to cease all services if she didn't get the access when she wanted it. When this was arranged at the home of her mother, she refused to attend as she has not been there in the two years since her father passed away. She was upset and yelling during this call. Because an agreement could not be reached, the visit was cancelled and when R.D. was informed by telephone, she yelled, screamed and cursed at Ms. MacLeod throughout call. She at one point said "I want my visit or all hell is going to break loose". She threatened that the Agency would regret her decision and hung up.

[198] Ms. MacLeod says following the October 15 telephone call with R.D., she received three voice mails from R.D. which were abusive, including cursing, yelling screaming and repeatedly stating "I want my visit."

[199] Ms. MacLeod admits in her viva voce evidence that she mistakenly stated in her affidavit that R.D. did not complete her detox program. In fact, she confirmed that R.D. did complete her detox program in the fall of 2014.

[200] Ms. MacLeod testified that A.W.'s foster parents reported to the Agency the following respecting A.W.; following access visits with his mother A.W. was beating his head on the headboard and rocking back and forth in a self-soothing manner; he had woken up with nightmares and was sobbing; A.W. tended to be negative following his return from access visits; following one such visit with R.D., A.W. had a bowel movement in his pants; in December 2014 A.W. had a bowel movement in his pants when he learned he would have an access visit with R.D. the following Monday.

[201] Ms. MacLeod says that in May 2015 two of R.D.'s brothers passed away. Ms. MacLeod says that she offered to be present after her first brother died when R.D. told R.W., but R.D. declined. R.W.'s foster parents expressed concern about how she would be told and I agreed to discuss it further with R.D.

[202] Ms. MacLeod says that the next day she learned that R.D.'s second brother had also died. On that day she met with Ms. Schauss who knew of the deaths and expressed concern about R.D. delivering the news appropriately to the children.

[203] When Ms. MacLeod contacted R.D. to discuss this, she told R.D. she would attend at the access visit that day to assist in supporting the children when they learned their uncles had passed away. R.D.'s response was that the Agency did not support her in telling the children when her father had passed away. She became agitated, cursed, swore and yelled at Ms. MacLeod. She claimed that MacLeod was harassing her and that she had no right to attend the access visit. R.D. continued to yell and curse and told her she better not come or else. R.D. continued to escalate her emotions, repeatedly said that Ms. MacLeod better not show up at the visit, that there would be trouble if she did and that if she thought R.D. was mad now then she should just wait.

[204] Despite giving her half an hour to calm down before calling back to discuss the matter, Ms. MacLeod testified that R.D. was still upset in the second call, claimed the death of her two brothers was no big deal and that the Agency was making a bigger deal than it really was. Ms. MacLeod says that she explained that R.D. needed to calm down and if she did not allow her to attend the visit the visit would have to be cancelled. R.D. then threatened again that there would be trouble if this occurred and if the access visit did happen she would not tell the children about the uncles' deaths. When asked how the children would find out, R.D. replied that R.W. was on the internet and she probably find out through Facebook. She said she would rather R.W. find out through Facebook than allow Ms. MacLeod to attend in support of R.D. telling her. The visit was cancelled.

[205] That cancellation was followed up a telephone message left by R.D. with Ms. MacLeod in which she stated "see I told ya you never call me back like always. Ya f***ing better put my visit back on I'm telling you right now."

[206] Ms. MacLeod explained that R.D. was resistant to family support services offered by the Agency after the first contested hearing. R.D. felt she didn't need support, that she knew how to parent and she was not co-operative. This continued to be R.D.'s attitude towards services. She was resistant, not consistent, missed appointments and lacked follow though.

[207] When asked why the Agency was asking for an order of permanent care, she testified that the concerns continued with R.D. around her ability to demonstrate insight, follow through on the services, and her ability to meet the physical and

emotional needs of the children and all of this was viewed by the Agency in the context of her considerable history and lack of progress.

[208] When asked if the father, T.W. had been considered for placement, she replied that he had not as he had not put forward any plan for the children.

[209] She testified that the Agency felt that it was time to seek permanent care now as there had been over 3 years of involvement and that the children need stability, security and a sense of belonging. She felt that if temporary care was continued it would harm the children as R.D. had shown no insight or ability to change.

[210] Ms. MacLeod testified that the plan was to place A.W. and R.W. together for adoption if permanent care was ordered. The Agency believed that there were no further services to be offered within the timeline that might help.

[211] Ms. MacLeod agreed that in May of 2014, about two months prior to the children being taken into care, R.D. did ask for therapy for R.W. and that this was a positive indicator for R.D..

[212] Ms. MacLeod agreed that in May of 2014 R.W. told her that that R.W. didn't want to lose contact with Ms. Schauss through the Agency and therefore didn't want the Agency out her life. She also confirmed that about two months later R.W. told her about physical abuse by her mother. Ms. MacLeod says that when such an allegation is made she has to take it seriously. It was during this time R.D. was not following through with services and Ms. Scott was reporting problems with R.D. This allegation was also similar to the earlier reports of abuse with a broom. She agreed that the other older children had not disclosed any physical abuse by R.D.

[213] Ms. MacLeod also agreed R.W.'s foster parents indicated that R.W. is not always truthful, lies a lot and tells people what they want to hear. She also agreed that R.W. had told another worker that some things had said about her mom were not true and things had gone too far.

[214] As well, R.W. had said she wanted to go back home, not be in permanent care and would not consent to an adoption. She confirmed that R.W.'s consent would be required for such an adoption. She also confirmed that this statement by a child is not at all unusual.

R.D.

[215] The evidence of the respondent mother, R.D., is contained in five affidavits sworn and filed by her. Further, she provided viva voce evidence at the voir dire and the hearing.

[216] It was R.D.'s evidence that she had been using the services of the Pictou County Women's Centre from January 2013 to today. This was confirmed by correspondence and testimony from Karen MacKay, support worker with the Women's Centre.

[217] R.D. confirmed that she had not been attending Addiction Services until July of 2013 but did engage Addiction Services since then. This was confirmed in the evidence of Rachael Tree.

[218] R.D. acknowledged missing appointments with Carolyn Scott, claiming these missed appointments were due to illness, both hers and the children's, weather and road conditions. She claimed to be prepared to continue with the therapy. She says she had sought a closure session with Ms. Scott but this had never been arranged.

[219] Respecting her relationship with the father, T.W., she indicated that she was separated from him in 2013 but that they had since reunited. He is supportive of having the children returned to her care.

[220] R.D. explained she is under the care of her family doctor, and she was prescribed medication for stress.

[221] In her July 28, 2015 affidavit R.D. admitted she consumed some alcohol, maintaining it was limited to a few beers after 10 PM on Monday nights. She maintains this is when the children were in bed. She did agree to cooperate with a hair strand test.

[222] She also admitted to smoking "a couple" of marijuana joints per week. She maintained this was done after 10 PM, the children were in bed and never done in the presence of the children. She maintains the marijuana helps to slow down her brain function "so that I can focus on a few tasks instead of thinking about many tasks at once". R.D. denies and use of alcohol or drugs since attending and

successfully completing a detox program and follow up program in the fall of 2014.

[223] Throughout her evidence R.D. absolutely denied any physical discipline of any of the children and denied physically harming them in any way. She maintained her belief that the child, R.W., had made untrue allegations of physical abuse against R.D. in order to continue the involvement of the Minister and specifically so R.W. could continue her relationship with Ms. Schauss.

[224] R.D. denies threatening to beat R.W. She maintained she told Carolyn Scott she had asked the Agency for help with her and they did nothing.

[225] R.D. notes that she had discussed her request that R.W. had therapy respecting her disrespectful behavior towards R.D.

[226] R.D. denies that the child A.W. was on the street when Ms. Schauss attended the home and she denies saying that she was feeling unwell, claiming rather the children had told her to relax.

[227] She denied the allegation that she was laying on the couch and neglecting the children but rather she said she would lay on the couch with the children or sit on the couch with them as well. While R.D. denied virtually all of the allegations made in the affidavit of Ms. MacLeod dated July 11, 2014, some are particularly worthy of note.

[228] R.D. admits to one occasion when she smelled of alcohol during an appointment with Carolyn Scott. She maintained she had two or three beer the evening prior after the children were in bed. She denies any other occasions of smelling of alcohol in the presence of Ms. Scott.

[229] R.D. denied being arrested for public intoxication and maintained was for disturbing the peace. Other evidence makes clear that she was indeed arrested for public intoxication despite that denial.

[230] R.D. denied that she refused or denied needing help from the Agency and cited her obtaining vouchers from the Agency as evidence that she was seeking assistance.

[231] Respecting the allegation that she did not take the child A.W. to an early intervention appointment in June 2014, she maintains this was because she did not know where the appointment was. She says she spoke to someone at that office and

attended for the appointment on June 25, 2014. Correspondence from Lis Smith, Executive Director of Pictou County Early Intervention, dated June 22, 2015, explains the delay and that it was the fault of R.D.

[232] R.D. maintains that she was an active participant in counselling with Carolyn Scott and took it seriously. She admitted she had not engaged with many community supports and that was "never my type of thing".

[233] She maintained that she continued to want to meet with Carolyn Scott. She explains that a scheduled meeting for November 2014 was cancelled by the Agency. She maintained she was prepared to do counselling with Allister Webster or another counsellor and explained she had participated in a PCA with Heather Power.

[234] Since returning to her care, R.D. maintained that M.D. and T.W. are doing very well, explaining that M.D. is participating in counselling with Ms. Schauss which was going well and would continue.

[235] She and the father, T.W. are together and things are going great. He is currently off on sick benefits, and when he works in trucking he can be away for a few weeks at a time. Respecting access, she maintains he attends the visits or calls and describes his relationship with the children as "awesome".

[236] She explained in some detail her living arrangements and her financial circumstances and maintained both were appropriate to support all the children.

[237] She discussed the main support people in her life being her mother, S.M.D., the father, T.W., and Ms. McKay from the Women's Centre as well as Rachel Tree from Addiction Services. She also identified a good friend who provides support to her.

[238] R.D. said that she has been accepted into the Adult Learning Program for September.

[239] R.D. reviewed her plans for the return of A.W. and R.W., discussing medical and eye care, dental care, child care and activities planned for them. She confirmed that she has spoken to Big Brothers Big Sisters regarding T.W. becoming involved with that organization.

[240] She had arranged for urine and blood alcohol testing and drug testing through her family doctor and the results of that testing filed in this matter indicate

that no drugs or alcohol were detected in her system on the date of the tests of June 11, 29 and July 6 of 2015.

[241] Despite a reference to a threat of self-harm in the records of Addiction Services, R.D. maintained she has no intention of doing any harm to herself or others.

[242] In the *voir dire*, R.D. indicated her primary position is that she seeks the return of A.W. and R.W. to her care. In the alternative, she supported the plan of her mother to have the children placed with her.

[243] Most significantly, she testified that she had a good relationship with her mother. She did say that there were bad days in that relationship when they disagreed over the kids on occasion. She testified that her mother was at her house every day.

[244] R.D. described her mother as being a support to her, that she was there for her both financially and emotionally. Her mother provided parenting advice to her sometimes and she was comfortable receiving that advice. She had no negative comments to make about her mother’s parenting.

[245] In cross-examination R.D. was questioned about whether she had made very critical comments about her mother to various service providers and to workers of the Agency. She denied absolutely that she ever made any negative comments about her mother and in each and every circumstance maintained that the service provider or the Agency worker had either lied or inaccurately recorded any comment she made. When asked if she was saying that Dr. Webster had lied about his recording of her comments about her family of origin, R.D. replied that she had never said anything about her childhood growing up to anyone, ever.

[246] Without going into detail respecting each recording of negative comments that she made, the evidence is clear that R.D. had done so repeatedly to Dr. Allister Webster, Valorie Rule, Shannon MacLeod and Heather Power. These comments ranged from statements that she would never want her kids to reside with her mother to maintaining that her childhood was one of neglect and emotional hardship. She described her home is lacking love, support or caring. She maintained that her parents treated her differently from her siblings. She reported physical abuse with a belt as punishment. She referred to her mother as a “bitch”.

[247] The evidence is also very clear that R.D. had discussed her family of origin extensively with Val Rule, Heather Power, Carolyn Scott and Dr. Webster.

[248] R.D. also claimed that, in the approximate 3 years of Agency involvement, she had not read any of the professionals' reports, or had at most read only a few. She denied that she had read the PCA of Ms. Rule or the reports of Dr. Webster. R.D. also claimed that, despite asking for R.W. to get help, she only read some of the Child Needs Assessment.

[249] When her evidence was given in cross-examination in the *voir dire*, it was apparent that R.D.'s emotional regulation began to collapse. She became more and more strident, emotionally animated, and more confrontational. Her positions became more strident and difficult to understand in the face of the clear and overwhelming evidence before the court.

[250] In her direct evidence at the permanent care hearing following the *voir dire*, R.D. provided further evidence. Respecting her statements in the *voir dire* that the various experts had lied in their reports regarding her statements about her family of origin and other issues, R.D. claimed that her memory came back to her, she accepted that she did say all of these things and they were accurately recorded. She maintained that there were so many documents and papers to read that caused her difficulty.

[251] She testified that she saw Carolyn Scott , took part in DBT and a 16 step program to deal with addictions and other issues and she claimed that her work in DBT was helpful. She explains that the closure appointment with Ms. Scott never took place despite her calling a few times to arrange it. None is scheduled to date. She maintained that she is still prepared to meet with Ms. Scott.

[252] R.D. denies absolutely any physical discipline of the children. She maintains that she uses "timeouts" of 5 to 15 minutes on the couch and if the child is nasty, she sends the child to the room.

[253] Despite the evidence of Ms. Schauss that R.D. flatly refused to take part in therapy with R.W., R.D. maintained that she doesn't recall this, that she may have said so but that she really would have been open to this. She felt that R.W. needed one-on-one therapy instead.

[254] R.D. maintained that she a plan for A.W. to attend daycare and it is arranged for the fall of 2015. She had registered him for daycare in 2014 but the children were apprehended before he could attend.

[255] For T.W. she testified that she had made arrangements for him to attend Big Brothers in September 2015. Likewise, she has plans for R.W. to attend Big Sisters but can't do so until she is placed in her care. R.D. described that she has a really good relationship with T.W. She says she always knows where he is that he gets along "awesome" with his siblings.

[256] R.D. explained that M.D. has finished high school and has applied to attend Community College.

[257] Respecting R.W., R.D. maintains that she has a really good relationship with her but they have their ups and downs and that R.W. is different from the other children.

[258] Respecting A.W., she describes her relationship with him as "awesome" and his relationship with the other children as "awesome". When asked about his rocking back and forth, she describes that he would get on his hands and knees and rocked to sleep and occasionally lightly hit his head on the headboard in which case he would move back.

[259] Respecting her financial status, she reports that she receives income assistance, HST rebate and the Child Tax Benefit for TW. She maintains that the father and her mother can assist her financially and that all of her bills are up-to-date.

[260] She maintains the only people living at the home with her are T.W. and M.D. as well as the father T.W., that she has no parties at the house and maintained she will have a quiet life with the children.

[261] When asked why she believes the Agency was involved in her family's life, she described that her parenting was not effective, that she had used drugs and alcohol and she was not there for her children. She claimed to know that she needed help with her mental health.

[262] R.D. maintained she had only read some of the PCA of Heather Power by the time of the *voir dire* but now had read it all. She again claimed there were so

many papers all along there were simply too many to read in the approximate three years of the Agency involvement.

[263] Respecting the negative comments about her mother, she maintains that her mother should still be part of the children's lives despite his earlier statements because her mother had changed.

[264] R.D. flatly denied the diagnosis of personality disorders as reported by Val Rule and Heather Power. She admitted that since her relationship with Ms. Scott ended in the summer of 2014, she had received no further treatment for her personality disorder.

[265] When asked about her plans to obtain services for R.W. should she be returned to her care, R.D. agreed that she had made no calls or taken no steps to line up or confirm services for R.W. This included any contact with Ms. Schauss to continue that work.

[266] Respecting A.W. and daycare, R.D. agreed that the Agency had recommended that day care would be important for him when terminating the proceedings in June 2013. When asked why she waited nine months to register him in daycare, she maintained she didn't understand it was important "right off the hop". When asked why he was not registered for school at the age of five, she maintained that he was not ready but she had no qualification to assess that.

Analysis

[267] In analysing the evidence I must also consider the applicable provision of the *Act* and the cases that have interpreted those provisions. Below is that analysis.

Preamble

[268] I have considered the preamble to the *Act* which includes a reference to the children's right to the least invasion of privacy and interference with their freedom which is compatible with their own interests and that children have a sense of time that is different from that of adults. I consider that children are entitled to protection from abuse and neglect and that their rights and fundamental freedoms

are no less than of that of adults. I also keep in mind that parents have a responsibility for the care and supervision of the children and those children should only be removed from their care when all of the measures are inappropriate.

Best Interests

[269] I also keep in mind the direction in Section 3 of the *Act* respecting determination of the best interests of the children. I clearly must consider the best interests of R.W. and A.W. in this analysis and I keep in mind throughout the provisions of Section 3 (2). Not all of these factors are to be given equal right weight in each case and are to be seen in the context of the circumstances of each family. For example, consideration in this circumstance of a child's cultural, racial and linguistic heritage is not applicable. Nor is the reference to religious faith.

Need for Protection

[270] The Minster is seeking an order of permanent care pursuant to Section 42(1)(f) of the *Act*. As noted earlier, the burden of proof is with the Minister to prove its case on the balance of probabilities.

[271] The Minister must first prove that R.W. and A.W. are children in need of protection. The evidence that they are still in need of protection is substantial.

[272] The identified risks involving the children in 2012 at the time of the first intervention by the Agency and when the children came into care again in 2014 remain largely the same today. R.D.'s drug and alcohol use were concerns then and remain concerns today. It is true that R.D. has engaged with services to address these issues, but as noted by Ms. Scott, it appears that this engagement behavior only lasts so long as the Agency is involved and is not driven by R.D.'s internal desire to make meaningful change.

[273] This was highlighted by R.D.'s return to alcohol use when initially engaged with Ms. Scott. Ms. Scott reported smelling alcohol on R.D. on two separate occasions. R.D. admitted to using marijuana until recently. She has a history of relapsing when the Agency is less involved in her life. That concern remains.

[274] As well, in 2012 Ms. Rule conducted a PCA and provided a significant mental health diagnosis. Since then, R.D. has not fully engaged in an attempt to address the impact this mental health circumstance has on her family and in particular R.W. and A.W.. She denies to this day the diagnosis of Ms. Rule. Her engagement with Ms. Scott and work with DBT, the gold standard for her condition, was not meaningful nor ongoing. She was assessed again by Heather Power who echoed much of what Ms. Rule had found and she provided a varied diagnosis which R.D. also rejects. R.D. has resisted at every turn engaging in the services and meaningful therapy she requires.

[275] Similarly, R.D. resisted working with Dr. Webster in 2012 and did not take steps to repair her therapeutic relationship with Ms. Scott until just prior to the hearing of this matter. Both Ms. Scott and Dr. Webster expressed doubts that they could or would work with R.D. given her history.

[276] Ms. Schauss describes R.D.'s unwillingness to participate in therapy with R.W. despite Ms. Schauss' advice that this would be helpful to R.W. R.D. flatly refused but did support therapy for R.W. alone.

[277] What is clear from the evidence of Ms. Rule, Ms. Scott, Dr. Wester, Ms. Power, and Ms. Schauss is that R.D. lacks insight. That lack of insight relates to her own mental health condition and, more importantly, she lacks insight into how her mental health status affects her ability to provide appropriate care for R.W. and A.W.. The evidence is clear that R.D. does not understand what is required to provide appropriate emotional support for these children. She also lacks any understanding as to how her behaviors over many years have traumatized these children. That remains a concern today.

[278] As noted earlier, there is the related issue of engagement. From 2012 to today, there is a clear pattern of limited to no meaningful engagement with appropriate services by R.D. She caused her therapeutic relationship with Ms. Scott to end.

[279] She did not pursue alternatives. She declined to engage with Ms. Schauss in therapy with R.W.

[280] To her credit, she does continue to engage with Addiction Services and the Women's Centre but these are not therapeutic relationships and are not moving R.D. forward in her very substantial challenges rooted in her mental health issues.

[281] Also to her credit, R.D. did complete a detox program and follow up program through Addiction Services but I have already commented on her motivations for these efforts and the history of relapse that she exhibits.

[282] The other challenge and risk that remains is her emotional dysregulation. The evidence is that R.W. and A.W. have experienced trauma over time as a result of their relationship with R.D. Both Ms. Rule and Ms. Power discuss at length R.D.'s experience with her family of origin. They go on to provide diagnoses for her and discuss how this would manifest itself in her life and parenting. Ms. Rule in particular discussed in her evidence what that would look like. Put simply, if R.D. is challenged in a way that she perceives as a threat to her, she will react in an extreme manner, becoming hostile, emotional and "in-your-face".

[283] I find that this was exhibited in several ways in this matter. Ms. MacLeod spoke of R.D.'s extreme reactions to her attending for access to tell R.W. about the death of her uncles, R.D.'s very threatening language around reinstating access when it was cancelled, R.D.'s reaction to the children coming into care, not revealing their location and R.D.'s threats at that time.

[284] Ms. Schauss spoke of her observations of R.D.'s reaction to an innocent comment by M.D. about a cat and that R.D.'s reaction was out of proportion. Her face was described as frightening and that she concluded there was an atmosphere of fear in R.D.'s home.

[285] In her testimony in this proceeding I find that R.D. exhibited this behavior as well. In the *voir dire* she accused the various experts and Agency workers of lying in their recordings of R.D.'s description of her family of origin and in particular her mother. She denied absolutely ever discussing this with anyone. Her demeanor at that time became more hostile, abrupt and irrational. I believe I observed exactly what happens when R.D. is under pressure or feels a threat. She became emotionally dysregulated to the point of being irrational.

[286] It was only after she calmed and provided her evidence at the hearing that she admitted that she had made the statements recorded about her family and mother.

[287] Similarly, in the *voir dire* she denied reading any or most of the expert reports filed over the three years of Agency involvement. That may be true, which would raise serious concern regarding her insight and engagement. But after careful consideration, I believe that this statement was a reaction to a perceived

threat in the form of the cross examination which caused her to lose emotional control and say things which were clearly either against her interest (that she had not read the reports) or not true.

[288] As well her initial denial of being arrested for public intoxication might be another example of this reactive thinking. She would know, if thinking rationally, that there would be records to prove this allegation and yet she denied the arrest.

[289] With this in mind, I am satisfied that the risk posed by her mental health circumstances and her resulting emotional abuse of the children when in her care remain. There has been no change in that circumstance. As made clear by Ms. Scott, to move forward in managing her mental health, R.D. will have to engage fully and for a prolonged time in DBT. As described by Ms. Rule, "she is a very, very complex woman" and I believe remains so.

[290] Based on this analysis, I do find that the children, R.W. and A.W. remain in need of protection. The children are as vulnerable today as they were in 2012.

Grounds Under S.22(2)

[291] I must now determine if the Minister has met the burden to prove the grounds pled pursuant to Section 22(2). The Minister says that the children had suffered physical harm pursuant to Subsection (a). The evidence of this is based on the statements made by R.W. of being stuck by R.D. with a broom and other physical abuse.

[292] I do not find that this ground had been proven on the balance of probabilities. R.D. denies the allegations. More importantly, R.W. admits that she doesn't want the Agency out of her life as that would mean a loss of her relationship with Ms. Schauss. As well, R.W. denies physical abuse on other occasions. Her foster parents and Ms. Schauss confirm she is not always truthful. None of the other children have made similar allegations. Thus I find the evidence does not satisfy me on a balance of probabilities that this ground has been made out by the Minister.

[293] Likewise, I cannot find that the Minister has proven on the balance of probabilities that the children have suffered physical harm as a result of the chronic or serious neglect of R.D. pursuant to Subsection (j). There is little evidence of

this. The evidence of the eating challenges of A.W. were dealt with in 2012 and the Minister had not pursued this ground in the current evidence.

[294] The other three grounds pled, Subsections (b), (g) and (ja), require a finding of substantial risk. I will deal with each separately.

[295] Subsection (b) requires a finding of substantial risk, or a real chance of danger in the form of physical harm that is apparent on the evidence. I need not find that the harm will actually occur, only that there is real chance that it will occur.

[296] I find that here is a substantial risk of physical harm. R.D. has been diagnosed with several mental health conditions which alone or in combination present a real danger to both children. Once feeling threatened, R.D. cannot regulate her emotional escalation and can act out in extreme ways. The examples given by Ms. Schauss and Ms. MacLeod as well as R.D.'s presentation during her evidence demonstrate this. She is not currently in treatment for her conditions and does not appear to have the insight required to motivate her to do so in a meaningful way.

[297] Further, the fact that she was involved in a violent altercation with another woman while intoxicated, combined with the real risk that she will return to alcohol and drugs if the children are returned to her and the proceedings discontinued, leads me to the conclusion that there is real risk present that physical harm could occur.

[298] I also find that, pursuant to Subsection (ja), there is also a substantial risk that the children will suffer physical harm inflicted or caused by chronic and serious neglect by R.D. and that she would not provide or refuses or may unable to provide consent to services or treatment to remedy or alleviate the harm. I make this finding on the basis of the evidence that R.D. is so focused on her own functioning and protection that as the children age and become more independent and likely to speak for themselves, this risk will continue. This is a particular concern for R.W. who has clearly been identified by R.D. as the cause of all her troubles. I find there is ample evidence that this risk is present.

[299] Finally, I find that the ground of Subsection (g) has been made out by the Minister. I find that the evidence is clear that the long term trauma suffered by A.W. and R.W. as identified by Allison Ellsworth and Ms. Schauss is largely emotional and entirely caused by R.D.. Her utter lack of insight into her own

mental health issues, and the resulting lack of understanding of the needs of R.W. and A.W. is clear. Several experts testified to this. Her inability to meet the needs of R.W. identified in the Needs Assessment and the evidence generally is clear. Her inability to understand and therefore meet A.W.'s needs, including her lack of appreciation of the concerns of the foster parents around nightmares, untimely bowel movement, banging his head and rocking among other concerns makes clear he remains at substantial risk, a real danger apparent on the evidence.

Available Services

[300] As to whether there are any services available to promote the integrity of the family pursuant to Section 42(4) of the *Act*, I am satisfied that the Minister has proven that all reasonable services have beee provided or made available. Clearly the children have been supported. The services provided or made available to R.D. have been appropriate to address her needs and the needs of her family. She has simply not engaged meaningfully in them, in particular with Ms. Scott and in refusing to accept the findings of Ms. Rule and Ms. Power respecting her mental health diagnoses and the impact those conditions have on her ability to parent.

Reasonable Prospects for Change

[301] As to whether there are reasonable prospects for change within the timelines pursuant to Section 42(2) of the *Act* , the timelines have expired and at the time of the hearing I am satisfied that there was and remains no such reasonable prospect. R.D. must embrace the change required and the experts in this matter have all said that had not occurred. If it ever does, Ms. Scott, Ms. Rule and Dr. Webster made clear that R.D. has a long road ahead of her to move towards managing her mental health. The timeline for her is measured in years, well beyond these timelines.

Family Community Placement

[302] Pursuant to s.42(3) of the *Act* I must also be determine whether it is possible to place the children with a relative, neighbor or other member of the children's community or extended family before ordering permanent care. I have already reviewed the evidence, or lack of evidence, on this issue and find that it is not possible to place the children with any alternative placement. The Minister is not required to seek out every conceivable option, only to consider those put forward.

None have come forward other than those of S.M.D., which I have rejected in the *voir dire* and R.D.

Decision On Placement And Access

[303] In this decision I have carefully canvassed and considered all of the evidence and applied the law to that evidence. My findings lead me to conclude that it is in the best interests of A.W. and R.W. that they be placed in the permanent care of Minister with a plan for adoption. The fact that R.W. has expressed that she will not consent to adoption is not an unusual position for a child to take and will have to be managed by the Minister.

[304] As to whether there should be access granted to R.D. now that permanent care had been ordered, I take into account Section 47 of the *Act* as follows:

> 47 (1) Where the court makes an order for permanent care and custody pursuant to clause (f) of subsection (1) of Section 42, the agency is the legal guardian of the child and as such has all the rights, powers and responsibilities of a parent or guardian for the child's care and custody.
>
> (2) Where an order for permanent care and custody is made, the court may make an order for access by a parent or guardian or other person, but the court shall not make such an order unless the court is satisfied that
>
> (a) permanent placement in a family setting has not been planned or is not possible and the person's access will not impair the child's future opportunities for such placement;
>
> (b) the child is at least twelve years of age and wishes to maintain contact with that person;
>
> (c) the child has been or will be placed with a person who does not wish to adopt the child; or
>
> (d) some other special circumstance justifies making an order for access.

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

> **37** Before the issuance of a permanent care order, the legislative focus is on preserving the family unit. This would understandably mean that when the children are in temporary Agency care, parental access is to be encouraged so as to hopefully rehabilitate the family. However, with a permanent care order, the focus shifts. Any hope of preserving the family within the legislated time limits is presumably lost and the focus becomes a stable alternate plan. Thus, upon securing a permanent care order, the Agency under the *CFSA* effectively becomes the parent:
>
> …
>
> **39** Therefore, from my reading of s. 47, three conclusions relevant to this appeal are clear. First, the Agency effectively replaces the natural parents. This puts the onus on the natural parents (or guardian) to establish a special circumstance that would justify continued access. Second, by virtue of ss. 47(2)(a) and (b), an access order must not impair permanent placement opportunities for children under 12. Section 47(2)(c) is consistent with this. It provides that if no adoption is planned then access will be available. This highlights the importance of adoption as the new goal and the risk that access may pose to adoption. Third., for children under 12, the "some other special circumstance" contemplated in s. 47(2)(d), must be one that will not impair permanent placement opportunities.
>
> **40** Therefore, to rely on s. 47(2)(d) as the judge did in this appeal, the (special) circumstances must be such that would not impair a future permanent placement. When then would s. 47(2)(d) apply? Consider for example a permanent placement with a family member which will involve contact with the natural parent. Presuming that the adopting parents would be content with that arrangement, the adoption would not be deterred. See **Children's Aid Society of Cape Breton-Victoria v. M.H.**, 2008 NSSC 242 at para. 35.
>
> **41** In short, access which would impair a future permanent placement is, by virtue of s. 47(2), deemed not to be in the child's best interest. This represents a clear legislative choice to which the judiciary must defer.

[305] It is the evidence of the Minister that there is a plan to place A.W. and R.W. for adoption as a sibling group. The evidence of Shalyn Murphy, Adoption Social Worker, is that there are 23 prospective homes that could take these children. She also testified that if access were granted after permanent care was ordered it would significantly reduce the available pool.

[306] In this case I find that R.D. has not established special circumstances that would support access. It is true that this will mean the loss of the relationship between R.D., TW and MD with A.W. and R.W. but this is something that must

managed by the Minister for the children. A.W. and R.W. need a new start and access will hinder that.

[307] Even if such special circumstances existed, I find that access would hinder or impair future permanent placement according to the evidence of Ms. Murphy. Thus, no access will be ordered. It is expected that a final visit will occur under the supervision of the Minister.

Timothy G. Daley, JFC