

FAMILY COURT OF NOVA SCOTIA

Citation: *Nova Scotia (Minister of Community Services) v. C.R.*, 2019 NSFC 8

Date: 20190618

Docket: FT No. 106491

Registry: Truro

Between:

Minister of Community Services

Applicant

v.

C.R. and T.C.

Respondents

And

L.B. and T.C.

Applicants

v.

C.R.

Respondent

Restriction on Publication: Pursuant to s. 94(1) of the *Children and Family Services act*, S.N.S. 1190, c.5.

Judge: The Honourable Associate Chief Judge S. Raymond Morse

Heard: December 14, 2018, January 23, 28, 2019 and February 6, 20, 2019, in Truro, Nova Scotia

Final Written Submissions: March 12, 2019

Counsel: A. Melvin, for the Applicant
J. Reid and P. Duke, for the Respondent, C.R.
P. Lederman for the Respondent, T.C., and the Applicant, L.B

By the Court:

Introduction

[1] C.R. is the mother of two children, M. (date of birth December **, 2014) and B. (date of birth June **, 2012). T.C. is the children's father.

[2] The children were taken into care by the Applicant on August 12, 2017. At time of the taking into care, the Respondents were living separate and apart.

[3] As of August 12, 2017, C.R. was involved in a new relationship with D.D-S.

[4] Pursuant to Review Application and Notice of Hearing dated March 9, 2018, the Minister made application for an order for permanent care and custody of both children pursuant to Section 46 of the *Children and Family Services Act* (hereinafter referred to as "the *CFSA*").

[5] The Respondent mother opposes the Minister's request for permanent care and custody.

[6] The Respondent father is supportive of the Minister's application.

[7] The Minister's application is premised upon an adoption placement for both children with the paternal grandmother, L.B. L.B. is also supportive of the Minister's request for permanent care and custody and has been approved as a potential adoption placement for both children.

Proceedings

[8] Pursuant to Protection Application and Notice of Hearing dated August 15, 2017, the Minister maintained that the children were in need of protective services pursuant to subparagraphs (b), (g), (j) and (k) of Section 22(2) of the *CFSA*.

[9] The initial five-day hearing was held on August 17, 2017 and an interim order for temporary care and custody was granted in favor of the Applicant. Given the Respondent mother's opposition to the Minister's request for temporary care and custody, the matter was scheduled for contested completion of interim hearing on September 1, 2017.

[10] Following presentation of evidence at the hearing held September 1, the court rendered an oral decision confirming that the children were to be returned to the day-to-day care of the Respondent mother, subject to the supervision of the Applicant.

[11] Pursuant to Variation Application and Notice of Hearing dated October 6, 2017, the Minister confirmed a request that the two children be placed in the care and custody of the Minister. An order for temporary care and custody was granted by the court at the conclusion of the variation hearing held October 10, 2017.

[12] On November 2, 2017, the court completed the protection hearing and found that the children were in need of protective services pursuant to subparagraphs (b), (g) and (k) of Section 22(2) of the *CFSA*.

[13] An initial disposition order was granted January 11, 2018 confirming that the children would remain in the care and custody of the Minister. The order was consented to by the Respondent father. The Respondent mother did not contest the initial disposition order as requested by the Minister.

[14] Pursuant to Review Application and Notice of Hearing dated March 9, 2018, the Minister made application for the two children to be placed in permanent care and custody. The application was supported by a Supplementary Plan of Care dated March 9, 2018. The plan confirmed that the Minister was supportive of the paternal grandmother applying to be considered as a potential adoption placement for the children.

[15] Review hearings were held March 20, May 3, July 26 and October 4, 2018 resulting in successive extensions of temporary care and custody.

[16] At the conclusion of the October 4, 2018 review, the court confirmed that the hearing for the Minister's application for permanent care and custody would commence on November 26, 2018.

[17] A pre-hearing was held on November 22, 2018, at which time it was agreed that a Section 36 application, as filed by the maternal grandmother, N.R., would be scheduled for a contested hearing on November 28. The court confirmed the final review hearing would commence December 5, 2018.

[18] The maternal grandmother's Section 36 application was heard on November 28, 2018. The application was adjourned for oral decision on November 30. On November 30 the court confirmed dismissal of the Section 36 application.

[19] At the outset of the December 5 hearing, the court queried whether or not a Parenting and Support Act (hereinafter referred to as "the *PSA*") application, as filed on behalf of the paternal grandmother, seeking leave to apply for custody of the children should be consolidated with the protection proceeding.

[20] Following discussion with counsel, the court, on its own motion, confirmed that L.B.'s *PSA* application would be consolidated with the protection proceeding such that both applications would move forward as a consolidated proceeding. The court determined that it would be appropriate to adjourn the matter to December 14 for commencement of the contested hearing in order to allow the parties to the consolidated proceeding adequate time to prepare.

[21] The contested hearing commenced December 14 and continued January 23, 28, February 6 and 20, 2019. At the conclusion of the trial on February 20, counsel agreed to forgo oral submissions in favor of written post trial submissions.

[22] A post hearing brief was submitted on behalf of the Respondent mother on February 28, 2019. A post hearing submission was filed on behalf of the Respondent father on March 8. The Minister's post hearing brief was filed March 12, 2019.

Review of Evidence

[23] A total of 19 exhibits were entered during the course of trial.

[24] Exhibit 1, as entered on behalf of the Minister, was a lengthy document brochure containing copies of pleadings, including various affidavits filed during the course of the proceeding.

[25] Exhibit 2 was a brochure containing copies of expert reports.

[26] Exhibit 14 was a document brochure prepared by the Minister containing case recordings that was entered by consent of counsel during trial on the understanding that the only case recordings to be considered as evidence would be the case recordings referred to by counsel for the Respondent mother during her cross-examination of agency workers.

[27] Exhibit 19 was a letter from Department of Community Services dated January 21, 2019 advising the paternal grandmother that her SAFE adoption assessment had been approved.

[28] Fourteen witnesses testified on behalf of the Minister. L.B., the paternal grandmother, testified on her own behalf. The Respondent mother testified and called five witnesses on her behalf.

[29] The paragraphs that follow contain a summary of the evidence. It is a summary and therefore not comprehensive. I have, however, carefully considered all of the documents/exhibits and testimony in determining this matter.

[30] The initial witness to testify was Devon Rankin, Clinical Therapist. By consent of counsel, Ms. Rankin was qualified to give opinion evidence as a clinical therapist with expertise in the area of counselling.

[31] During her testimony Ms. Rankin confirmed that the children have not made any disclosures during their counselling. However, she indicated that they do show signs of trauma in the way in which they attempt to control their environment and by testing limits. Ms. Rankin testified that the focus of her counselling has been emotional regulation and basic social skills.

[32] Ms. Rankin testified that the children need stability and reliability as far as their home environment is concerned. When asked what sort of home environment would be contra-indicated, she indicated it would be the exact opposite, a home environment that was inconsistent, unreliable and unpredictable.

[33] She expressed her belief that the children had made tremendous progress in terms of their overall presentation. She also indicated that the paternal grandmother has followed through appropriately with the school and has shown a dedication to meeting the children's needs.

[34] The following is an excerpt from Ms. Rankin's Progress Report dated October 25, 2018 as contained in Exhibit 2, tab 3 E;

(B.) and (M.) require consistency from caregivers and service providers regarding behavioral modification techniques. That is, it would be helpful for the children regarding expression of defiant and maladaptive behaviors, to receive similar consequences across environments and for these messages to be consistent. Self-regulation of feelings can be the most challenging part of emotional development. All children learn to regulate their emotion through watching the adults in their life manage their own emotions and actions, it helps them to learn to manage their own feelings and behaviors. (B.) and (M.) require sensitive and comforting support to cope with stress. Both children tend to respond positively in a therapy setting when expectations regarding behavior are clear and when they know what to expect. Self-regulation skills develop gradually, so it is important adults hold expectations that fit with (B.) and (M.)'s age and ability.

The current family placement appears beneficial for both (B.) and (M.) and caregivers appear dedicated to ensuring the children's physical and emotional needs are met...

[35] The next witness called by the Minister was Holly White, Child in Care Worker.

[36] Ms. White testified that M. has medical needs and ongoing involvement with the IWK Health Centre (IWK) and also has processing issues. B. has behavioral issues which become amplified during periods of change, as well as sensory issues. Both children have attachment issues.

[37] In discussing the children's needs, she indicated that the children need to have a placement that will consistently follow through with the recommendations of service providers and provide a predictable environment.

[38] The next witness to testify was Jennifer Goguen, Occupational Therapist. Ms. Goguen was qualified to give opinion evidence as an expert in the area of occupational therapy.

[39] Ms. Goguen testified that B. is struggling with sensory processing and anxiety on a daily basis and that this affects his functioning. She indicated she reached a similar conclusion with respect to the child, M.

[40] When asked to explain the cause of the children's sensory issues, she opined that their issues were due to anxiety and stress. She testified that environment is key for brain development of a child. Being exposed to stress on a daily basis will affect the brain and causes behaviors and responses.

[41] When asked what sort of environment induces sensory behaviors, she suggested the behaviors were basically due to lack of structure and routine, associated feelings of insecurity, as well as exposure to stress, causing a child to feel unstable and unsafe. She emphasized that a child needs emotional and physical stability to thrive.

[42] When asked what type of environment is required to avoid or prevent sensory issues, she indicated that children need emotional security and trusting relationships. Their environment needs to be stable both emotionally and physically. Children benefit from lots of routine and structure.

[43] Ms. Goguen testified that any environment where there were lots of unexpected things happening, causing anxiety, can cause sensory issues. She indicated that in such an environment a child is ready to go off at any time, referring to this as a “Trigger and dynamite” scenario. Again, she indicated that what is required is caregivers who provide lots of structure and emotional support and are aware of the child’s triggers. She also testified that exposure to domestic violence would increase stress and anxiety for children with sensory issues.

[44] During cross-examination, Ms. Goguen testified that B. struggles with transition and that his responses can be unpredictable and gestured her arm in a roller coaster motion to illustrate unpredictability. She indicated that, typically, a child with sensory processing issues really struggles with transition from activity to activity. The reaction can come out as oppositional defiant behavior, a meltdown or withdrawal. She indicated that kids with sensory issues are always on high alert.

[45] She acknowledged that joint compression and brushing are two strategies that she teaches. These strategies provide the child with deep sensory input and may calm the child. It allows the opportunity for physical interaction between the caregiver and the child. She referred to it as a holistic based strategy to release calming hormones.

[46] During redirect examination, Ms. Goguen testified that the roller coaster analogy describes the child’s transition from regulation to dysregulation.

[47] She testified that, based upon her assessment in this particular instance, she would see trauma as the basis for the children’s issues.

[48] She explained that any situation that causes stress or anxiety will enhance the children’s sensory processing struggles. She stated that if the children are exposed to stress and anxiety, they will continue to have behaviors that affect their functioning.

[49] In her Occupational Therapy Assessment for the child, B., dated July 2018 as set forth in Exhibit 2, tab 6B, Ms. Goguen indicates as follows at page 3;

(B.) is experiencing anxiety, which increases his sensory processing difficulties and behaviors/responses. Being aware of his triggers and knowing how transitions and change can affect him is important. Both his home and preschool are doing a great job with this. If you are not aware of his triggers, he can easily and quickly

become overwhelmed and his behaviors/responses escalate and become out of control...

[50] Later in the Summary and Conclusions portion of her report for B., Ms. Goguen offered the following comments;

(B.'s) anxiety and sensory processing difficulties will limit his ability to participate in larger group settings, and to learn new skills. His anxiety will take over and he will respond with inappropriate behaviors (trying to withdraw or going into fight or flight response) ...

(B.) would benefit from a number of sensory strategies to help him to feel more integrated, organized and calm throughout his day. He has a high threshold for sensory input, needing more input to bring them into his optimal range of functioning (deep pressure input; not light touch input). He would benefit from many forms of proprioceptive or heavy muscle work...

...The long-term goal is for (B.) to realize what helps him feel more calm, relaxed, organized, and to seek out the strategies independently.

[51] In her Occupational Therapy Assessment for the child, M. (Exhibit 2, tab 6C), Ms. Goguen indicated as follows commencing at page 4;

With similar sensory based struggles at home and Daycare being noted, it is important that both environments work together. M. is displaying a mixture of sensory processing struggles combined with some anxiety and attachment behaviors. Her attention seeking and looking for excuses to obtain adults attention is typical of children who have been moved around at a young age. they are dealing with many emotions and security/trust issues. That being said, she is receiving amazing support and care both in her present home environment and Daycare...

My main concern as an Occupational Therapist includes the fact that M. is dealing with all of this at such a young age. This is affecting her ability to deal with emotional regulation, contributing to her difficulties with social skills and overall ability to function (grow, play, learn). If not helped and strategies not put in place for her at this early stage, there is typically an increase in anxiety with sensory regulation struggles, collaborated with behaviors. These all affect her emotional and social well-being and everyday function.

[52] Ms. Goguen's reports contained specific recommendations in relation to each child.

[53] The next witness to testify was the Family Support Worker, Jonna Francis.

[54] Ms. Francis confirmed that she worked with the Respondent mother for approximately one year. When asked how the family support sessions went, Ms. Francis testified that the Respondent mother was consistent in attendance at first, but a lot of time was spent on other

issues such as discussion of C.R.'s past relationships. There were days when the Respondent mother was escalated and couldn't retain any of the information that was being provided.

[55] Ms. Francis testified that she felt C.R.'s lack of progress was due to her lack of insight as to why the children were taken into care, noting that if a parent doesn't have insight it makes it very difficult to work with the parent.

[56] She indicated there were continuing concerns with respect to the Respondent mother's home and the individuals in it. Domestic violence was a continuing concern. She did not believe the Respondent's home would be a safe home for the children.

[57] During cross-examination, Ms. Francis testified that in the visits that she participated in, any redirection of the children on the part of C.R. was as a result of her prompting and not initiated by C.R.

[58] At several points during her cross-examination, Ms. Francis was referred to her running record notes as set forth in Exhibit 14.

[59] When referred to tab 1, sub tab G, page 9 of 28, she agreed that that was a note confirming positive interaction between the Respondent mother and the child, B., and confirming that C.R. provided appropriate lunch and snacks during the visit. However, the note also confirms that the majority of the visit was spent playing with Lego and while C.R. participated in this activity, she was more focused on the creations she was making than what B. was doing and as a result, B.'s comments and questions were often ignored. Ms. Francis confirms that B. would repeat himself or stop engaging because his mother was too focused elsewhere to acknowledge him. Prompts were provided to the Respondent throughout to encourage her to acknowledge B. and to follow his lead in play.

[60] A note at page 17 of 31, sub tab H, dated June 5, 2018, confirms that Ms. Francis saw the Respondent mother's use of reminders on her phone as a positive given her ADHD. Ms. Francis testified that this wasn't done consistently but that she commended C.R. for it and encouraged her to use this system, but that the Respondent did not.

[61] Ms. Francis was referred to page 19 of 31, sub tab H, and a note from June 12, 2018 which confirmed that she had told C.R. on that date that C.R. had made gains and that B. had also made gains. However, the note also indicates that C.R. was emotional during the home visit and talked in abundance about the struggle she was currently experiencing trying to decide if she should be on her own or with D.D-S. The note also indicates that the worker noted that C.R.'s relationship with D.D-S. had involved domestic violence and suggested that they incorporate healthy relationships and the effect of domestic violence on the children as topics for future sessions and C.R. agreed with this suggestion.

[62] Ms. Francis testified that C.R. did not use sensory activities consistently and often times when she did use them it was as a result of Ms. Francis' prompting and reminding.

[63] When referred to her client contact note for June 18, 2018, as found at sub tab H, page 21 of 31, and the reference to the Respondent using a timer to set times for specific activities, Ms. Francis explained that the transition was better if the plan was followed but expressed her belief that she still had had to prompt the Respondent mother to follow the plan. The note also indicates that during the lunch part of the session, the Respondent mother was asking questions and making comments quickly and unrelated to the moment. The worker observed that the child B. did not have time to process what was being asked of him by C.R. before another question was asked.

[64] Ms. Francis was referred to tab 1, sub tab I, of the agency case recordings brochure, page 20 of 21. She indicated that the entry for September 21, 2018 referred to the large shoebox which was the sensory box that she had referred to in her previous answer. She acknowledged that C.R. also used blanket activities and that pulling the children around the room using a blanket was positive and that the children enjoyed it. The note also indicates that the Respondent mother did not notice until prompted that B. was becoming quite frustrated with his sister. The note also confirms that Ms. Francis prompted the Respondent mother several times during the visit on how to respond to the children, how to redirect appropriately and reminded her of the routine that had been discussed for the visit. C.R. did not check in with B. during the visit as they had discussed to see if things were okay. Ms. Francis also modelled for C.R. and offered suggestions during the prompting.

[65] On redirect, she indicated that at the end of her work with C.R., during access visits C.R. was not utilizing or employing sensory activities with the children, even with prompting.

[66] Ms. Francis' affidavit, sworn November 2, 2018 (Exhibit 1, tab 28), confirms that the education sessions for the Respondent mother did not progress as she anticipated they would. At paragraph 7 she notes that C.R. would often use the education sessions as opportunities to discuss her frustration with the agency, frustration with agency workers, her health, her past relationship with T.C. or current relationship with D.D-S. Ms. Francis indicates that, as a result, limited progress was made in relation to parenting education materials despite the attempts made during sessions to redirect C.R.'s attention.

[67] At paragraph 8 of her affidavit, Ms. Francis indicates that the Respondent mother struggled with parenting of both children during access visits and presented as overwhelmed. This led to separate access visits for each of the children during the winter of 2018 so as to allow C.R. the opportunity to enhance attachment and bonding with B. Combined visits resumed in August 2018 but were again switched to separate visits in October because C.R. was unable to demonstrate that she could parent both children together positively and safely on a consistent basis.

[68] Paragraph 9 of the affidavit confirms that, due to limited progress and cancellation of education sessions by C.R., in-home support sessions were ended on October 23, 2018.

[69] In paragraph 28 of her affidavit Ms. Francis confirms that when she attended the Respondent's home on October 16, 2018, she noticed a smell of marijuana. She noticed another woman in the home who appeared to be under the influence. She observed that the home was in

a state of disarray. During an access visit which occurred between C.R. and B. on that same date, Ms. Francis noted that C.R. did not make use of any strategies discussed in their previous parenting support sessions.

[70] Paragraph 31 relates to an access visit on October 23, 2018 between C.R. and B. Ms. Francis discussed with C.R. her cancellation of the past three family support sessions. When Ms. Francis indicated that she had been noticing regression during access visits, C.R. indicated that she had also noticed her regression but blamed it on her pregnancy and the fact that she was not taking prescription medication. C.R. also reported that she was weaning herself off marijuana and that this was making her feel ill. Ms. Francis remained for the access visit between B. and C.R. on October 23 and observed that C.R. was unable to set limits with B. despite prompts and that suggestions that had been made in relation to emotional regulation and sensory activities were also not executed by C.R.

[71] The next witness called by the Minister was Dr. Pogosyan. By consent, Dr. Pogoyan was qualified to give opinion evidence as an expert in psychiatry.

[72] In her psychiatric assessment for C.R. (Exhibit 2, tab 1B) Dr. Pogosyan confirms the following conclusions at page 15;

(C.R.) meets the following DSM-V criteria, including Posttraumatic Stress Disorder, Panic Disorder, Attention Deficit Hyperactivity Disorder, Marihuana Use Disorder, Adjustment Disorder with depression and anxiety.

(C.R.) also possesses features suggestive Borderline Personality Disorder. Many adults with Borderline Personality Disorder have a predisposing emotional vulnerability and are raised in an environment experienced as “invalidating” in which the child’s expressions of emotions is met with erratic and sometimes extreme responses. Cyclothymia in patients with borderline personality disorder can be particularly difficult to differentiate. (C.R.) presented with a long history of frequent mood swings and impulsivity which are common in Cyclothymia; however her mood swings are short-lived and seem to only appear in reaction to particular stressors. Her mood swings are better explained by underlying personality disorder and her emotional dysregulation...

[73] In her report Dr. Pogosyan outlines various defence mechanisms used by the mother which demonstrate borderline personality organization involving acting out, externalizing and denial.

[74] During her direct examination Dr. Pogosyan was asked about Borderline Personality Disorder (BPD) and she confirmed that in order to diagnose BPD an individual has to meet five of the nine criteria. She explained that BPD is a disorder involving instability in many areas including relationships, self image and also associated with impulsivity. Individuals with BPD are very passionate, very quick to enter into relationships then quickly the relationship turns into fighting and fear of abandonment as such individuals have a hard time tolerating loneliness. The diagnosis also involves emotional instability where the individual can go from being anxious, to

angry, and to happy all within the same hour and also act out in their anger. Suicidal behaviors, threats and ideation are common. There can also be dissociative and psychotic symptoms. Dr. Pogosyan testified that C.R. met four criteria for BPD.

[75] She was then referred to Exhibit 1, tab 16, the affidavit of Leeann MacDonald sworn March 9, 2018 and the paragraphs which provided a summary of an altercation between C.R. and D.D-S. on January 8, 2018. During this incident, at one point, C.R. threatened to consume pills and at another point, had to have a butcher knife removed from her possession. Dr. Pogosyan indicated that as the incident involved a suicide threat it would mean that C.R. meets five out of the nine criteria for BPD.

[76] The next witness to testify was Lisa Richardson-Dellapinna, a social worker currently employed with the Nova Scotia Health Authority. She identified Exhibit 10 as her Can Say statement dated December 3, 2018.

[77] She was referred to contact with C.R. on January 8, 2018. She testified that C.R. said she had gone to the hospital due to a mental breakdown and feeling suicidal.

[78] She was then referred to C.R.'s affidavit, Exhibit 6, paragraph 88, and indicated that she felt that she and C.R. had connected fairly well, but that they were not able to continue their therapeutic relationship because of C.R.'s no-shows.

[79] In her Can Say statement Ms. Richardson-Dellapinna confirms that her counselling with C.R. was suspended due to C.R.'s lack of attendance on September 24, 2017. Counselling was subsequently recommenced but then subsequently suspended once again in February 2018 in part due to further missed appointments. The Can Say statement does indicate that Ms. Richardson-Dellapinna observed that C.R. presented as much calmer and with improved focus after she began taking medication. As of February 2018, Ms. Richardson-Dellapinna noted that it had been hard to make any progress through therapy as a result of C.R.'s sporadic attendance.

[80] The next witness to testify was Ms. Jessica Heidebrecht, Clinical Social Worker.

[81] In her Progress Report as contained within Exhibit 3, tab 4b, Ms. Heidebrecht confirms that C.R. was referred to her to carry out treatment recommendations made by Dr. Pogosyan. The report notes that formal Dialectical Behavior Therapy (DBT) includes weekly DBT group sessions as well as weekly individual therapy.

[82] C.R. was asked to access the public system for DBT group sessions, but C.R. did not show for the Choice appointment that had been scheduled for July 18, which was the initial step required in arranging for C.R. to participate in DBT group sessions. The report reviews C.R.'s attendance history between May 2018 and July 2018 and confirms that C.R. attended three out of six scheduled sessions and as a result, the counselling with Ms. Heidebrecht was suspended when C.R. missed her third appointment and Ms. Heidebrecht then closed her file.

[83] Brock Caldwell, was permitted to give opinion evidence as a counsellor in the area of general and domestic violence counselling.

[84] His counselling sessions with D.D-S. commenced April 19, 2018. He indicated that D.D-S.'s attendance was fairly spotty having attended 17 sessions and there were 12 no-shows. He referred to D.D-S. as not being very committed.

[85] When asked about progress, he indicated that they have covered a lot of the basics. When asked if he had observed D.D-S. applying the things he had learned, Mr. Caldwell testified that part of the challenge for him was that he only has what his client reports.

[86] Mr. Caldwell also confirmed that while D.D-S. has indicated that he feels that his relationship with C.R. is improving, they expect relapses along the way.

[87] Sergeant O'Brien of the Royal Canadian Mounted Police (RCMP) identified his Can Say statement and explained what happened on August 29, 2018 when the detachment received a complaint of a domestic disturbance. He confirmed his understanding that the complaint arose out of the fact that C.R. had entered into another relationship and was pregnant from that individual, but had reconciled with D.D-S. The conflict was over the pregnancy. He indicated that D.D-S. corroborated that this was the point of contention. There was not enough evidence to support charges since it appeared to have been primarily a verbal dispute.

[88] Heidi Melanson, Social Worker, testified on behalf of the Minister. Ms. Melanson identified tab 2 of Exhibit 1 as her affidavit. This was the initial affidavit filed on behalf of the Minister following the taking into care of the children on August 12, 2017.

[89] The affidavit confirms that in June 2017, C.R. attended the agency office with the child, B. and reported that the child had bruises on his thighs after returning from an access visit with T.C. A joint agency/police investigation was initiated. A physician examined the child at the emergency room of the Colchester Regional Hospital on June 7 and noted that the child had linear type bruises on the posterior thigh bilaterally. A joint interview was undertaken on June 8 and during that interview the child disclosed that T.C. had hit him with a belt on his bum/legs. T.C. was subsequently charged and released on a conditional undertaking.

[90] On August 10, 2017 the agency received a referral concerning C.R. and D.D-S. from Truro Police Service who reported that earlier that afternoon they had received a report of two young children walking alone in the vicinity of a gas station and asking customers and staff for food and money. When officers were able to identify the children and return them to their home, they discovered C.R. and D.D-S. asleep at the residence and neither had realized that the children had left the home.

[91] On August 12 a further intake was received from Truro Police Service reporting the two young children had been found in the middle of the road soaking wet by neighbors. Truro Police subsequently confirmed that the children were B. and M. and that C.R. had once again confirmed that she was unaware the children had left the house and that she had been asleep. A risk management conference was held, and a decision was made to take the children into care based upon C.R.'s inability to keep the children safe.

[92] The next witness called was Social Worker, Leeann MacDonald.

[93] Ms. MacDonald confirmed that prior to the second taking into care on October 3, 2017, she made multiple visits to the Respondent mother's residence as a result of continuing concerns. She indicated that there was a cleanliness issue with the home and she observed drug paraphernalia present and referred to that as a continuing concern. She observed further deterioration in the condition of the home over time with subsequent visits. C.R. did not follow through in arranging for preschool for B. The agency was also concerned that blood work for the child, M. had not been done on time and that was a continuing concern.

[94] The agency held a risk conference and they concluded that C.R. was not providing accurate information and not meeting the needs of the children. A decision was made to take the children into care. In her testimony, she described what transpired during the taking into care in some detail. She referred to both the Respondent mother and D.D-S. as being very volatile during the taking into care.

[95] When asked about protection concerns at the outset of the proceeding, Ms. MacDonald indicated that the concerns were mental health, substance abuse, domestic violence, neglect, lack of supervision and medical neglect. She referred to the children as being pushed to the back and that there was a lot of deflection and lack of follow through on the part of the Respondent mother. C.R. would say she was connected with services but when the agency checked, she wasn't. The needs of the children were not being met.

[96] When asked what the risks are at this point in time, Ms. MacDonald testified that they are essentially the same. C.R.'s relationship with D.D-S. is volatile. C.R. is impulsive and reactive. Ms. MacDonald commented that failure to use the medication as recommended by Dr. Pogosyan was another barrier to addressing issues as identified in Dr. Pogosyan's psychiatric assessment.

[97] When asked what steps had been taken to address the protection concerns, she indicated that counselling had been arranged for C.R. because of her personal issues and history. The agency was under the impression that she had been involved with some services such as Early Intervention and found out that she had not actually worked with Early Intervention because the Early Intervention worker had not been able to make contact. C.R. also was not connected with the Parenting Journey Program, despite having indicated she was. The services provided were counselling with Lisa Richardson- Dellapinna and family support services. Subsequently, the agency concluded that a psychiatric assessment would be beneficial.

[98] C.R. attended only one out of four sessions with Ms. Richardson-Dellapinna, so the counselling was suspended. Then they decided to reinstate counselling but again had to suspend the counselling due to missed appointments.

[99] Both Ms. Richardson- Dellapinna and the family support worker felt that C.R. had trouble focusing during sessions. C.R. would focus on what she wanted to talk about. The psychiatric assessment was intended to clear up these issues and provide feedback as to how to communicate with C.R. so she could make gains. Ms. MacDonald referred to this as being a big piece of the puzzle and that the agency wanted that feedback and wanted the right medication for C.R.

[100] With respect to DBT therapy and Eye Movement Desensitization and Reprocessing (EMDR) therapy as recommended by Dr. Pogosyan, Ms. MacDonald testified that with C.R.'s assistance she was able to arrange for C.R. to commence counselling with Jessica Heidebrecht. Subsequently, Ms. MacDonald received an email reporting missed appointments on the part of C.R. When the third missed appointment occurred the service was put on hold. By the time C.R. advised that she wanted to try counselling again, Ms. Heidebrecht was no longer available.

[101] Ms. MacDonald testified that the decision to seek permanent care and custody was made in March 2018. The agency focused on the fact that at that point there had been no gains made and, while acknowledging that the timeline was approximately 18 months, the agency did not want to be involved any longer than they needed to and again, at that point they saw no progress and in fact it appeared that C.R. was going backward. C.R. and D.D-S. had been evicted from their apartment and information that C.R. had provided had been shown to be inaccurate.

[102] She made it clear to C.R. that the agency felt that things were not progressing, but also confirmed the agency's willingness to keep working with her. Ms. MacDonald felt that she laid it all on the table. She confirmed that the plan was for services to continue and that part of the rationale behind the decision to seek permanent care and custody was to propel C.R. forward and have her take the proceeding seriously and hopefully develop insight, take responsibility and start moving forward.

[103] During cross-examination Ms. MacDonald was referred to sub tab F of tab 1 of Exhibit 14 at page 8 of 31, an entry for January 12, 2018, which noted that C.R. had admitted that she had been taken off her medications. C.R. said she had had a mental health breakdown and expressed upset that the police had taken away D.D-S. who was her only support person. Ms. MacDonald said she remembered the conversation well and that C.R. was maintaining that the police had left a suicidal person all alone. Ms. MacDonald was concerned by the situation.

[104] She was then referred to page 10 of 31, another entry for January 12, relating to a home visit on that date. This visit was made after the telephone call she had received from C.R. The visit started okay but didn't end well. She said she took police with her because of her concern that D.D-S. would be there, despite a no contact order. She said she observed that C.R. was running up and down the stairs despite having indicated that she was so sick she couldn't walk. The note indicates that during the home visit the worker was surprised to see drugs and drug paraphernalia in the home given C.R. had earlier reported that she had been drug-free all week as a result of her release conditions. The worker found an individual in the child B.'s bedroom with a shoebox filled with drug paraphernalia, rolled up paper money and a baggie of pills beside him, as well as a bong located by the head of the bed. The note confirms that C.R. started screaming at the individual that he would have to leave. D.D-S. was found in the upstairs bedroom. At this point the Respondent, C.R. started yelling and behaving erratically.

[105] Ms. MacDonald left the residence but was followed outside by C.R. who continued to yell. When the Respondent was able to calm herself down, the worker and C.R. re-entered the home at the request of C.R. and C.R. proceeded to explain what had happened between herself and D.D-S. on Sunday night. C.R. referred to D.D-S. making a comment about her not being a good mother in response to which she indicated she lost it. C.R. reported that she had pretended

to take all of her pills but actually dumped them in the sink. She then reported grabbing a knife and re-enacted D.D-S. tackling her to the floor to get the knife away from her and as a result the knife cut/bruised her arm.

[106] Ms. MacDonald's affidavit of October 6, 2017 (tab 8 of Exhibit 1) was filed following the second taking into care of the children on October 3, 2017.

[107] Paragraph 26 confirms that during a home visit on September 11, 2017, Ms. MacDonald discussed with C.R. the fact that she had missed two counselling sessions with Ms. Richardson-Dellapinna and C.R. advises she would not miss any more.

[108] Paragraph 35 discusses the home visit made by Ms. MacDonald on October 3, 2017 where she observed the entire apartment to be a mess. During this visit, C.R. advised the worker that she had taken M. for blood work two weeks ago.

[109] Ms. MacDonald checked with the IWK on October 3 and as a result understood that C.R. had not taken the child M. to the IWK for blood work.

[110] Starting at paragraph 43, Ms. MacDonald's affidavit summarizes the outcome of the risk management conference held on October 3, 2018 at which time it was noted that B. had not been registered for school, C.R. did not follow through with necessary blood work for the child, M., counselling for C.R. had been suspended because she had missed three out of four appointments, that C.R. had been dishonest in indicating that she continued to participate in Early Intervention, the condition of the home had continually deteriorated since the children had been returned to C.R.'s care under supervision and that there had been such a continuous deterioration in the condition of the home to the point that the condition of the home was now a safety concern for the children. As a result, the agency determined that the children continue to be in need of protective services and that it was necessary to take the children into care.

[111] In paragraph 55, Ms. MacDonald confirms contact with Income Assistance. Income Assistance confirmed what expenses Income Assistance had assisted with in connection with M.'s admission to the IWK, as well as an explanation as to why Income Assistance was not prepared to assist with C.R.'s power bill. In addition, as a result of that contact, Ms. MacDonald understood that the delay in relation to the Respondent mother receiving the Child Tax Credit was due to the failure on the part of C.R. to file her post-bankruptcy tax return with Canada Revenue Agency (CRA).

[112] The affidavit of Leeann MacDonald, sworn October 26, 2017 (tab 10, Exhibit 1), paragraph 21, confirms that on October 24, 2017, C.R. informed Ms. MacDonald that she felt that all of her daughter's issues were linked to the IWK and that she was suing them as she believed the IWK was not treating her child appropriately. Despite the worker pointing out that the child, M. no longer had ongoing infections, C.R. expressed her belief that the medication the child was being administered was not actually working. C.R. blamed her Income Assistance worker for not assisting with her application for housing and for not paying for her phone. Ms. MacDonald advised C.R. that in fact Income Assistance was covering the cost of the phone.

[113] Ms. MacDonald's affidavit of March 9, 2018 is found at tab 16 of Exhibit 1.

[114] Paragraph 29 confirms that on January 15, 2018 C.R. spoke with casework supervisor Jennifer Hutt and advised her that she was going to lay charges against Ms. MacDonald and the Department and demanded another caseworker be assigned.

[115] Paragraph 31 relates to a meeting at the agency on January 16, 2018 between casework supervisor, Jennifer Hutt, another social worker and C.R. During this conversation C.R. indicated that Ms. MacDonald had discriminated against her from the beginning and had taken her children into care because C.R. had threatened to sue Ms. MacDonald. C.R. maintained that she had a briefcase full of evidence that Ms. MacDonald was a liar, that a police inspector had advised C.R. that Ms. MacDonald would be charged and also indicated that disciplinary action would be taken against the two officers who had accompanied Ms. MacDonald to C.R.'s residence on January 12. C.R. also reported that she had called the Ombudsman, talked to her lawyer and had spoken with the Human Rights Commission.

[116] Paragraph 34 confirms that on January 16, the casework supervisor contacted the police inspector and was advised that there had been no disciplinary action taken against the police officers who had been involved on January 12, and that there was no investigation happening with respect to Ms. MacDonald's actions during a home visit on January 12.

[117] Paragraph 45 confirms a conversation between Ms. MacDonald and C.R. on February 5, 2018 wherein C.R. indicated that she did not want to meet with Ms. Richardson-Dellapinna anymore because Ms. Richardson-Dellapinna didn't let her vent.

[118] Paragraph 48 confirms that on February 6, 2018, Ms. MacDonald learned about a 90-minute live video on Facebook posted by C.R. Ms. MacDonald watched the video and noted that C.R. went into great detail about her children and identified them as being in care. During the course of the video C.R. discussed her interaction with Ms. MacDonald and identified Ms. MacDonald by name and at one point makes a number of accusations. A DVD copy of the video is attached as Exhibit 1 to the affidavit.

[119] The affidavit of Leeann MacDonald sworn September 20, 2018 is found at tab 26 of Exhibit 1.

[120] Paragraph 16 confirms that C.R. reported that she was currently not on her medication due to being pregnant and that she had run out of medication prior to learning she was pregnant.

[121] Paragraph 20 confirms that on July 26, 2018, when Ms. MacDonald spoke with C.R., she reported that police had attended at the home of C.R. and D.D-S. She confirmed that she had called the police after she and D.D-S. were involved in an argument and she was fearful that things would escalate.

[122] The affidavit of Leeann MacDonald sworn December 3, 2018, entered as Exhibit 4, confirms Ms. MacDonald's belief that the paternal grandmother has demonstrated exceptional commitment to the children and that the children have done well in her care. Paragraph 9

confirms that the agency intends that L.B. adopt the two children if they are placed in the permanent care and custody of the Minister.

[123] The affidavit of Leeann MacDonald sworn December 3, 2018, Exhibit 5, paragraph 6, confirms that, as of December 11, 2018, L.B. had been approved by the Minister to adopt the two children. Paragraph 10 reviews various threats as made by C.R. during the course of the protection proceeding.

[124] Ms. MacDonald was the last witness to testify on behalf of the Minister.

[125] The paternal grandmother, L.B., was the next witness to testify.

[126] At the outset of her evidence L.B. confirmed that she had received notification that her adoption application had been completed and approved. A confirmation letter from Department of Community Services (DCS) was entered as Exhibit 19.

[127] L.B. confirmed that the children were placed with her on December 5, 2017. The children have never left her home alone begging for food, no locks are required, and the police have not been called due to any domestic dispute.

[128] She confirmed that either she herself or her parents supervise T.C.'s visits with the children, but primarily it is her.

[129] When asked why she was adopting the children she indicated that she believes it would be in the children's best interest for her to adopt. She believes that the children's parents would struggle emotionally and financially to care for the children. She expressed doubt as to the parents' ability to meet the children's needs.

[130] When asked if she had any concerns about a potential *PSA* order in her favor, she identified her concern as relating to continued contact with C.R. and the associated anxiety for B. before and after such contact. She indicated that such contact would create uncertainty about the children's safety and what to expect and she was not sure about her relationship with C.R. She expressed concern about the constant up and down in the children's lives.

[131] During cross-examination by Ms. Reid, L.B. confirmed that she received the Occupational Therapy Assessment in July 2018. She spoke with Ms. Goguen by telephone after receiving the assessment. She had done a lot of reading and online research. She has balance balls, foam rollers and bouncy balls, and she had those before the report was submitted. She also has weighted blankets. There is a slider rocker outdoors and both children have their own slider rocker, and each child has their own tent in the room so that they can have quiet time.

[132] She indicated that B. has done better at self-regulating both at home and at school. At this point she doesn't have to intervene very much. M. may still have temper tantrums but again, not that often.

[133] B. struggles with transitioning. Early on he seemed upset at school some days and struggled moving from one workstation to another. He likes to have information given to him. They kept working through the process and now it is much better. Now he enjoys music and makes use of the calm bin. He was able to participate in the Christmas concert and he has become much more comfortable. He sees a social emotional wellness teacher at the school and now uses a colour code system. He also attends an afterschool program.

[134] She was asked about the possibility of a *PSA* order containing very specific clauses and she explained that her concern is that C.R. doesn't always follow instructions and that the children should not be exposed to police contact. She does not want the police at her home and she does not want the children to be part of that lifestyle.

[135] L.B. testified that she is not comfortable with assuming responsibility for supervision of C.R.'s access. She indicated she would have to have a third-party with her if she had to interact with C.R. She indicated she would be very disappointed if the court allowed C.R. unsupervised access, indicating that it would be a strain for everybody, but she would try.

[136] In her affidavit, Exhibit 8, sworn November 28, 2018, L.B. indicates at paragraph 2 that she has a long history of dealing with C.R. and expresses her concern that C.R. remains overtly hostile to her despite all the efforts she has made to support C.R. and the children over the years.

[137] At paragraph 3 of her affidavit L.B. maintains that the children have experienced a degree of stability that they never had with their mother during the period of time that they have been with her. She confirms that she has acted as a member of the professional team of social workers, therapists, teachers, pre-school, teachers and access workers who have co-operated to help these children succeed in life. In paragraph four, L.B. confirms that she is fully committed to supporting the children and providing them with a stable and positive home.

[138] Attached as Exhibit A to L.B.'s affidavit of November 28, 2018 is a printout of Facebook postings made by C.R. The Facebook comments include several negative comments about L.B. including the accusation that L.B. allowed her son to abuse C.R. for years and alleging that T.C.'s family lied for him. In addition, the post contains the following comment, "I've lost everything because I believed his mother".

[139] At paragraph 32 of her affidavit, sworn October 14, 2018, Exhibit 9, L.B. reviews her observations of changes in the child, B. during the period of time that he has been in her care. She suggests that it is nice to see that B. has settled and is not worried about things, noting he is affectionate, loving and enjoys her family and is very protective of M.

[140] At paragraph 40 she reviews her observations with respect to the child, M. noting at paragraph 44 that M. has not had a bladder infection since coming into her care. She confirms that she has had very positive feedback from local pediatricians and they have had success at increasing her blood count to the point where she has been released from follow-up. She notes that M. thrives on stability and routine and describes her as a very curious child, always seeking knowledge, noting she has become polite and less demanding and more at peace with her surroundings.

[141] At paragraph 48 she expresses her misgivings about entering into a custody agreement with C.R. and indicates that adoption would be in the best interests of the children. She expresses concern about the potential for her having to experience outbursts and hostility from C.R. and indicates that she does not believe it would be in the children's best interests to maintain a relationship with their mother until such time that C.R. has made a stable life for herself and is able to demonstrate better regard for the well-being of the children.

[142] The first witness to testify for the Respondent mother was Judy Lightfoot, a therapist with Mental Health. She was referred to her Can Say statement identified as Exhibit 15. She indicated that she has seen C.R. for nine sessions.

[143] When asked what she and C.R. have been working on, she indicated that she had reviewed C.R.'s history and chart and the predominant issue they have been working on has been hyperactivity. She indicated that she believes that C.R. has done a good job at managing that.

[144] She testified that she has no concerns of ongoing domestic violence in the relationship between C.R. and D.D-S. However, she also indicated that if she had been aware of an incident in August, she would have asked questions. She expressed her belief that C.R. has been honest and forthright with her, despite the nondisclosure of the incident in August.

[145] She believes that C.R. has demonstrated insight into domestic violence, self-care, controlling her emotions, appropriate interaction, expression of emotion, parenting and maintenance of the home.

[146] She acknowledged that her opinions respecting C.R.'s insight is based upon C.R.'s self reporting.

[147] When asked if she can avoid being snowballed by a client, she responded by indicating that she was very good at telling the difference between truth and a lie and agreed that C.R. had been too impulsive at times and that she does allow her to vent and then she shuts it down and redirects.

[148] During cross-examination Ms. Lightfoot confirmed that she has seen C.R. for a total of nine one-hour sessions.

[149] She testified that she was aware that C.R. had been diagnosed with BPD traits but indicated again that she has not seen evidence of the traits. She also commented that the research indicates that people can outgrow BPD.

[150] The next witness to testify was Glenn Gray, Psychologist. His Can Say statement was entered as Exhibit 16.

[151] C.R. was referred to him by her insurance company as a result of a motor vehicle accident. Physiotherapy and psychological counselling or therapy were offered concurrently. He saw her over a period of five months from April to August 2018. He acted more as an emotional support and sounding board rather than working on specific treatment goals.

[152] He notes that she could be quick to judge and that he had seen some acting out behaviors. He agreed that she has a tendency to externalize and blame others.

[153] She did tell Mr. Gray that she was in a conflict with Children's Aid. She said there had been some allegations of domestic violence, but she denied it, explaining that she and D.D-S. had been involved in a heated argument and that she had become escalated and had said things that she regretted.

[154] Nicole Hurley of Maggie's Place was the next witness to testify. She identified her Can Say statement, Exhibit 17. She started working with C.R. in March 2018. C.R. participated in both one on one sessions as well as group programming at Maggie's Place. She acknowledged that she did not know a lot about the children. She and CR. worked on basic parenting issues. She knew nothing of C.R.'s mental health issues and was not aware of any domestic violence concerns.

[155] Dr. Diana Jones testified on behalf of C.R.

[156] She acknowledged that C.R. was on Clonidine, a non-stimulant treatment for ADHD, and experienced side effects and light-headedness so the medication was discontinued.

[157] She is aware that C.R. uses marijuana and is aware that she has been diagnosed with Marijuana Use Disorder. When asked if she knew whether or not C.R. had a marijuana license, she indicated she did not know. She acknowledged that she does not support a license for marijuana for individuals under age 25. She said she would have refused a request to authorize a license. However, she might have referred her to another clinic. She acknowledged she is aware that C.R. has smoked cannabis during her pregnancy and she confirmed that she does not recommend that.

[158] The next witness to testify was D.D-S.

[159] When asked if he wished to provide an update with respect to his affidavit, Exhibit 7, he indicated that he felt that he and C.R. had progressed in their relationship, although it had been difficult. He suggested that they have managed to come together as a cohesive unit and that the current situation is helping them calm down. He believes they are doing the right thing in opposing the agency.

[160] During cross-examination, he expressed his belief that he and C.R. are heading towards a stable relationship. When asked how many times police had attended their residence in response to a domestic violence call, he responded three times and possibly one additional time.

[161] When asked if he was aware of C.R.'s Marijuana Use Disorder diagnosis, he suggested that they haven't abused cannabis and it is not fair to base the diagnosis on use of marijuana if you can still do your daily routine, in which case it should not be called a disorder. He acknowledged that he doesn't have any training in toxicology but then states that he does a lot of research on his own through Google or the library. He then went on to profess admiration for Dr. Oz.

[162] He testified that C.R. acted on impulse once in a while.

[163] He said he was not aware of pending criminal charges. When referred to information from a Justice Enterprise Information Network (JEIN) record, he then agreed that there are current charges but suggested they would be dropped if he pays restitution.

[164] C.R. testified on her own behalf.

[165] During her direct examination, C.R. was referred to and identified her affidavit sworn November 22, 2018, entered as Exhibit 6.

[166] During cross-examination the Respondent initially disagreed with the suggestion that the children's behaviors sometimes presented problems during access, but then subsequently indicated that she would agree that the children's behaviors led to the children having separate access visits.

[167] The Respondent disagreed with the suggestion that it was her inability to handle both children at an access visit that led to the separation of access. She expressed her belief that the problems experienced with the children's behaviors during access were a result of the children not receiving adequate therapy. The Respondent mother insisted that she parented adequately during access visits.

[168] The Respondent agreed that when the children first came into care, they were having an inadequate amount of supervision. When the children were returned to her in September 2017, she suggested that DCS failed to put everything in place on their end and she ended up living on Income Assistance for a whole month while trying to parent the children. She conceded however, that she did mess up. She denied that she was blaming the agency for the second taking into care, but again suggested that she didn't have the proper amount of help when the children were returned to her, again suggesting that she did not have adequate money because she was not receiving the Child Tax Benefit. She maintained that she would have been better prepared to parent the children had she had adequate financial support.

[169] The Respondent mother agreed that she absolutely has PTSD. She indicated that she also has an anxiety disorder. She absolutely agreed that she has ADHD. She indicated that she would not agree that she has Marijuana Use Disorder.

[170] She would not agree that the diagnosis of Borderline Personality Disorder would also apply, indicating that she disagreed with Dr. Pogosyan's testimony because she believes that it would be illegal for Dr. Pogosyan to change her diagnosis while testifying. She clarified that she does not feel that she has BPD, but that she probably has traits of BPD.

[171] C.R. stated that she does not believe her BPD traits are interfering with her life at this point, suggesting that she has been doing very well and that she has made a lot of changes. However, she also expressed her belief that Dialectical Behavior Therapy (DBT) would help her immensely.

[172] The Respondent went on to suggest that she felt that she had done a lot of work to try and help herself and that she had done a lot of programs and work to get herself to the point where she is better able to raise her children. When asked if her BPD traits or disorder would have impact on her parenting of the children if they were returned to her care, the respondent indicated they would not because she believes that she has received adequate help over the last year and noted she was going to be going into DBT.

[173] She agreed that the ADHD medication did her good when she was taking it. The Respondent testified that she had stopped one of her medications because her pharmacy was having difficulty getting approval for payment of the medication. She agreed, therefore, that technically she was not taking the medication before she knew she was pregnant, but it was not by her choice but because of the pharmacy's difficulties in arranging for her to receive the medication.

[174] During her cross-examination C.R. confirmed that she had obtained a medical license for marijuana after she had been diagnosed with Marijuana Use Disorder. She confirmed that she was still continuing to use marijuana even though she was pregnant.

[175] At one point during her cross-examination, the Respondent asserted that she was learning to manage her BPD traits more effectively at this point.

[176] C.R. denied telling Dr. Pogosyan that all of the agency material was lies. She testified that what she had told Dr. Pogosyan was that she disagreed with what was in the agency file. She agreed that her evidence was not consistent with what Dr. Pogosyan's report indicated.

[177] She agreed that she may exhibit some of the behaviors identified by Dr. Pogosyan but not in a way that affects her life. She suggested that if she had been given the proper treatment that she would not have had such a hard time with her BPD traits.

[178] Later in her cross-examination, C.R. indicated that she doesn't know 100% whether she has full-blown BPD, traits of BPD or traits of something else. She insisted that she's willing to accept any sort of help that will help her learn how to deal with whatever it is that she does have. She also acknowledged and agreed that she needs to have proper medication put in place.

[179] Initially, when asked if she agreed that she had been hostile towards the agency throughout the proceedings she responded by suggesting that there had been miscommunication on both parts. However, she subsequently conceded that there had been situations where she has been hostile.

[180] She denied that she had made a false report to the police about the agency suggesting that what she had done was provide her opinion on what happened during the second taking into care. She acknowledged that she has contacted the Ombudsman, contacted politicians, threatened to sue the agency, threatened to sue Ms. MacDonald and threatened to sue the IWK.

[181] When asked if she had been hostile with L.B., she initially suggested that there had been occasions where they had both been hostile with each other but then agreed that she had been hostile with L.B.

[182] In her affidavit, Exhibit 6, C.R. acknowledged that she missed some appointments with Ms. Richardson-Dellapinna and maintained that she and Ms. Richardson-Dellapinna did not connect. She states that Ms. Richardson-Dellapinna would not let her discuss things that she felt she needed to discuss and so she requested a different counsellor.

[183] In Exhibit 6, C.R. also acknowledges that she and her current partner, D.D-S. have had some rough patches and arguments, but she asserts the relationship is now stable.

[184] She admits that the anger she felt following the children's re-apprehension in October 2017 was sometimes inappropriately focused on Ms. MacDonald and that she did make a complaint about Ms. MacDonald to the police. She disagreed that she was consistently or repeatedly inappropriate with agency staff or that she was regularly hostile with them or other service providers.

[185] In her affidavit, C.R. talks about what will happen if the children are returned to her care and she indicates that she will maintain regular overnight parenting time between the children and L.B. She hopes that she and L.B. will be able to work and co-parent together positively. She indicates her intention to continue to see Ms. Lightfoot and to participate in a DBT program.

Issues

[186] The following issues arise for determination;

1. Are the two children who are the subject of the proceeding in need of protective services?
2. If the two children are no longer in need of protective services such that the Minister's application should be dismissed, what would be the appropriate custody disposition under the *Parenting and Support Act*?
3. In the event the court determines that the two children are still in need of protective services, what disposition would be in the best interests of the children; permanent care and custody or an appropriate *Parenting and Support Act* order in favor of the paternal grandmother?

General Principles Applicable to a Request for Permanent Care and Issues

[187] The case authorities referred to in the following paragraphs contain useful summaries of general principles applicable to determination of an application for permanent care and custody.

[188] In *Minister of Community Services v. C. B.*, 2012 NSSC 358, Justice Jollimore determined an application by the Minister for an order for permanent care and custody without

provision for access for the Respondent mother. In granting the Minister's application Justice Jollimore offered the following analysis commencing at paragraph 19:

[19] The purposes of the *Children and Family Services Act* are to protect children from harm, to promote the family's integrity and to assure children's best interests. These purposes are expressed in the *Act's* preamble and they are also repeated in the articulation of "best interests" found in subsection 3(2).

[20] In *Children and Family Services Act* proceedings, the children's best interests are paramount. At different points in a child protection application, the *Act* directs me to consider "the best interests of a child" when making an order or a determination. When that happens, subsection 3(2) dictates that I consider those of enumerated circumstances which are relevant.

[21] This is an application to review a temporary care and custody order. Section 46 of the *Children and Family Services Act* outlines the process I'm to follow in this review. Before I make an order in a review, I must consider: whether the circumstances have changed since the previous disposition order was made; whether the plan for the children's care applied in that order is being executed; the least intrusive alternative that's in the children's best interests; and whether the requirements of subsection 46(6) have been met. Subsection 46(6) says that I may make a further temporary care and custody order unless I am satisfied that the circumstances which justified the earlier order are unlikely to change within a reasonably foreseeable time that doesn't exceed the statutory deadline.

...

[33] The Minister asks that I order the children be placed in its permanent care and custody pursuant to section 42(1)(f). Before I may do this, I must consider subsections 42(2) and 42(4) of the *Act*. The former section mandates that I do not make an order that removes the children from their mother unless I am satisfied that less intrusive alternatives have been tried and have failed, have been refused, or would be inadequate to protect them. The latter section instructs that I shall not make a permanent care and custody order unless I am satisfied that the circumstances which justify the order are unlikely to change within a reasonably foreseeable time, not exceeding the maximum time limits. I have already addressed the latter point, above, but will return to it, briefly, below

...

[42] According to subsection 42(3) of the *Children and Family Services Act*, I am not to place children in the Minister's permanent care and custody without considering whether there is a possible placement with a relative, neighbor or other member of the children's community or with extended family. Here, no such placement has been identified for J or C.

[189] In *Mi'kmaw Family and Children Services v. KDo*, 2012 NSSC 379, Justice Forgeron considered an application for permanent care and custody. Justice Forgeron identified the following principles commencing at paragraph 19:

[19] In making my decision, I must be mindful of the legislative purpose. The threefold purpose is to promote the integrity of the family, protect children from harm, and ensure the best interests of children. The overriding consideration is, however, the best interests of children as stated in sec. 2(2) of the *Act*.

[20] The *Act* must be interpreted according to a child centred approach, in keeping with the best interests principle as defined in sec. 3(2). This definition is multifaceted. It directs the court to consider various factors unique to each child, including those associated with the child's emotional, physical, cultural, and social development needs, and those associated with risk of harm.

[21] In addition, sec. 42(2) of the *Act* states that the court is not to remove children from the care of their parents, unless less intrusive alternatives have been attempted and have failed, or have been refused by the parent, or would be inadequate to protect the children.

[22] When a court conducts a disposition review, the court assumes that the orders previously made were correct, based upon the circumstances existing at the time. At a review hearing, the court must determine whether the circumstances which resulted in the original order, still exist, or whether there have been changes such that the children are no longer children in need of protective services: sec. 46 of the *Act*; and **Catholic Children's Aid Society of Metropolitan Toronto v. M. (C.)** [1994] 2 S.C.R. 165.

[23] Past parenting history is also relevant as it may be used in assessing present circumstances. An examination of past circumstances helps the court determine the probability of the event reoccurring. The court is concerned with probabilities, not possibilities. Therefore, where past history aids in the determination of future probabilities, it is admissible, germane, and relevant: **Nova Scotia (Minister of Community Services) v. Z.S.** 1999 NSCA 155 at para. 13; **Nova Scotia (Minister of Community Services) v. G.R.** 2011 NSSC 88, para. 22, as affirmed at **Nova Scotia (Minister of Community Services) v. G.R.** 2011 NSCA 61.

Legal Analysis

[190] The Minister is requesting an order for permanent care and custody with respect to both children pursuant to Section 47 of the *CFSA*.

[191] The Minister bears the burden of proof with respect to the application. The burden of proof is the civil burden based upon balance of probabilities. (*F.H. v. McDougall*, 2008 SCC 53). The Minister must adequately establish that it would be in the best interests of the children that they be placed in permanent care and custody.

[192] In determining whether the Minister has adequately discharged the burden of proof, it is the responsibility of the trial judge to carefully consider and review the evidence.

[193] The court must also consider the relevant provisions of the *Children and Family Services Act*, S.N.S. 1990, c. 5.

[194] In determining the Minister's application I've considered the preamble to the legislation which confirms the objectives and philosophy of the *CFSA* and clearly emphasizes that children are only to be removed from the care of their parents when all other measures are inappropriate.

[195] The purpose of the *CFSA* as set forth in Section 2(1), namely, to protect children from harm, to promote the integrity of the family and assure the best interests of the children must be kept in mind throughout.

[196] It is important to acknowledge that in all proceedings under the *CFSA*, the paramount consideration is the best interests of the child as per Section 2(2). That provision underscores the need for a child focused or centric approach to the determination of child protection proceedings.

[197] I have taken note of the relevant provisions as set forth in Section 22(2) of the *CFSA* in determining whether the children continue to be in need of protective services.

[198] I have also considered Section 3(2), and the relevant circumstances as listed therein, in determining the best interests of the children.

[199] I have considered Sections 42, 45, 46 and 47 in determining the Minister's application.

[200] In the context of this consolidated proceeding, it is also important to acknowledge that in any proceeding under the *PSA* concerning custody of children, the court is also required to give paramount consideration to the best interests of the child per Section 18(5). Section 18(6) provides a listing of circumstances to be considered in determining best interests.

Outside Limit

[201] The outside limit for disposition orders in this proceeding was January 11, 2019.

[202] Case authorities clearly establish that if a child is still in need of protective services at the outside limit, the matter cannot be dismissed, and the court has no jurisdiction to order either supervision or temporary care and custody.

[203] In *Nova Scotia (Community Services) v. R.F.*, 2012 NSSC 125, Justice Jollimore indicated as follows commencing at paragraph 165 of her decision;

[165] According to Justice Saunders in *Children's Aid Society of Halifax v. B.(T.)*, 2001 NSCA 99 at paragraph 19, I'm to consider each of the possible dispositions in section 46(5) and, by virtue of section 46(5)(c), section 42(1). His Lordship's reasons limit my considerations. At paragraph 23, he explained:

As the proceeding nears a conclusion, the opportunity to grant disposition orders under s.42(1)(c) diminishes until the maximum time is reached at which point the court is left with only two choices: one or the other of the two “terminal orders”. That is to say, either a dismissal order pursuant to s. 42(1)(a) or an order for permanent care and custody pursuant to s. 42(1)(f).

[166] This proceeding is nearing its conclusion: the deadline for final disposition is April 7, 2012. As a result, the only two options available for my consideration are dismissing the Minister’s application or placing C in the Agency’s permanent care and custody.

[204] Given that the outside limit applicable to this proceeding has now been reached, the court must determine whether to dismiss the Minister’s application or place the children in permanent care and custody.

[205] Since this is a consolidated proceeding the court can grant an appropriate order under the *PSA* in the event of dismissal of the Minister’s application, having regards to the best interests of the children.

[206] Again, in the context of a consolidated proceeding, should the court conclude that the children continue to be in need of protective services, the court can also consider and determine whether an appropriate order under the *PSA* would constitute a “less intrusive” alternative to permanent care and custody, having regards to the best interests of the children, consistent with the court’s duty as set forth in Section 42(3)(a) of the *CFSA*.

Protection Finding

[207] The Minister maintains that the children continue to be in need of protective services. A protection hearing pursuant to Section 40 of the *CFSA* was held November 2, 2017. The court found that the two children were in need of protective services pursuant to subparagraphs (b), (g) and (k) of s. 22(2). C.R. did not contest the protection finding. T.C. consented to the finding.

[208] Section 22 reads as follows;

(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 substantial risk that the child will suffer emotional abuse and the parent or guardian does not provide, refuses or is unavailable or unable to consent to, or fails to co-operate with the provision of, services or treatment to remedy or alleviate the abuse;

....

(k) there is a substantial risk that the child will experience neglect by a parent or guardian of the child, and the parent or guardian does not provide, refuses or is unavailable or unable to consent to, or fails to co-operate with the provision of, services or treatment to remedy or alleviate the harm;

....

[209] Subparagraphs (b), (g) and (k) are protection grounds based upon “substantial risk”.

[210] Section 22(1) indicates as follows; “In this section, “substantial risk” means “a real chance of danger that is apparent on the evidence”.

[211] In *Nova Scotia (Minister of Community Services) v. S.C.*, 2017 NSSC 336, Justice Jollimore commented upon the meaning of “substantial risk”, indication as follows at paragraph 35 of her decision;

[35] “Substantial risk” is a real chance of danger that is apparent on the evidence: subsection 22(1) of the *Children and Family Services Act*. It is the real chance of physical or emotional harm or neglect that must be proved to the civil standard. That future physical or emotional harm or neglect will actually occur need not be established on a balance of probabilities: *MJB v. Family and Children Services of Kings County*, 2008 NSCA 64 at paragraph 77, adopting *B.S. v. British Columbia (Director of Child, Family and Community Services)*, 1998 CanLII 5958 (BC CA), at paragraphs 26 to 30.

[36] If the Minister establishes that there is a real chance of harm, the question is purely one of D’s best interests, as between permanent care and a return to the parents. If the Minister does not establish this that there is a real chance of harm, then D must be returned to her parents.

[212] The Minister maintains that the protection concerns at this point relate to the Respondent mother’s mental health, domestic violence, neglect, substance abuse and lack of insight into the risks faced by the children if returned to the mother’s care.

[213] The court will consider each of these issues having regard to the evidence presented with the exception of lack of insight. The court feels that lack of insight on the part of the Respondent mother may be relevant to consideration of the protection concerns but need not be considered as a standalone issue in determining whether or not the children continue to be in need of protective services.

C.R.’s Mental Health

[214] Dr. Pogosyan’s psychiatric assessment for the Respondent mother confirms the following diagnoses; Post-traumatic Stress Disorder (PTSD), Panic Disorder, Attention Deficit Hyperactivity Disorder (ADHD), Marijuana Use Disorder, and Adjustment Disorder with depression and anxiety.

[215] In addition, Dr. Pogosyan concluded that the Respondent mother also displayed features suggestive of Borderline Personality Disorder (BPD).

[216] At trial, Dr. Pogosyan was referred to social worker MacDonald's affidavit of March 9, 2018 and the paragraphs referring to an incident between the Respondent mother and D.D-S. on January 8, 2018. Dr. Pogosyan testified that the Respondent mother's threats of suicide as referred to in the affidavit would mean that the Respondent mother would meet five of the nine criteria and therefore the diagnosis of BPD would apply.

[217] During her testimony and in her report, Dr. Pogosyan discussed the defence mechanisms used by the Respondent mother to cope with stress such as acting out, denial and externalizing. Dr. Pogosyan explained that the acting out behaviors, in some instances, create an inability to engage in conversation as the individual can become angry quickly and have a hard time regulating their emotions. Externalizing involves blaming others for something that relates to oneself and is to be contrasted with an individual who takes responsibly as opposed to blaming others. Denial is regarded as immature and primitive. Dr. Pogosyan suggested an example of C.R.'s denial would be her assertion that the agency file contains lies and that it is easier for C.R. to take that position than to admit the reality.

[218] Ms. Richardson-Dellapinna testified to her contact with C.R. on January 8, 2018 indicating that the Respondent mother informed her that she had gone to the hospital due to a mental breakdown and feeling suicidal. C.R. had been arrested by police after attempting to grab a kitchen knife and had subsequently attended at the emergency room. The mother did not wish to share what had happened with the agency, but Ms. Richardson- Dellapinna encouraged her to do so.

[219] During her testimony, Ms. Richardson-Dellapinna indicated that the time that she and C.R. had together just got caught up with externalizing blame and as a result she suggested to C.R. that they talk less about what was going on and work on acquiring skills. C.R. was not accepting of Ms. Richardson-Dellapinna's suggestion.

[220] Social Worker MacDonald referred to the Respondent mother as impulsive and reactive. She expressed her belief that the failure on the part of the Respondent mother to use medication as recommended by Dr. Pogosyan was a barrier to addressing issues. Lack of follow through on the part of the mother was a continuing concern.

[221] Ms. MacDonald testified that at one point the family support worker advised that use of medication for ADHD had allowed the Respondent mother to slow down and it looked like a silver lining was appearing but that change only lasted a short time as C.R. stopped taking the medication. Ms. Richardson-Dellapinna had made a similar observation at one point.

[222] Ms. MacDonald reviewed the difficulties that were encountered in attempting to provide appropriate therapeutic services for the Respondent. In first instance, therapy was arranged with Ms. Richardson-Dellapinna. Subsequently, that service was suspended when the Respondent missed three appointments. Subsequently, therapy with Ms. Richardson-Dellapinna was

reinstated but once again suspended, due in part to continued sporadic attendance on the part of the Respondent mother.

[223] In her affidavit, Exhibit 6, the Respondent mother refers to the fact that she and Ms. Richardson-Dellapinna “did not connect” (paragraph 88) because Ms. Richardson-Dellapinna would not allow her to speak about her issues. She confirmed that she requested a different counselling be provided (paragraph 90).

[224] Following receipt of Dr. Pogosyan’s assessment and Dr. Pogosyan’s recommendation that C.R. participate in DBT and EMDR therapy, arrangements were eventually made for C.R. to participate in therapy with Jessica Heidebrecht. Subsequently, that therapy was also suspended after the Respondent mother missed a third scheduled appointment.

[225] During her testimony, Ms. Heidebrecht reviewed her brief involvement with the Respondent mother. She confirmed that she asked that C.R. attend a Choice appointment in order to arrange for participation in DBT therapy group sessions as recommended by Dr. Pogosyan. C.R. did not attend the Choice appointment that had been scheduled for July 18, 2018 and therefore did not progress to participation in the DBT group program. Ms. Heidebrecht closed her file after the therapy was suspended for missed appointments.

[226] In her affidavit, Exhibit 6, the Respondent mother acknowledged that her mental health declined over several months commencing summer 2017 and culminating in the incident that occurred in January 2018 that resulted in her admission to the hospital. She suggests that the medications that she was on as of January, as prescribed by her family doctor, resulted in reactions that she felt contributed to her breakdown. As a result, she stopped taking them.

[227] In her affidavit the Respondent mother also indicates that the taking into care of her children for the second time in October 2017 impacted negatively on her mental health and as a result she was very angry with the agency. She admits that her anger was sometimes inappropriately focused on Ms. MacDonald but denies that she was consistently or repeatedly inappropriate with agency staff.

[228] In her affidavit she confirms her intention to continue counselling with her present mental health counsellor and to participate in a DBT program. During her direct examination the Respondent mother testified that she has been accepted into the DBT program starting March 7, 2019 and advised that the program runs for six months.

[229] During her cross-examination the Respondent mother suggested that when the children were returned to her care by the court in early September 2017, she was mentally unequipped, emotionally unstable and experiencing mental health issues. She suggested that there were quite a few factors that led to the children being once again take into care in October, but that she didn’t believe that it was solely her fault. She agreed on cross-examination that she was also having problems with her mental health at time of the re-apprehension and that probably the children should have been removed from her care and that was the reason why she did not contest the Minister’s request for temporary care and custody at that point in time. The mother

indicated that at the time of the second taking into care she was completely stressed out and had a lot of stuff on her plate.

[230] During cross-examination, C.R. conceded that she has PTSD and an anxiety disorder. She also agreed that she has ADHD.

[231] She disputed Dr. Pogosyan's diagnosis of Marijuana Use Disorder, asserting that in order for a disorder to exist you have to have something that would cause you to have a problem in your everyday life and she asserted that she functions fine and that she does not smoke marijuana all day or "gram upon gram". She would consider her use of marijuana similar to use of any medication. Her partner, D.D-S. gave very similar testimony.

[232] C.R. also testified that she did not agree with Dr. Pogosyan's diagnosis of BPD because it was "illegal" for Dr. Pogosyan to change her diagnosis during testimony. C.R. testified that she does not believe her BPD traits are interfering with her life at this point. However, she also expressed her belief that DBT therapy would help her immensely. C.R. stated that she did not feel her borderline traits or disorder would have any impact if the children were returned to her care and suggested that she has received adequate help over the last year and noting that she would be going into DBT therapy.

[233] During her cross-examination, C.R. acknowledged that her current therapist has referred her once again to DBT therapy because it was recommended by Dr. Pogosyan. C.R. testified that she is willing to do whatever she can to have her children come home and that she sees participation in DBT therapy as something she has to do in order to have the children returned to her care. C.R. also acknowledged and agreed that she needs to have proper medication put in place. C.R. acknowledged her past mental health issues which led to the children being removed from her care but suggested that what she is doing now should indicate who she is at present, as opposed to who she was a year ago when she was completely stressed out and had "a lot of stuff on her plate".

[234] During her testimony, Judy Lightfoot, C.R.'s current therapist, indicated that the predominant issue that she and C.R. have been working on during therapy has been hyperactivity. She testified that she is aware of the Respondent mother's history of dysregulation and BPD traits. She has not seen any of those behaviours during her sessions with C.R. She has seen hyperactivity. She expressed her belief that use of medication for ADHD would make a big difference because it would slow down her thinking.

[235] During cross-examination Ms. Lightfoot testified that she has no concerns about domestic violence in C.R.'s current relationship but then acknowledged that she was unaware of any incident between C.R. and D.D-S. in August. She testified that she has observed no BPD traits and suggested that C.R. has taken responsibility for past mistakes and certain tendencies. Her work with C.R. is focused on the present and not so much on the past. Ms. Lightfoot testified that she believes that C.R. has been honest and forthright with her. She also acknowledged that her opinion respecting C.R.'s insight is based upon C.R.'s self reporting. She agreed that at present C.R. has every reason to portray herself in the most positive manner possible.

[236] The evidence clearly establishes that the Respondent has a long-standing history of mental health issues. She was not participating in any therapeutic program when the agency initially became involved. Her history of medication usage is confusing and confirms a lack of consistent use of prescribed medication. Since August 2018 she has not been able to use prescription medication as a result of her pregnancy albeit she has continued to use cannabis on a regular basis against the advice of her family doctor.

[237] The Respondent herself concedes that she was struggling with mental health issues when the children were returned to her care in early September 2017 following a contested interim hearing. At that time the court accepted the Respondent mother's testimony that she was capable of providing adequate parenting. The court returned the children under the auspices of an appropriate supervisory order and denied the Minister's request for continuation of temporary care.

[238] C.R. also conceded that her mental health issues justified the subsequent re-apprehension in early October 2017. She testified that her appreciation of her poor mental health was the reason why she did not contest the Minister's request for temporary care and custody at that point.

[239] Despite her professed appreciation as to how her mental health issues had impacted upon her ability to parent, the Respondent mother did not engage appropriately in therapy with Ms. Richardson-Dellapinna. The therapy was suspended for missed appointments. Even after the therapy service was reinstated at the request of the Applicant, continued sporadic attendance contributed to a further suspension of the service. C.R. stated that she and Ms. Richardson-Dellapinna did not connect and indicated that Ms. Richardson-Dellapinna would not let her talk about what she wanted to during therapy sessions. C.R. subsequently asked to participate in therapy with a different counsellor. The Respondent's evidence demonstrates significant lack of insight respecting the therapeutic process.

[240] The Respondent maintains that she experienced a mental health breakdown in January 2018. Subsequently she attributed the breakdown to a negative reaction to medication. There was an absence of medical evidence supporting these assertions. C.R.'s family doctor did not indicate that C.R. had suffered a breakdown on January 8, 2018 nor did she indicate that side effects of medication played a part in what happened on January 8, 2018.

[241] Following receipt of Dr. Pogosyan's assessment the Respondent was offered the opportunity to participate in further therapy with Jessica Heidebrecht. Once again, the Respondent mother failed to make the necessary commitment to participation in therapy despite the Respondent having assisted in identifying Ms. Heidebrecht as a qualified therapist. This therapeutic service was also suspended in July 2018 due to missed appointments. When the agency subsequently agreed to reinstate counselling, unfortunately Ms. Heidebrecht was no longer in a position to accept the referral.

[242] C.R. also missed a Choice appointment in July 2018 which was intended as an initial step in arranging for her participation in a DBT group therapy program in accordance with Dr.

Pogosyan's recommendations. As a result, C.R. had not participated in any DBT programs as of trial.

[243] By end of October 2018, the only service being provided by the agency was supervised access. In-home family support services had been terminated due to lack of progress on the part of the Respondent mother. Ms. MacDonald, as the responsible caseworker, was having infrequent contact with the Respondent. At that point, the protection proceeding was heading towards a contested final review hearing.

[244] C.R. demonstrated initiative by arranging to start counselling services with Judy Lightfoot, a therapist with Mental Health Services in the fall of 2018. Ms. Lightfoot testified that to date she has had nine one-hour sessions with C.R. Ms. Lightfoot has had no contact with the agency. She spoke very positively about C.R. and testified that has not seen any BPD traits during any sessions. Ms. Lightfoot suggested that C.R. may have grown out of her BPD traits because C.R. has matured. She acknowledged that many of her positive impressions regarding C.R. are based upon C.R. self-reporting and conceded that C.R. has every reason to portray herself in the most positive manner possible at this point. C.R.'s self reporting is the only source of information she has with respect to C.R.'s current circumstances.

[245] While the court has no difficulty accepting that Ms. Lightfoot was being forthright in offering her impressions and opinions with respect to the Respondent mother, the court has significant reservations with respect to the reliability of Ms. Lightfoot's opinions since they are essentially based upon acceptance of information provided by the Respondent mother. Ms. Lightfoot's involvement and interaction with the Respondent mother has occurred over a very limited time frame.

[246] I am satisfied that the evidence establishes that the Respondent mother has only recently engaged appropriately in individual therapy and that the focus of therapy to this point has been the Respondent mother's hyperactivity. Other issues as identified by Dr. Pogosyan have not been addressed.

[247] The court is unable to place a great deal of weight or reliance on the opinions expressed by Ms. Lightfoot. Her contact with the Respondent mother has been limited. She has had no contact with the agency. Her assessment and her opinions are based on the self reporting of the Respondent. Ms. Lightfoot's opinions are therefore premised upon her assumption or belief that the Respondent mother should be viewed as a reliable source of information. I will offer further comment with respect to my assessment of C.R.'s credibility later in this decision.

[248] The court is not prepared to place significant weight on Ms. Lightfoot's assertion that the diagnosis of BPD may no longer be applicable. The court accepts and relies upon the evidence of Dr. Pogosyan with respect to the diagnosis of BPD.

[249] The Respondent mother confirmed that she once again has the opportunity to start DBT therapy as recommended by Dr. Pogosyan. It will involve a six-month program starting March 2019. It remains to be seen whether or not the Respondent will be able to successfully complete the program. The Applicant has yet to complete an appropriate program involving EMDR

therapy as recommended by Dr. Pogosyan. The Applicant has not followed through appropriately or consistently with Dr. Pogosyan's therapeutic or medication recommendations to date.

[250] When the Respondent mother was referred to Ms. Rankin's testimony indicating that the children presented with symptoms of trauma, she responded by initially suggesting that the children's father had abused them. When asked what role she may have played in the children's trauma, she acknowledged that she had yelled. She then admitted that she was an angry person at that point in her life and admitted that she had problems controlling her emotions. She acknowledged that the children would have been subject to trauma and stress while in the care of herself and the children's father. When asked if she would agree that during her care of the children the children were subject to trauma, stress and anxiety, she responded by indicating that initially after she and the children's father separated, she felt that the children were doing well but then stated the problem was that she was not doing well. She explained that she had a lot of mental issues going on and that the children were probably subjected to seeing her very upset, sad and crying.

[251] The evidence supports and justifies the conclusion on balance that the children's sensory issues are attributable to the trauma the children have sustained as a result of their previous home environments. When in the care of the Respondents, the children's home environment was chaotic without necessary structure or routine. Domestic violence was a continuing concern. Following the Respondents' separation, the Respondent mother's untreated, or inadequately treated, mental health issues resulted in the children being exposed to situations where they would have been subject to stress and anxiety. The Respondent mother was not able to provide the children with a stable home environment or with parenting that would adequately meet the children's needs for consistency and routine. Both children have made significant gains since being placed in a home environment where their needs are being adequately met on a consistent basis.

[252] The Respondent herself has conceded that her mental health issues have interfered with her ability to adequately parent her children in the past.

[253] The evidence supports social worker MacDonald's concern that the Respondent mother's life was chaotic. There were continuing concerns with respect to domestic violence in her relationship with D.D-S. The status of C.R.'s relationship with D.D-S. was unclear. Sometimes they were a couple and sometimes they were not. They changed residences a number of times during the course of agency involvement. The police attended at the Respondent mother's home on several occasions in 2018 due to domestic conflict, the last such incident having occurred in August 2018, approximately four months before the commencement of trial. The extent to which the Respondent's ongoing mental health issues may have contributed to this unfortunate history is unclear but the court would acknowledge that some of the behaviours involved appear to be consistent with behaviours associated with BPD or borderline personality traits as explained by Dr. Pogosyan.

[254] During access visits with the children the Respondent mother was observed as being incapable of managing the two children resulting in separate access visits. The visits did not go

well and there was a great deal of frustration and escalation of behaviours for both children during visits. The family support worker, Ms. Francis, testified that she felt the dysregulation demonstrated by the children during access visits was due to lack of attention on the part of the Respondent mother as well as her inability to deal with the children's dysregulation, despite her involvement in family support educational sessions. Ms. Francis testified that she felt that the Respondent mother was offered the full opportunity to demonstrate her parenting skills but also indicated that the Respondent mother didn't appear to be able to retain the information that was being provided. Ms. Francis did not see consistent use of information she provided to C.R. during access visits. It is reasonable to infer that some of the difficulties encountered with respect to the Respondent's inability to retain and utilize the information provided by the family support worker may best be understood or explained as a result of the Respondent's ADHD diagnosis and the associated hyperactivity as referred to by Ms. Lightfoot.

[255] The Respondent failed to co-operate appropriately with, or engage appropriately in, services intended to assist her in addressing her mental health issues despite the repeated opportunities afforded to her.

[256] Successive therapeutic programs for the Respondent were suspended due to the Respondent's inability to keep scheduled appointments. On another occasion a program intended to afford the Respondent the opportunity to participate in DBT therapy was not able to be arranged because the Respondent again missed a scheduled appointment. The Respondent did not demonstrate the necessary commitment to addressing her mental health issues during the course of the protection proceeding despite the opportunities afforded to her.

[257] As noted earlier, there has been considerable confusion with respect to the Respondent's use of prescription medication. At one point the Respondent mother suggested that she ran into difficulty with funding of one of her medications which led to disruption in her use of the medication. At one point she confirmed that she stopped taking her medication because she suspected she was pregnant, only to learn subsequently that she was not. In January 2018 the Respondent felt she had a mental breakdown which she attributed to a negative reaction to medication. As a result, she again stopped taking her medication after consulting with her family doctor. Subsequently, in July 2018 Dr. Locke prescribed Lamotrigine, a mood stabilizer, as well as Methylphenidate for ADHD. Those medications were discontinued in August 2018 when C.R. discovered she was pregnant.

[258] The mother's current therapist acknowledges that medication would be of considerable benefit to her. The court would note however that, while the Respondent mother curtailed her use of medications as a result of her pregnancy, she continued to use marijuana on a regular basis against the advice of her family physician and despite her awareness that she has been diagnosed with Marijuana Use Disorder by Dr. Pogosyan. While C.R.'s inability to use prescription medications at time of trial was attributable to her pregnancy, the resulting unfortunate reality is that there is little evidence which would allow the court to properly assess the actual impact or efficacy of appropriate and sustained use of prescription medication on the Respondent mother's mental health issues or her ability to provide adequate parenting.

[259] There is a lengthy history of negative interaction between the Respondent mother and agency workers or representatives. At different times the Respondent has accused agency workers of being dishonest. She has threatened legal action and reported her primary social worker to police. She has complained to various individuals and agencies about the agency's involvement and agency action. In many instances, the behavior on the part of the Respondent mother is consistent with the behaviors referred to by Dr. Pogosyan relating to the Respondent mother's BPD traits and associated defence mechanisms.

[260] The frequently hostile and adversarial relationship between the Respondent and the agency hindered or impeded the Respondent mother's ability to effectively address the agency's protection concerns.

[261] Based upon careful consideration of all the evidence, the court has concluded that there continues to be a substantial risk of harm for the children associated with mental health issues on the part of the Respondent mother which impact negatively upon the Respondent mother's ability to provide adequate parenting. The court finds that there is a real chance of danger apparent on the evidence associated with the potential harm for the children associated with the Respondent's unresolved or unaddressed mental health issues.

[262] In reaching this conclusion I want to make it clear that the court acknowledges that mental health issues or illnesses should not be viewed as incompatible with or precluding adequate parenting. The court is well aware that many individuals with emotional or mental health issues are wonderful parents. I would emphasize that the conclusions that I've reached in this particular case are based upon my review and consideration of the evidence presented.

Domestic Violence

[263] The evidence in this case establishes that domestic violence was a long-standing issue in the relationship between C.R. and T.C.

[264] The affidavit of social worker Heidi Melanson, sworn August 16, 2017 (Exhibit 1, tab 2), confirms a referral from police on March 12, 2017 indicating a domestic dispute between C.R. and T.C. which resulted in C.R. being charged with assault.

[265] Dr. Pogosyan's psychiatric assessment for the Respondent mother includes a historical summary of C.R.'s relationship with T.C. and indicates that C.R. reported that T.C. was physically and emotionally abusive during their relationship.

[266] At page 16 of her assessment report in discussing the defence mechanism "acting out", Dr. Pogosyan suggests that an illustration of "acting out" on the part of C.R. would be seen in a police report of an altercation between C.R. and D.D-S. on December 9, 2017 which resulted in some property damage.

[267] On January 8, 2018 the agency received a referral from Truro Police concerning a domestic dispute between C.R. and D.D-S. This incident is referred to in the affidavit of Ms.

MacDonald sworn March 9, 2018 commencing at paragraph 17. C.R. was charged as a result of this incident.

[268] Ms. MacDonald attended the Respondent's home on January 12, 2018 because she was concerned about the Respondent. Even though C.R. was subject to a no contact order prohibiting contact with D.D-S., he was found in her residence on January 12.

[269] During Ms. MacDonald's contact with the Respondent mother on January 12, 2018 C.R. described how she and D.D-S. had gotten into conflict after he made a comment about her not being a good mother and as a result, she "lost it". The Respondent described and demonstrated how she pretended to take pills but instead dropped them down the sink and how D.D-S. had tackled her to the floor in order to get a butcher knife away from her.

[270] Exhibit 4 contains RCMP occurrence reports relating to RCMP involvement with C.R. and D.D-S.

[271] The first report relates to an incident on July 17, 2018 when the Respondent mother contacted the police after getting into a verbal altercation with D.D-S. The report confirms that when the police arrived at the residence both C.R. and D.D-S. were still involved in a heated dispute and accused each other of assault. D.D-S. was arrested. Both parties subsequently refused to support the assault allegations. No injuries were noted. No charges were laid.

[272] The second incident occurred August 29, 2018. Again, C.R. contacted the RCMP to report a verbal dispute with D.D-S. advising that during a physical struggle D.D-S. had bumped her in the stomach.

[273] Sgt. O'Brien, one of the attending officers, testified that the conflict arose out of the fact that C.R. was pregnant from another individual and had since reconciled with D.D-S. The conflict between the parties was over the pregnancy. There was not enough evidence to support charges and Sgt. O'Brien noted that it appeared to be primarily a verbal dispute.

[274] The agency arranged for D.D-S. to engage in domestic violence counselling with Brock Caldwell in April 2018. Mr. Caldwell testified that D.D-S.'s attendance at counselling was fairly spotty and the fact that he had 12 no-shows indicated that he was not very committed. Mr. Caldwell testified that he was aware of the August incident involving the RCMP and that it appeared that D.D-S. had not handled it in the way he would have hoped. Mr. Caldwell testified that as a domestic violence counsellor he does expect relapses.

[275] During her testimony Ms. Lightfoot, the Respondent mother's current therapist, indicated that based upon the Respondent's self reporting she has no concerns respecting domestic violence. However, she acknowledged during cross-examination that she was not aware of the August incident involving the RCMP.

[276] During his testimony D.D-S. expressed his belief that he and C.R. have progressed in their relationship, although it had been difficult. During cross-examination he agreed that in one instance he had told his counsellor Mr. Caldwell that he had put C.R. out because of her

outbursts. He indicated that C.R. acts on impulse once in a while. D.D-S. indicated that he considers his home to be a stable environment at this point.

[277] During her cross-examination C.R. agreed that the police had attended her and D.D-S.'s home at least three times in 2018 but suggested that none of those visits involved domestic violence, only verbal disputes. C.R. denied any domestic violence in her relationship with D.D-S. C.R.'s evidence is inconsistent with the information contained in the police occurrence report for July 2018. C.R.'s effort to deny, downplay or minimize the significance of these incidents suggests a disturbing lack of insight with respect to domestic violence.

[278] C.R.'s failure to recognize that the incident between herself and D.D-S. in January 2018 involved domestic violence is particularly troubling. The incident clearly involved an attempt on her part to inflict emotional harm on D.D-S. by demonstrating an intention to self-harm as part of her emotional over reaction to his comment criticizing her ability to parent. The January 2018 incident was a very serious incident and it is fortunate that neither C.R. or D.D-S. sustained serious injury. Most importantly, it is fortunate that the children were not present at the time.

[279] On balance, the evidence justifies and supports continuing concerns respecting the potential for domestic violence in the relationship between the Respondent mother and D.D-S.

[280] There is no evidence indicating or confirming any incidents of domestic violence for the past six months. However, that does not preclude the obvious potential for further conflict between the parties at some point in future given the parties track record to date, D.D-S.'s half-hearted commitment to domestic violence counselling, C.R.'s lack of insight with respect to domestic violence and her unresolved or untreated mental health issues, especially her BPD traits.

[281] Exactly where the prior incidents between C.R. and D.D-S. fit on a scale of domestic violence may be subject to some debate, but the court has little hesitation in concluding based upon the evidence that had the children been present for these altercations they would have been exposed to further risk of trauma.

[282] Lack of follow through on the part of the Respondent mother with respect to Dr. Pogosyan's recommendations is also relevant to assessment of risk.

[283] At page 18 of her report, Dr. Pogosyan confirms that her recommendation that the Respondent participate in a DBT therapy was intended to provide the Respondent mother with the opportunity to start with behavior interventions which would help her to control impulses and angry outbursts.

[284] The Respondent was offered the opportunity to commence a DBT program in July 2018 but missed a scheduled appointment intended to facilitate her participation in the program. The Respondent apparently now has another opportunity to participate in a six-month DBT program. Whether the Respondent will be able to successfully participate in and complete the program is unknown at this point in time.

[285] I find that there continues to be a substantial risk of harm associated with the children's potential exposure to domestic violence should the two children be returned to the care of the Respondent. While I cannot say that future physical harm or emotional abuse will actually occur as a result of exposure to domestic violence, I am satisfied that the evidence in this case does establish a real chance of danger due to domestic violence based upon careful review of the evidence.

Neglect

[286] The Minister maintains that the children continue to be in need of protective services due to the continuing risk of neglect if the children are returned to the day-to-day care of C.R.

[287] The affidavit of social worker Heidi Melanson, sworn August 16, 2017 (tab 2 of Exhibit 1), confirms on August 10, 2017 the agency received a referral from Truro Police Department reporting that earlier that afternoon they had received a report of two young children walking alone on Willow Street in the vicinity of a gas station and asking customers and staff for food and money. Officers were able to identify the children as C.R.'s children. When they returned the children to C.R.'s home, they found C.R. and D.D-S. asleep at the residence and unaware that the children had left the home.

[288] Ms. Melanson attended at C.R.'s residence on August 11. The Respondent mother admitted that she didn't realize the children were gone and expressed frustration that the child B. wasn't listening to her. C.R. indicated that she was amenable to services and suggested that she had contacted Early Intervention and was involved with Third Place Transition House. C.R. was cautioned that if there was any further protection concerns the agency might have to take the children into care.

[289] On August 12, 2017 a further intake was received from Truro Police Service reporting that the children had been found in the middle of the road soaking wet by neighbours. When police returned the children to C.R., she again indicated that she was unaware the children had left the house as she had been asleep. A risk management conference was held, and decision was made to take the children into care based upon C.R.'s inability to keep the children safe.

[290] At time of the initial 5-day interim hearing, the court granted the Minister's request for an initial order for temporary care and custody. The Respondent mother requested the opportunity to contest the Minister's request for an order for temporary care and custody and as a result the matter was scheduled for contested interim hearing.

[291] In support of her position the Respondent mother filed an affidavit sworn August 28, 2017 (Exhibit 1 tab 3) in which she indicated that she had signed up for the My Parenting Journey Program as offered by Maggie's Place, enrolled in outreach programs through Third Place Transition House and contacted Early Intervention. The Respondent mother said that she would welcome any services that the agency was willing to provide and indicated that she had taken steps to ensure that the children would not be able to leave her residence without her

knowledge in future. She requested that the children be returned to her under the auspices of a supervisory order.

[292] Following a contested interim hearing on September 1, 2017, the court concluded that a supervision order would be appropriate and in the best interests of the children.

[293] The children were subsequently taken into care on October 3, 2017 and the Minister proceeded to file a variation application confirming a request for an order for temporary care and custody.

[294] Social worker MacDonald testified that she spent quite a bit of time at the Respondent's home after the children were returned to the care of C.R. on September 1. She confirmed that the condition of the home remained a concern.

[295] There were concerns with respect to the cleanliness of the home. Over time she observed that the condition of the home deteriorated. C.R. did not follow through with arranging for preschool for B. and blood work for the child M. had not been done on time.

[296] Ms. MacDonald's affidavit of October 6, 2017 (tab 8 of Exhibit 1) confirms that an agency worker checked with Early Intervention on September 5 and was advised that C.R. had not actually ever met with Early Intervention and the only contact had been by phone. Contact with the IWK on October 3 resulted in confirmation that C.R. had not taken the child M. to the IWK for blood work.

[297] On October 4 Ms. MacDonald again contacted Early Intervention and was advised that C.R. was not currently involved with Early Intervention. C.R. had not been home when an Early Intervention worker had attempted to visit with her on September 19 and had not responded to a lengthy note that had been left by the worker. Contrary to what C.R. had suggested, Early Intervention had never told C.R. not to register the child B. for school.

[298] On October 4 Ms. MacDonald contacted Maggie's Place and as result learned that C.R. was not registered for the Parenting Journey Program.

[299] During her cross-examination the Respondent agreed with the suggestion that when the children first came into care, she was providing inadequate supervision. However, in relation to the second taking into care in early October, she suggested that Department of Community Services failed to put everything in place on their end and she ended up living on Income Assistance while trying to parent the children. She denied that she was blaming the agency for the second taking into care and conceded that she did mess up but again suggested she didn't have the proper amount of help when the children were returned to her.

[300] The evidence supports and justifies the conclusion that the children were clearly exposed to substantial risk of harm as a result of neglect on both occasions when the children were taken into care in 2017.

[301] The evidence of the family support worker, Ms. Francis, confirms the lack of progress on the part of C.R. despite the extensive family support services offered over an extended time frame. C.R. was unable to consistently demonstrate an ability to adequately parent the children. Ms. Francis' testimony supports and justifies the conclusion that there would still be a substantial risk of harm due to neglect if the children were returned to the Respondent mother's care. Ms. Francis' affidavit (Exhibit 1, tab 28) confirms that in August 2018 separate visits were again instituted because C.R. was unable to demonstrate she could parent both children together positively and safely. Education sessions were ended October 23, 2018 due to limited progress and cancellation of sessions by C.R. On October 23, C.R. admitted to regression during access visits, but blamed it on her pregnancy and resulting inability to take medication. During the visit on October 23, 2018, Ms. Francis observed that C.R. was not able to set limits with B. despite prompts.

[302] The Respondent mother did not engage appropriately or adequately in services and supports intended to assist in addressing the agency's concerns. For a significant period of time during the course of agency involvement, the Respondent mother invested considerable time and energy in opposing and criticizing the agency rather than making the necessary commitment to participate in services. She accused agency workers of lying, threatened to sue agency workers, filed complaints with the police respecting agency workers and on many occasions, demonstrated escalated behaviors when communicating with agency workers involving threats and inappropriate language. She sought support from outside agencies and individuals in opposing the agency. She even went so far as to post a lengthy video monologue on Facebook in which she identified the responsible caseworker and indicated an intention to sue the worker and extensively criticized and complained about agency involvement.

[303] The mother's negative and hostile attitude towards the agency became a very real impediment to her ability to engage in services and demonstrate her ability to address the agency's concerns.

[304] The court acknowledges that the Respondent mother has participated in programming including programming at Maggie's Place, specifically, the Positive Parenting and Nobody's Perfect programs. While C.R.'s participation in these programs may be generally helpful or beneficial to her as a parent, they cannot be seen as intended to address the agency's protection concerns relating to neglect. Maggie's Place programming is not equivalent to the family support assistance provided by the agency family support worker, Ms. Francis. Despite C.R.'s participation in Maggie's Place programming, Ms. Francis noted regression on the part of C.R. at time of the access visit on October 23, 2018.

[305] The court is satisfied that the evidence establishes and confirms that the children would be exposed to a significant risk of further neglect and inadequate parenting if returned to the care of the Respondent mother.

[306] Based upon consideration of the evidence, I find that there continues to be a substantial risk of harm for the children associated with neglect. The court finds that there is a real chance of danger apparent on the evidence associated with the substantial risk of future neglect if the children are returned to the day-to-day care of C.R.

Substance Abuse

[307] The Respondent mother has, almost from the outset of the protection proceeding, admitted to regular use of marijuana. There is no evidence indicating or suggesting any use of illicit drugs or abuse of alcohol.

[308] There is no evidence indicating that the Respondent was ever observed to be under the influence of marijuana when responsible for the care of the children.

[309] In her psychiatric assessment, Dr. Pogosyan confirmed a diagnosis of Marijuana Use Disorder and recommended that the Respondent educate herself about marijuana use, its addictive properties and its consequences on psychosocial and cognitive functioning.

[310] C.R. did not demonstrate any insight with respect to the risks associated with her continued use of marijuana during her testimony.

[311] Dr. Locke was very clear in expressing her view that she does not support issuance of a medical license for marijuana for individuals under age 25. She also testified that she is aware that C.R. has continued to smoke cannabis during her pregnancy and again indicated that she does not recommend that.

[312] Exhibit 3 to C.R.'s affidavit, Exhibit 6, is a medical authorization for use of cannabis for medical purposes signed by Dr. Frank Slipp dated May 29, 2018.

[313] C.R. acknowledged that she proceeded to obtain a medical license for use of cannabis after being informed of Dr. Pogosyan's diagnosis of Marijuana Use Disorder.

[314] During trial she disputed Dr. Pogosyan's diagnosis indicating that, because she believes she continues to function on a day-to-day basis, she cannot be diagnosed as having Marijuana Use Disorder. She maintained that she functions fine and indicated that she does not smoke marijuana all day or smoke "gram upon gram" of weed.

[315] While the court accepts Dr. Pogosyan's diagnosis, there is a lack of evidence indicating that the Respondent mother's use of cannabis is such that it would impact adversely on her ability to parent.

[316] The court is certainly concerned about C.R.'s lifestyle choices associated with continued use of cannabis and the potential impact upon her ability to provide adequate parenting. However, the evidence in this case does not justify or support the conclusion that continued cannabis use on the part of C.R. has negatively impacted upon her ability to provide adequate parenting in the past or is likely to do so in the future. The evidence does not establish that the children have been harmed or neglected as a result of C.R.'s substance use nor does it adequately establish a substantial risk of physical or emotional harm or neglect associated with her substance use.

Conclusion Regarding Need of Protective Services

[317] There continues to be a substantial risk of harm for the children associated with mental health issues on the part of the Respondent mother. The court finds that there is a real chance of danger apparent on the evidence associated with the potential harm or trauma for the children associated with the Respondent's unresolved or unaddressed mental health issues.

[318] I am also satisfied that there continues to be a substantial risk of harm associated with the potential exposure to domestic violence if the children were returned to the care of C.R. While the court cannot state that such harm will actually occur, on balance of probability the court is satisfied that there is a real chance of harm associated with the potential exposure to domestic violence.

[319] Similarly, I would reiterate my finding that there continues to be a substantial risk of harm for the children associated with neglect.

[320] I am satisfied that the two children who are the subject of this application remain in need of protective services pursuant to Section 22(2), subparagraphs (b), (g) and (k) of the *CFSA*.

Credibility

[321] In relation to credibility, I would refer to the decision of the Nova Scotia Court of Appeal in *G.L.T. v. Nova Scotia (Community Services)*, 2017 and SCA 68 (CA). In denying the appeal, the court referred approvingly to the trial decision of Justice Forgeron wherein Justice Forgeron identified various case authorities which set forth legal principles and guidelines applicable to the assessment of credibility including, *C.R. v. McDougall*, 2008 SCC 53 (S.C.C.), *Baker-Warren v. Denault*, 2000 9 NSSC 59, and *Novak Estate, Re*, 2008 NSSC 283 (N.S.S.C.).

[322] I have attempted to undertake the credibility assessment required in this case in accordance with the principles and case authorities as referred to by Justice Forgeron and approved by the Nova Scotia Court of Appeal in *G.L.T.*, *supra*.

[323] I have significant reservations with respect to the reliability of significant portions of the Respondent mother's testimony. In the bulleted paragraphs that follow below, I provide specific examples or instances which I feel support and justify my concern with respect to reliability of the Respondent mother's testimony;

- During her initial involvement with the agency, the Respondent mother indicated that she had been in touch with Early Intervention to arrange for Early Intervention services for B. In her affidavit, sworn October 6, 2017 (tab 8 of Exhibit 1), at paragraph 25, Ms. MacDonald confirms the Respondent mother told her on September 11, 2017 that Early Intervention had told her not to register the child B. for school as he was not ready. Ms. MacDonald's affidavit sworn October 6, 2017, confirms at paragraph 16, contact between social worker Melanson and Early Intervention in early September confirmed

that Early Intervention had made no such recommendation to C.R. Early Intervention was not, and had not, been actively involved with the mother and the children.

- Similarly, while the Respondent had indicated that she had registered for the Parenting Journey Program offered at Maggie's Place, contact with Maggie's Place on October 4, 2017 resulted in confirmation that C.R. was not registered for the Parenting Journey Program (see Ms. MacDonald's affidavit sworn October 6, 2017 at paragraph 53).
- Ms. MacDonald's affidavit of October 6, 2017 also confirms at paragraph 38 that during a home visit on October 3, she asked C.R. about M.'s blood work and C.R. responded by indicating she taken M. for blood work two weeks prior. However, when Ms. MacDonald contacted the IWK on October 3, she learned that the Respondent mother had not taken the child for blood work, despite repeated reminders from the IWK to do so.
- On January 8, 2018, C.R. was arrested for allegedly assaulting D.D-S. and released on an undertaking which included a condition that she not have any contact with D.D-S. Ms. MacDonald's affidavit sworn on March 9, 2018 (Exhibit 1, tab 16) at paragraph 21 confirms that when Ms. MacDonald spoke with C.R. on January 12, she reported that she had been alone all week and complained that the police had taken D.D-S., as her support person, away from her as a result of the no contact order. When Ms. MacDonald subsequently attended at C.R.'s residence with the police on January 12, D.D-S. was found in the Respondent's bedroom, contrary to the conditions of C.R.'s undertaking.
- Paragraph 32 of Ms. MacDonald's affidavit of March 9, 2018 confirms that during a conversation with the Respondent mother on January 16, 2018, C.R. advised a casework supervisor that she had been informed by Inspector Hearn of Truro Police Service that social worker MacDonald was going to be charged and that police officers who had attended with Ms. MacDonald at C.R.'s residence on January 12, 2018 were going to be disciplined. As a result of the supervisor's subsequent contact with the police, the agency determined that the information C.R. had provided was incorrect. The Respondent denied at trial that she had filed a false report with police stating that what she had done was report her version of events. C.R.'s response was obviously tactical and self-serving.
- Paragraph 41 of Ms. MacDonald's affidavit sworn March 9, 2018 indicates that on February 5, 2018, the Respondent mother advised Ms. MacDonald that the agency was giving her mental health problems and that she had had perfect mental health for five years. The statement obviously conflicts with C.R.'s testimony at trial wherein she indicated her mental health had declined from summer of 2017 to January 2018 culminating in what she referred to as a breakdown in January 2018.
- At paragraph 124 of her affidavit, Exhibit 6, the Respondent mother suggests that the most recent incident between herself and D.D-S. was in July 2018 when the police were called. Ms. MacDonald points out in her affidavit, Exhibit 4, paragraph 20, that the police were also called to C.R. and D.D-S.'s residence on August 29, 2018 after C.R. had

contacted police in relation to a domestic dispute between herself and D.D-S. Sgt. O'Brien also testified as to the August 29th incident.

- During her testimony, Dr. Pogosyan confirmed that C.R. expressed disappointment over the fact that Dr. Pogosyan had reviewed the agency file before she met with her and stated that the information in the agency file was all lies. At page 11 of her assessment report, Dr. Pogosyan again confirms that the Respondent indicated "Community Services are lying and I'm trying to charge one of the social workers". During cross-examination the Respondent mother denied telling Dr. Pogosyan that the agency file was all lies but conceded that her evidence was inconsistent with Dr. Pogosyan's.

- During her cross-examination the Respondent mother maintained that she did not claim domestic violence at any point in time in relation to her relationship with D.D-S. This evidence is inconsistent with the information contained in the RCMP occurrence report for July 15, 2017, as found within Exhibit Book 3, which indicates that both C.R. and D.D-S. accused the other of assault.

- In her affidavit of August 28, 2017 (tab 3 of Exhibit 1) at paragraph 27, the Respondent mother indicates that she welcomed any services the agency was prepared to provide. Subsequently, the Respondent failed to attend counselling/therapy services as arranged by the agency on a consistent basis with two successive therapists, in each instance resulting in a suspension of counselling/therapy services. The evidence also confirms the Respondent missed a Choice appointment at Mental Health which was an important first step in setting up and arranging for her participation in DBT therapy, as recommended by Dr. Pogosyan and requested by the agency.

- The court accepted and relied upon C.R.'s testimony at the time of the interim hearing in determining that it would be in the best interests of the children that they be returned to her care under the auspices of a supervisory order. C.R. testified at trial that when her children were returned to her care by the court in early September 2017, she was mentally unequipped, emotionally unstable and experiencing mental health issues.

- At paragraph 154 of her affidavit, Exhibit 6, C.R. indicates that she disagrees with the assertion that she was regularly hostile with agency staff. The evidence on behalf of the Minister confirms that angry, hostile or escalated behavior was a reoccurring problem impacting upon the agency's involvement with the Respondent mother. Ms. MacDonald's affidavit of January 3, 2018 (Exhibit 1, tab 13) confirms several specific incidents in January, February and March of 2018 when the Respondent mother interacted with agency staff in an angry, hostile, threatening or escalated manner.

[324] In assessing the Respondent mother's credibility, I want to emphasize and make clear that I have not considered the Respondent mother's testimony in isolation, but instead having regard to the totality of the evidence adduced. While I have provided some examples in the preceding paragraphs to justify my credibility concerns regarding C.R.'s evidence, I would note that there are certainly other instances where C.R.'s testimony was obviously self-serving, contradictory of her own testimony or clearly inconsistent with other witnesses.

[325] The Respondent mother presents as intelligent and reasonably articulate. She had a tendency to provide rambling and rapid-fire response to many of the questions posed during cross-examination. This is perhaps not surprising in light of her ADHD diagnosis, as well as her anxiety issues. Nevertheless, the inconsistencies and contradictions in the Respondent mother's own evidence, as well as obvious inconsistencies and contradictions in relation to the evidence presented on behalf of the Applicant give rise to significant concerns with respect to the reliability of C.R.'s evidence.

[326] The Respondent mother did at times provide candid and frank responses to questions posed, including occasional admissions against interest, however in many other instances her responses appeared to be strategic and self-serving. In some instances, she was too quick to advance an opinion or theory which she was not qualified to offer, or which did not appear to have a factual foundation. On several occasions her initial response would give way to a reluctant concession when her initial response was subject to challenge or clarification.

[327] In some instances her responses to questions appeared consistent with her borderline personality traits involving externalizing or denial. An example would be her suggestion that if she had been given proper treatment, she would not have had such a hard time dealing with the traits of BPD, when in fact the evidence establishes that on two successive occasions the Respondent's lack of commitment to therapy resulted in suspension of therapeutic programs.

[328] Based upon careful review of the evidence, I would confirm that I have significant reservations as to the reliability of significant portions of the Respondent mother's testimony.

[329] Leeann MacDonald, the primary caseworker, gave her evidence in a straightforward, honest and candid manner.

[330] The court accepts Ms. MacDonald's evidence wherein she indicated that at time of the decision to request permanent care and custody, she laid it all on the table for the Respondent mother explaining the agency's concerns but also confirming the agency's willingness to keep working with her.

[331] Ms. MacDonald acknowledged that C.R. made a number of allegations with respect to her role as caseworker, including allegations of conflict of interest and breach of confidentiality, and on more than one occasion, requested that a different caseworker be assigned. The agency discussed whether or not Ms. MacDonald, given these circumstances, felt there was potential for progress or gains if she continued to work with C.R. The court was impressed by Ms. MacDonald's evidence wherein she indicated she agreed to attempt to repair the relationship between herself and C.R. and move on. Part of the rationale behind Ms. MacDonald's decision to continue as the primary caseworker was based upon her belief that C.R. would actually be put at a disadvantage if a new worker was assigned as well as her appreciation that the Respondent mother's mental health issues were impacting upon C.R.'s interactions with herself and other agency workers.

[332] In any instance where there is direct conflict or contradiction between the testimony of the Respondent mother and Ms. MacDonald, the court accepts and relies upon the testimony of Ms. MacDonald in preference to the testimony of C.R.

[333] The court also has no credibility concerns with respect to the testimony of the family support worker, Ms. Francis. She gave her evidence in a straightforward and candid fashion. Her notes as referred to during cross-examination are consistent and corroborative of the information set forth in her affidavit. Ms. Francis had no difficulty acknowledging instances when the Respondent mother's interaction with the children was positive or appropriate, or to make positive comments or observations respecting the Respondent mother's parenting when appropriate. Unfortunately, there were only limited positive observations made during the approximately one-year period that Ms. Francis was involved with C.R.

[334] In any instance where the evidence of C.R. conflicts or contradicts the evidence of the family support worker, Ms. Francis, the court accepts and relies upon the evidence of Ms. Francis.

[335] In any instance where the evidence of C.R. conflicts with the testimony of Dr. Pogosyan, the court accepts and relies upon the evidence of Dr. Pogosyan.

Best Interests

[336] As noted earlier, Section 2(2) of the *CFSA* confirms that the best interests of the children is the paramount consideration in determining this application.

[337] The court is required to consider the applicable circumstances as referred to in Section 3(2) of the *CFSA* in determining best interests. The section reads as follows;

(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;
- (ga) the child's sexual orientation, gender identity and gender expression;
- (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.

[338] In the post-hearing brief filed on her behalf, the Respondent mother makes reference to Section 3(3) and submits that section is applicable in this case and must be applied when determining best interests. Section 3(3) reads as follows;

(3) Where a person is directed pursuant to this Act in respect of a proposed adoption to make an order or determination in the best interests of a child, the person shall take into consideration those of the circumstances enumerated in subsection (2) that are relevant, except clauses (i), (l) and (m) thereof. 1990, c. 5, s. 3; 2015, c. 37, s. 2.

[339] The Respondent mother maintains that as a result of application of this section, the court ought not to consider the merits of the agency's proposed plan of care premised upon adoption in determining the best interests of the children. Counsel for the Respondent did not refer the court to any case authorities in support of this argument.

[340] Counsel for the Minister maintains that the argument advanced on behalf of the Respondent mother with respect to the applicability of Section 3(3) is based upon a misunderstanding, or misapplication, of the subsection. Counsel for the Minister points out that this is a protection proceeding and not an adoption proceeding and maintains that Section 3(3) applies to the "adoption judge" and refers to Peter McVey's *Annotated Children and Family Services Act [2nd edition]* at page 33, as indicating that the section is intended to prevent an adoption judge from revisiting the protection finding or permanent care order by means of an adoption placement.

[341] I believe that Section 3(3) is clearly intended to apply to determination of adoption applications and the requirement that the court determining an adoption application be satisfied that the adoption is proper and in the best interests of the person to be adopted as per Section 78(1)(c).

[342] Acceptance of the Respondent mother's position would effectively mean that in any instance where the Minister's plan is premised upon a request for an order for permanent care and custody and adoption, the court would be precluded from considering the circumstances referred to in subparagraphs (i), (l) and (m) of Section 3(2) which are often critical to determination of the children's best interests at time of final review hearing. Such a result would

be inconsistent and incompatible with the fundamental premise of the legislation pursuant to Section 2(2), that the best interests of children is paramount and the associated statutory obligation, to consider the circumstances that are relevant or applicable in determining best interests as per s. 3(2). I am satisfied that Section 3(3) is not applicable in this case.

[343] I make the following findings with respect to the circumstances as referred to in Section 3(2) based upon the evidence:

- (a) I find that it would be in the children's best interest that they have the opportunity for development of a positive relationship with a parent or guardian as a member of a family in accordance with the Minister's current plan of care premised upon adoption by the paternal grandmother.
- (b) The evidence establishes and confirms that the children enjoy a positive relationship with the paternal grandmother. The children have been in the paternal grandmother's care by way of a kinship foster placement since the fall of 2017. The grandmother has evidenced her commitment to the care of the children by establishing a residence for herself and the children in Nova Scotia. She has been cooperative throughout with the agency. She has demonstrated an ability to effectively communicate with the professionals who are presently involved with the children, including the oldest child's teachers, as well as medical or healthcare professionals. She has demonstrated a consistent ability to meet the needs of the children since assuming responsibility for their day-to-day care. Most importantly, the evidence establishes that the children have thrived in her care.
- (c) The children have been in the temporary care and custody of the Minister since October 3, 2017. A kinship foster placement with the paternal grandmother was approved by the Minister in December 2017. The Minister's current long-term plan of care is premised upon the children being adopted by the paternal grandmother. L.B. has demonstrated her commitment to the parenting of the children through the period of time that she has been responsible for their day-to-day care. The evidence establishes that both children have some special needs in relation to sensory issues and associated behaviors. The youngest child has medical issues that have required past medical treatment and intervention, and which continue to be monitored. Both children have made considerable progress during the period of time that they have been in L.B.'s care. The evidence supports and justifies the conclusion that there would be a substantial risk for the children if the existing caregiving arrangement was disrupted and the children returned to the care of their mother. I am satisfied that maintaining continuity of the children's current placement is critical to ensuring the best interests of the children and avoiding the probable negative effect of disruption of the children's current placement.
- (d) There is evidence suggesting a positive bond between the Respondent mother and the children. There is also evidence indicating a positive bond between the Respondent father and the children. The paternal grandmother, at this point in time, is the de facto guardian of the children under the auspices of a kinship foster

placement. The evidence also supports and justifies the conclusion that the children enjoy a positive bond with L.B.

- (e) The children's therapist testified that she believes the children have presented with symptoms of trauma. Counselling has focused on emotional regulation and basic social skills. Ms. Rankin testified that the children require stability and a caregiver who is reliable and predictable. An unstable or unpredictable home environment would not be appropriate. Occupational Therapy assessments were undertaken for both children by Ms. Goguen. She confirmed that both children suffer from anxiety and sensory issues. She testified that sensory issues are caused by complex trauma and expressed her belief that the children's sensory issues were caused by stress and anxiety. Ms. Goguen emphasized the children's need for security and stability. She explained that an appropriate home environment is critical and that the children require a caregiver who will be available to them emotionally and physically as necessary and appropriate. A stressful home environment would aggravate or worsen the children's sensory issues and anxiety and result in further or increased behavioral issues. Clearly, both children require a safe, stable and secure home environment where their physical, mental and emotional needs will be adequately attended to on a consistent basis.
- (f) B. is currently six years old. He started school in September 2018. The child M. is presently four years old and attends daycare. M. has a medical history which required her to attend the IWK Hospital for follow-up nephrology appointments. She needs to attend yearly medical appointments associated with blood work. While the child had previously suffered from recurrent urinary tract infections, that problem appears to have abated since the child has been in the care of her paternal grandmother. The evidence did not suggest any significant physical, mental or emotional development issues for either of the children, other than the sensory processing issues and associated behaviors previously referred to.
- (g) The agency's plan is premised upon adoption by the paternal grandmother. The mother's plan is premised upon the children being returned to her care. The paternal grandmother and the children's father both support the Minister's plan. Based upon careful consideration of the evidence, the court has concluded that the Minister's plan premised upon adoption by the grandmother has more merit than the plan of the mother. The mother has not been able to provide adequate parenting on a consistent basis. She has not been able to consistently and adequately meet the children's physical, mental and emotional needs. The home environment provided by the Respondent mother prior to agency involvement can best be described as chaotic. The children were negatively impacted by their home environment resulting in both children having difficulties with self-regulation and sensory processing. The children require a safe, stable, secure and predictable home environment where their needs will be adequately met on a consistent basis. The paternal grandmother has demonstrated an ability to provide this type of home environment. Unfortunately, the evidence warrants the conclusion that the Respondent mother is not capable of providing such an environment on an adequate or consistent basis. The evidence establishes a

substantial risk of harm associated with the children being returned to the care of the Respondent mother. The court is satisfied that the agency's plan of care premised upon an adoption placement with the paternal grandmother has more merit than the Respondent mother's plan.

- (h) This proceeding has reached the outside limit and therefore the only options available to the court in the context of the child protection proceeding are dismissal or an order for permanent care and custody. Unjustified delay in disposition of a protection proceeding is generally seen as contrary to the best interests of the children having regard to the child's sense of time. As this matter is before the court by way of a consolidated proceeding, the court can also consider whether or not an appropriate order under the *PSA*, as opposed to an order for permanent care and custody would be in the best interests of the children. The court does not believe that delaying a final determination either under the *CFSA* or the *PSA* would be in the best interests of the children who are the subject of this proceeding.
- (i) I am satisfied, based upon the evidence, that there is a substantial risk that the children will likely suffer further harm if returned to the care of the Respondent mother.
- (j) I am also satisfied that the degree of risk that justified the finding that the children are in need of protective services remains substantial and I would confirm my conclusion that the evidence presented clearly establishes on balance of probability a real chance of danger associated with the children being returned to the care of their mother in accordance with Section 22(2), subparagraphs (b), (g) and (k) of the *CFSA*.

[344] The Respondent mother has been given reasonable opportunity to address the agency's protection concerns.

[345] It was only after the second incident where the children were found out in their community without supervision that the agency took the children into care.

[346] Following a contested interim hearing, the court returned the children to the care and custody of C.R. subject to a supervisory order only to have the children taken into care once again on October 3, 2017. The Respondent mother did not contest the Minister's request for temporary care and custody following the second taking into care based upon her own appreciation of her mental health issues and recognition that she was not, at that point in time, in a position to provide adequate parenting. The Respondent mother expressed her willingness to participate in any services offered by the agency.

[347] Therapy was arranged to assist the Respondent mother in dealing with her emotional issues. The initial therapy program was suspended due to the mother's poor attendance. Shortly after being reinstated, the therapy was once again suspended as a result of sporadic attendance on the part of the mother. The mother subsequently indicated that she wished to have a new therapist assigned because she had not connected with the original therapist. It took time to find a

second therapist qualified to provide the therapeutic assistance recommended by Dr. Pogosyan. The mother herself assisted in finding the second therapist. However, once again the therapy program was suspended as a result of the mother's inconsistent attendance. The mother also failed to keep an important appointment in the summer of 2018 intended to facilitate her participation in DBT therapy as recommended by Dr. Pogosyan.

[348] At this point in time, the Respondent mother is asking the court to dismiss the Minister's application and return the children to her care. She maintains that she has taken appropriate steps independent of the agency to improve her mental health and her ability to parent. The court has carefully considered the evidence, including in particular, the mother's testimony in determining this matter. The Minister takes the position that the services and supports the Respondent has participated in are not relevant to the agency's protection concerns.

[349] Based upon the testimony of Mr. Gray and Ms. Hurley, the court is satisfied that their involvement with the mother was really quite limited and that they have had little insight into the agency's protection concerns. While the services or programs they offered may have been beneficial to the Respondent mother, I cannot conclude that they had any meaningful relevance to, or impact upon, the Minister's protection concerns.

[350] The court acknowledges that the mother's current therapist, Ms. Lightfoot, certainly gave very supportive evidence on behalf of the mother. Ms. Lightfoot's involvement with the mother is relatively new having started in the fall of 2018 and involving nine sessions as of date of trial. The therapy has been focused on C.R.'s current circumstances and not her past history. Ms. Lightfoot's primary source of information has been C.R. and her opinions were premised upon her belief that C.R. has been honest with her and that the self-reporting by the mother is reliable. She has had no contact with the agency. The court has concluded that C.R. cannot be viewed as a reliable source of information and therefore the court is regrettably unable to attach great weight or significance to Ms. Lightfoot's testimony.

[351] I believe that the court's conclusion can be best paraphrased or expressed in terms similar to those expressed many years ago by the Manitoba Court of Appeal in *Dauphin v. Director of Public Welfare* (1956), 5D. L.R. (2d) 275, as set forth in the decision of the Nova Scotia Court of Appeal in *L.C. v. Family and Children Services of Queens County*, 1996 NSCA 95 when referring to Judge Niedermayer's decision in the case of *Children's Aid Society of Halifax v. M.A.* (1986) 76 NSR (2d) 18;

The test is: what is in the best interests of these children and not merely whether the mother has seen the light and is now prepared to be a good mother, while in the past, on her own admission, she was not such. The test is whether the mother has in fact turned a new leaf and whether she is now able to give to the children in the care which is in her best interests. Good intentions are not sufficient. As the Chief Justice of this court, speaking in a unanimous decision in another case states so ably: "To give this mother another chance is to give these children one less chance in life."

[352] C.R. was given reasonable opportunity during the course of this proceeding to address the Minister's protection concerns. The court is unable to accept her assertion that she has adequately addressed the agency's concerns and therefore the children should be returned to her care. After careful consideration of all of the evidence, I am satisfied that C.R. has not adequately addressed the Minister's concerns and is not able to provide adequate parenting on a consistent basis. Based on the evidence, I have regrettably concluded that giving C.R. another chance would be inconsistent with and contrary to the best interests of the children. Returning the children to C.R. would expose them to substantial risk of further harm.

Consideration of Section 42(2)

[353] I am satisfied that less intrusive alternatives, including services to promote the integrity of the family, were offered during the court of the protection proceeding in accordance with Section 13. The services offered included counselling/therapy services for the Respondent mother as well as her current partner, counselling services for the Respondent father, family support services for the Respondent mother as well as the Respondent father, a psychiatric assessment for the Respondent mother, Occupational Therapy assessments for the children and therapeutic services for the children. In addition, the Respondent mother also self-referred to services including Maggie's Place, Mental Health and Third Place Transition House. I have unfortunately concluded that the Respondent mother was not able to adequately address the Minister's protection concerns, despite the services offered. The children remain in need of protective services.

Consideration of Section 42(3)

[354] Section 42(3) of the *CFSA* provides as follows:

(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 (a) it is possible to place the child with a relative, neighbour or other member of the child's community or extended family with whom the child at the time of being taken into care had a meaningful relationship pursuant to clause (c) of subsection (1), with the consent of the relative or other person; and (b) where the child is or is entitled to be an aboriginal child, it is possible to place the child within the child's community.

[355] This proceeding is a consolidated proceeding involving the Minister's application under the *CFSA* requesting an order for permanent care and custody, as well as the application on behalf of L.B. under the *PSA*, requesting leave to apply for custody, and if leave is granted, custody of the two children.

[356] Case authorities have clearly established that in the context of a child protection proceeding where the outside limit has been reached, there are only two options that may be considered; permanent care or dismissal.

[357] The consolidation order was confirmed on the court's own motion based upon the court's conclusion that in the absence of the consolidation, this court would have no jurisdiction or ability to consider the less intrusive option of an appropriate order under the *PSA* in favor of the paternal grandmother as opposed to permanent care and custody. I concluded that a consolidated proceeding would be in the children's best interests.

[358] I would note that the paternal grandmother, during her testimony, made it clear that she would prefer to proceed in accordance with the Minister's plan of care premised upon her adoption of the children.

[359] The Respondent mother was supportive of the court's decision to consolidate the two applications. As an alternative to the children being returned to her care following dismissal of the protection proceeding, the mother maintains that an appropriate order under the *PSA* would be a less intrusive option or disposition to permanent care and custody and in the best interests of the children.

[360] The court recognizes that Section 42(3) of the *CFSA* confirms the court's obligation to consider less intrusive options having regards to the best interests of the children.

[361] Similarly, the court acknowledges that, pursuant to Section 18(5) of the *PSA*, the best interests of the children are the paramount consideration in determination of custody.

[362] In *S.G. v. Children's Aid Society of Halifax*, 2001 NSCA 70, the parents and paternal grandparents of the children appealed the trial judge's decision granting the agency permanent care and custody. The issues on appeal were whether or not the trial judge erred by ordering permanent care and custody when there were less intrusive measure available and did she place undue emphasis on the possibility of future litigation which she determined would not be in the best interests of the children?

[363] At trial, the maternal grandparents supported the agency's plan for permanent care and custody with an intention of pursuing adoption of the children by the maternal grandparents.

[364] The trial judge concluded that placing the children with the maternal grandparents in a custodial situation would set them up for ongoing litigation from both paternal grandparents and the parents and expose them to the emotional drain of future litigation in relation to custody and access, which could destroy the stability and viability of the placement. The appellants maintained that the trial judge erred in reaching this conclusion because the risk of ongoing litigation was not a relevant consideration under the *CFSA* or not supported by the evidence.

[365] In delivering the judgement of the court and dismissing the appeal, Justice Cromwell (as he then was) indicated as follows, commencing at paragraph 19:

19 In my respectful view this submission has no merit. The trial judge was obviously of the view that it was in the children's best interests to be in a stable and permanent arrangement for their care as soon as possible. This was a proper consideration. The preamble to the **Act** notes that children have a sense of time

that is different from that of adults and that services provided pursuant to the **Act** and proceedings taken pursuant to it must respect the child's sense of time. The judge's decision also properly takes into account the time provisions established by the **Act** which had, in fact, been exceeded with respect to B. by the time of her decision. Under s. 3(2)(k) of the **Act**, the effect on the children of delay in the disposition of the case is a factor to be considered in relation to the best interests of the children. In my view, the trial judge did not err in considering the children's need for stability in a timely fashion and in giving it appropriate weight. Nor do I accept the submission that there was no basis for the judge's concern about lack of stability resulting from ongoing litigation about these children. The behaviour of the parents and the dynamics of these proceedings amply justified her concern.

20 In rejecting family placement as a less intrusive alternative, the judge was entitled to consider, as she clearly did, that the Agency's plan included adoption of the children by the D.s subject to successful completion of the adoption process. While it is true, as the appellants suggest, that the making of a permanent care and custody order did not guarantee this result, the trial judge had before her extensive evidence about the D.s' parenting of the children and she was well aware that the children had been with the D.s virtually for their entire lives. She also was of the view that there was no other realistic option for these children. There was no reasonable prospect that the children could be returned to their parents, placement with the G.s was not a viable option and, in the circumstances of the case, having regard to the family dynamics which she fully reviewed in her reasons, addressing the needs of these children through a custody and access order was not in their best interests.

21 As the Court stated in **D. (B.) v. Family & Children's Services of Kings (County)**, supra at paragraph 19, the provisions of the **Act** giving priority to family placement and requiring that the least intrusive alternative be pursued must be interpreted and applied in the context of the **Act** as a whole and in light of its paramount purpose to further the best interests of the children. All placement alternatives must be considered in the context of the needs and best interests of the children. In my view, that is exactly what the judge did.

....

[366] Based upon the evidence before me, I also believe that recognition of the children's sense of time is required in this case and leads to a similar conclusion, namely, that it is in the children's best interests to be in a stable and permanent arrangement as soon as possible.

[367] During her cross-examination, the Respondent mother was asked if she had been hostile with L.B. and she responded by suggesting that there have been occasions when they had both been hostile with each other, but then conceded that she had been hostile with L.B.

[368] In her affidavit, Exhibit 8, L.B. confirms that she felt it was important to make the court aware that C.R. remains overtly hostile to her and attached to her affidavit as Exhibit A, a

printout of postings on Facebook in which the Respondent mother indicates ongoing dislike for L.B.

[369] L.B. testified at trial that she had concerns about a potential order under the *PSA* if it provided for continued contact between the children and C.R. She expressed concern about how such continuing contact would potentially create anxiety for the child, B. before and after such contact. She feels that such contact would create uncertainty about the children's safety and expose the children to the constant up and down that they had experienced in their lives when in the care of the mother. She expressed concern about how such contact would potentially impact upon the children's stability.

[370] Ms. MacDonald's affidavit sworn December 3, 2018, Exhibit 4, confirms her belief that L.B. has demonstrated exceptional commitment to the children and that the children have done well in her care. She confirms the agency's intention that L.B. adopt the children if they are placed in permanent care and custody. She also notes that the Respondent mother's access with the children remains fully supervised and that she continues to struggle with parenting during access.

[371] Ms. MacDonald's affidavit, Exhibit 5, sworn December 12, 2018, confirms that as of December 11, 2018, L.B. has been approved by the Minister to adopt the children. The evidence therefore suggests a probability or likelihood of adoption, as opposed to possibility, in the event of an order for permanent care and custody.

[372] In Exhibit 5, Ms. MacDonald also expresses her belief that the Respondent mother's access with the children has often been disruptive to the children. In paragraph 12 she confirms that the Minister is concerned about the Respondent mother's apparent disposition towards conflict, suggesting that it would compromise the stability and permanency of any placement under the *PSA*.

[373] I find that the evidence before me supports and justifies the conclusion that there would be significant risk of further litigation associated with any order that might be made in favor of L.B. under the *PSA* given the Respondent mother's well-established propensity to be adversarial. This conclusion is also supported and justified based upon consideration of the history of the relationship between the Respondent mother and the paternal grandmother.

[374] I am satisfied that any potential order under the *PSA* would potentially destabilize the children's placement with the paternal grandmother. The potential for conflict between the paternal grandmother and the Respondent mother and the associated negative impact upon the emotional well-being of the children and the stability of their placement is significant and inconsistent with the best interests of the children.

[375] The children have done extremely well in their current placement with the paternal grandmother. Their behaviors have improved. They are less anxious. They have responded well to the safety, stability, security and consistency they have experienced since being placed in the day-to-day care of the paternal grandmother. The court is satisfied based upon the evidence that a

PSA order would jeopardize the gains that have been made by the children and expose them to a very real and substantial risk of further harm.

[376] I find, therefore, that the less intrusive option of a *PSA* order would be inconsistent with the best interests of the children.

[377] Furthermore, I am satisfied that an order for permanent care and custody premised upon adoption by the paternal grandmother, as approved by the Minister, will best ensure the children's needs are consistently and adequately met in a safe, stable and nurturing home environment.

[378] I acknowledge that the evidence indicates that the Respondent father has continued to have contact with the children subject to appropriate supervision, including supervision provided by the paternal grandmother. This contact is likely to continue following adoption by the paternal grandmother. I acknowledge that the mother sees this as an unconscionable result given the fact that an order for permanent care and custody will effectively terminate her parental rights and that the existing negative relationship between her and the paternal grandmother suggests that it is unlikely the grandmother will permit or encourage contact between the mother and the children post-adoption. The mother also points out that the father received a conditional discharge in relation to a criminal proceeding arising from the father's inappropriate physical discipline of the oldest child.

[379] Ultimately, as I had emphasized throughout this decision, it is the best interests of the children that is the paramount consideration as opposed to the concerns or preferences of either of the parents.

[380] In the event of adoption, the paternal grandmother will assume parental responsibility for the children. She will have to exercise this responsibility in a manner consistent with the best interests of the children. Her parental responsibility to protect the children will include ensuring that any contact between the children and their biological father is subject to appropriate terms and conditions, including supervision, as long as such conditions are consistent with the best interests of the children.

[381] The evidence of the paternal grandmother indicates that she has not totally closed the door on the possibility of future contact between the mother and the children. Whether or not the mother is able to have future contact, as well as the nature and extent of any such contact, will obviously be a decision made by the paternal grandmother having regard to the children's best interests. The nature of any interaction between L.B. and C.R. will no doubt also play a critical role in determining future events.

Consideration of Section 42(4)

[382] The outside limit for this case expired January 11, 2019 and as a result, a finding under Section 42(4) is neither appropriate or required.

Consideration of Section 46

[383] The Minister's request for an order for permanent care and custody is made pursuant to Section 46 of the *CFSA*.

[384] Having regard to Section 46(4), I would confirm the following findings:

1. The Respondent mother was not able to address the Minister's protection concerns despite the services offered and the opportunities afforded to her. The children continue to be in need of protective services. In reaching this conclusion I would also note that the Respondent father is supportive of the Minister's request for permanent care and custody. The paternal grandmother has successfully demonstrated a continuing ability to adequately parent the children since assuming responsibility for their care in December 2017.
2. The original plan of care was premised upon both Respondents having the opportunity to participate in services in an effort to address the agency's protection concerns. Unfortunately, the Respondent mother was not able to address the protection issues despite the opportunities afforded to her. The mother was, therefore, unable to successfully carry out or comply with the original plan of care. The Minister filed a Supplementary Plan of Care in support of the Minister's request for permanent care and custody. As noted in the preceding paragraph, L.B. has successfully applied for approval as a potential foster placement in accordance with that plan of care.
3. The evidence confirms that an order for permanent care and custody would be in the best interests of the children.
4. In light of the expiration of the outside limit, this is not a case where the court must consider the requirements of Section 46(4)(d).

Access

[385] In accordance with Section 47(2), the order for permanent care and custody will not include an order for access.

Determination of Religion

[386] No evidence was offered with respect to the religious denomination of the children. The religious denomination of the children is therefore noted as undetermined.

Conclusion

[387] I find that the Minister has adequately discharged the burden of proof in relation to the Minister's request for an order for permanent care and custody. The Minister's application for an order for permanent care and custody be and hereby is granted.

[388] Given the court's decision, the court confirms that L.B.'s application under the *PSA* be and hereby is discontinued at the direction of the court.

[389] The court acknowledges an outstanding *PSA* application on behalf of the maternal grandmother and the court confirms that that application be and hereby is also discontinued at the direction of the court.

S. Raymond Morse, JFC