

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF the *Child and Family Services Act*,
S.N.W.T., 1997, c.13, as amended

AND IN THE MATTER OF the children:

H.L.H.
Born: 2017

A.L.H.
Born: 2018

Apprehended: April 30, 2021

REASONS FOR DECISION
of the
HONOURABLE DEPUTY JUDGE B.E. SCHMALTZ

There is a ban on the publication, broadcast or transmission of any information that has the effect of identifying (a) a child who is (i) the subject of the proceedings of a hearing under this Act, or (b) a parent or foster parent of a child referred to in paragraph (a) or a member of that child's family or extended family. *s.87 CHILD AND FAMILY SERVICES ACT.*

Application for a Temporary Custody Order by the Director of Child and Family Services, pursuant to section 28(1)(c) of the *Child and Family Services Act*.

Heard: Yellowknife, Northwest Territories
Date: August 19, 20, and 23, 2021
Decision: August 26, 2021
Counsel for the Director: Stefanie Laurella
Counsel for the Father: Sukhmanpreet (Sukham) Dhindsa

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I. INTRODUCTION

[1] The Director of Child and Family Services (the Director) brought an Application for an Order placing H.L.H., born January 2017, and A.L.H., born February 2018, (the Children), in the Temporary Custody of the Director for a period of 6 months, pursuant to s. 28(1)(c) of the *Child and Family Services Act*, S.N.W.T., c.13, as amended (the *Act*). Y.H. is the Father of the Children; C.L., the Mother of the Children, was not involved in these proceedings.

[2] The Father brought an Application pursuant to the *Charter*, alleging that the Director violated his right to be free from unreasonable search and seizure (section 8 of the *Charter*) and his right to life, liberty, and security of the person (section 7 of the *Charter*). The Father sought a remedy pursuant to sections 24(1) and 24(2) of the *Charter*.

[3] Both the Director's Application and the Father's Application were heard together on August 19 and 20, 2021, with all evidence called being applied to both Applications. The Director called two Child Protection Workers, M.S. and S.D., and three R.C.M.P. officers, Cst. E., Cst. L., and Sgt. K. who gave expert evidence. The Father also testified, as did D.L., the maternal grandmother of the Children.

[4] I heard submissions on behalf of the Director and the Father on August 23, and gave my decision on August 26, advising that I would file written reasons for my decision. The following are my reasons for that decision.

II. THE CHARTER APPLICATION

A. Section 8

[5] On April 20, 2021, Child and Family Services received a report that two young children were alone in the parking lot of Sir John Franklin High School in Yellowknife. Two Child Protection Workers, M.S. and R.A., attended the location and found the two children. Two R.C.M.P. officers, Cst. E. And Cst. L., were also at the location. Child Protection Worker M.S. recognized the children H.L.H. and A.L.H. from previous involvement with the Children and their family. The Children were about two blocks from their home. M.S. and the two R.C.M.P. drove to the Children's home and Child Protection Worker R.A. stayed with the Children.

[6] Upon arrival at the apartment where the Children lived with their Father, Cst. E. knocked on the door to the apartment three times; no one answered the door, and no noise could be heard from the apartment. At that point Cst. E. decided to do a 'welfare check' to ensure that if there were any occupants in the apartment, they were not in any danger. Cst. E. opened the door which was not locked, though seemed to have a chair and a vacuum cleaner against it, and announced himself. At this point T.R. came to the door asking the police officer to keep it down as there were children in the home. Hearing there were children in the home, M.S. stated that she needed to see them, and T.R. began looking for them. M.S., who had been in the apartment on previous occasions, entered the apartment as she was concerned for the safety of other children in the apartment. M.S. asked T.R. if Y.H., the Father, was there, and T.R. did not answer. M.S. looked down the hallway and saw the Father's feet on the bed in the Children's bedroom. M.S. took no further steps to locate children in the apartment, but went to the Children's bedroom, and standing in the doorway, spoke to the Father.

[7] M.S. testified that the Father's response was unintelligible to her when she told the Father where the Children had been found. The Father testified he had spoken Somalian, saying "Thank Allah" upon learning that his children were alright. M.S. then stepped into the bedroom in order to hear and understand the Father better. M.S. told the Father to get dressed and come out and speak to her. However, M.S. did not leave the bedroom, but stayed and continued speaking to the Father, asking what he had been doing that morning. The Father then got up to go to the washroom and Cst. E. escorted him to the washroom, requesting that the Father leave the door open.

[8] When the Father went to the washroom, M.S. then tried to speak to T.R. who was in the other bedroom; T.R. told M.S. that she would not speak to her. M.S. testified that T.R.'s voice and words were aggressive. M.S. then left that bedroom and did a quick walk through the apartment and confirmed that there were no children in the apartment.

[9] M.S. testified that Cst. E. told her that he believed the Father was under the influence of drugs, and that he had seen a spoon on the bed where the Father had been. M.S. then looked for the spoon, and upon seeing the spoon on the bed, also saw a baggie with a "white powdered rock" in it, among children's toys. M.S. testified that she informed Cst. E. of the baggie and gave it to him. M.S. testified that Cst. E. told her that he believed it was crack cocaine, and she then asked if the substance could be tested. M.S. testified that when the Father returned to the bedroom to get dressed she spoke to him further in the bedroom about the crack cocaine found on the bed, and her belief that he was under the influence of drugs. M.S. noted a number of signs of intoxication, including the Father not being able to fully open his eyes, having slurred speech, his inability to focus, and being restless. The Father denied being under the influence of anything. When the Father suddenly got up to go to the kitchen, M.S. saw another small bag with a white powdered rock in it; M.S. said she gave it to Cst. E. immediately. The Father gave Cst. E. a bag of a powdered substance from the kitchen cupboard.

[10] Cst. E. testified that M.S. pointed out and gave him the bag of what looked like crack cocaine when the Father went to the washroom, and that she may also have pointed out a crack pipe. Cst. E. said he had not been in the bedroom but had been waiting in the hallway, and did not recall pointing out anything to M.S. Cst. E. did not recall and had not noted the Father displaying any signs of intoxication. Cst. E. testified that he received a second smaller package of suspected crack cocaine that the Father took from the pocket of his pants, and a third baggie of white powder from the Father that the Father got from a cupboard in the kitchen. Cst. E. testified that he did a *NIC* (field) test on the package of

suspected crack cocaine that he had received from M.S. and the package of powdered substance that the Father gave him from the kitchen cupboard; both tests indicated positive for cocaine. Further, Cst. E. believed from its appearance and his experience that the smaller package of suspected crack cocaine from the Father's pants pocket was cocaine.

[11] Cst. L. also attended the apartment with M.S. and Cst. E. She recalled T.R. telling them to keep the noise down as there were children in the residence. She also recalled M.S. saying that illicit drugs had been found in the residence before. She stayed in the hallway while M.S. was in the bedroom, but also recalled Cst. E. being in the bedroom. Cst. L. recalled seeing Cst. E. doing the *NIC* tests on two bags of suspected cocaine found in the residence, and clearly recalled that only one of the bags tested positive.

[12] Section 8 of the *Charter* states:

8. Everyone has the right to be secure against unreasonable search or seizure.

[13] Clearly there was a search of Y.H.'s home. The first inquiry must be was this an unreasonable search? There is a presumption of unreasonableness if the search has taken place without a warrant. The party seeking to justify the warrantless search, in this case the Director, must rebut the presumption.

[14] In order for a warrantless search to be reasonable, it must be authorized by law, the law must be reasonable, and the search must be carried out in a reasonable manner.

[15] Y.H.'s very young children had been found unattended two blocks from their home on their own with no supervision. A concerned citizen had contacted the R.C.M.P., who in turn had contacted Child and Family Services. This was a serious situation that called for action and investigation.

[16] M.S., a Child Protection Worker who knew the Children and knew where they lived had attended the parking lot where the Children were found. She left the Children safe with another Child Protection Worker and attended the Children's home, accompanied by the R.C.M.P. for safety reasons. At this point, no one knew what the situation in the home might be.

[17] When M.S. and the R.C.M.P. arrived, and knocked on the door, no one answered. The R.C.M.P. decided to do a welfare check, and opened the door. Upon opening the door and entering the residence, the R.C.M.P. had no reason to

believe that the adults in the residence were in danger. T.R. came to the door telling the officers to keep the noise down as there were children in the residence. Upon hearing children were in the residence, M.S. requested to see them, which was reasonable in the circumstances, as the two children who she knew lived in that residence had been able to leave the residence unsupervised.

[18] But M.S. did not wait for T.R. to get the children or check on the children, or even ask T.R. if she was referring to Y.H.'s children. M.S. immediately entered the residence and testified that this was because she was "concerned for the safety of the children" she had been told were in the residence. M.S. then asked T.R. where Y.H. was, and then saw him in one of the bedrooms of the residence. M.S.'s request to see the children in the residence may have been justified in all the circumstances, but M.S.'s search of the residence was to find Y.H. as was abundantly clear from her actions. As she walked into the residence she saw Y.H. in the Children's bedroom, went to that bedroom and began speaking to him. She told him to get dressed and come out and speak with her about the situation. Yet she did not give him the opportunity to do that, but continued to speak with him in the bedroom about what he had been doing that morning.

[19] When Y.H. got up to use the washroom, M.S. then went to the room where T.R. had gone and attempted to speak with T.R. When T.R. would not speak to her, it was only then that M.S. did a "quick walk through" the apartment, and confirmed there were no children in the apartment. Even after confirming this, she did not wait for Y.H. to finish in the washroom and come out and speak with her, but again returned to the room he had been in to search it, after she said that Cst. E. told her there was a spoon on the bed.

[20] When Y.H. returned to the bedroom, M.S. still did not leave the bedroom to allow Y.H. to get dressed in private, but simply turned away, and then continued to talk to Y.H. in the bedroom, and when Y.H. left the bedroom, again searched the bed and found a further bag of suspected crack cocaine.

[21] The Director relies on both s. 9(1) of the *Act* and exigent circumstances to justify the entry into Y.H.'s apartment, and the subsequent search thereof. Section 9(1) states:

9(1) A person to whom a report is made under section 8 shall investigate the child's need for protection.

[22] M.S. received a report of two children clearly in need of protection. Any reasonable person would agree that a three and four year old found unsupervised in

a parking lot away from their home is a situation that needs to be acted on. M.S. attended to the parking lot, recognized the children, left them with another Child Protection Worker in order to investigate the situation at the home.

[23] Upon arriving at the home, and being told there were children in the home, M.S.'s request to see the children was reasonable. However M.S. did not wait to see if there were other children in the home, or allow T.R. to confirm whether there were children there, but she took it upon herself to check the apartment. There were no exigent circumstances in the apartment. While M.S. had authority to investigate what had happened, she had no authority to search the apartment to determine whether or not exigent circumstances existed.

[24] This was not a criminal case. There was nothing known to M.S. when she entered the apartment that rose to the state of urgency calling for immediate police action to preserve evidence or officer safety. The Director correctly argues that exigent circumstances can arise when it is necessary to preserve public safety, and certainly public safety would include the protection and well-being of children.

[25] However, when the R.C.M.P. entered the apartment and T.R. came to the door, no exigent circumstances existed. When T.R. said to be quiet as there were children in the apartment, no exigent or urgent circumstances existed. Clearly M.S. needed to speak with Y.H. as his children were in the custody of a Child Protection Worker and he was not aware of that. Section 9 of the *Act* placed a duty on M.S. to investigate the situation that lead to the Children being found unattended in a school parking lot with no supervision. To ask to speak with Y.H. would have been entirely reasonable.

[26] However, M.S. felt she needed to look through the residence to determine if there were other children there. Nothing about the situation justified a search of the residence at that point. Further, M.S. did not immediately go through the apartment to ensure there were no children there; when she saw Y.H. she stopped and spoke to him in the bedroom where he was. If M.S. honestly believed there were children in the residence in danger, she would not have stopped to speak to Y.H. When Y.H. went to the washroom, M.S. then went to speak to T.R. M.S. testified it was only after speaking to T.R. that she did "a quick walk through" and confirmed there were no children present. M.S.'s actions clearly demonstrate that there was no exigent circumstances with respect to the protection or well-being of children, there was no urgency. M.S. is an experienced Child Protection Worker, and if she believed children in the residence were in danger, she would have taken all steps to locate them. She did not, she spoke to Y.H., she attempted to speak to T.R., and then she did a quick walk through to ensure there were no children in the

residence. As M.S.'s actions show there was no reason to believe that *if* there had been other children in the residence, they were in danger.

[27] Neither M.S. nor Cst. E. were lawfully in the bedroom where Y.H. was; M.S. was not lawfully in the bedroom while Y.H. used the washroom, and she searched the bedroom finding suspected crack cocaine. Consequently the plain view doctrine does not apply.

[28] Section 9 of the *Act* did not justify the search of Y.H.'s apartment; no exigent circumstances existed that would justify the search of Y.H.'s apartment. But for the unlawful search of Y.H.'s apartment the suspected cocaine would not have been found and the plain view doctrine has no application in this case.

[29] Y.H.'s right to be secure against unreasonable search and seizure was clearly violated.

Section 24(1) of the Charter

[30] Counsel on behalf of the Father suggests various remedies pursuant to s. 24(1) of the *Charter* would be appropriate. Section 24(1) states:

24(1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

[31] Counsel on behalf of the Father suggested one remedy that could be granted was that the Court order a regular review of this matter if a Temporary Custody Order was granted. The Court may always order reviews of temporary or permanent custody orders pursuant to ss. 28(1)(c)(i) and 28(1)(d)(i) of the *Act*. As such, it is difficult to see how such an Order could be seen as a remedy when it is already available to the Father.

[32] Counsel on behalf of the Father further suggests that the Court impose limitations on the Director's interactions with the Father. To impose limitations on future interactions would be insurmountably difficult to foresee or impose. Further such limitations could end up not being in the best interests of the Children, and may even result in real harm to the Children, and as such would not be appropriate.

[33] Another remedy suggested is to return the Children to the Father. To do such would contravene sections 27 and 28 of the *Act* which requires the court

hearing an Application for a temporary custody order, to determine, in accordance with section 7, whether or not the child who is the subject of the hearing needs protection, and if the court makes such a declaration, to make a child protection order that is, in the opinion of the court, in the best interests of the child. To order that the Children be returned to the father could not be determined to be in the best interests of the Children without hearing the evidence and considering the factors set out in section 7(3) of the *Act*.

Section 24(2) of the *Charter*

[34] The Father's position is that the evidence of M.S. and the two R.C.M.P. officers as it relates to the observation and seizure of the suspected cocaine should be excluded.

[35] Section 24(2) of the *Charter* states:

24(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

[36] The Supreme Court of Canada in *R. v. Grant*, 2009 SCC 32, set out the procedure for determining whether or not evidence obtained in a manner that infringes an individual's rights or freedoms, as found in this case, ought to be excluded. The inquiry is objective and must consider whether a reasonable person, informed of all the relevant circumstances and values underlying the *Charter*, would conclude that the admission of the evidence would bring the administration of justice into disrepute.

In making this determination, regard must be had to:

1. The seriousness of the state conduct;
2. The impact of the breach on the Charter protected interests of the individual; and
3. Society's interest in the adjudication of the case on its merits.

[37] The assessment under each of these lines of inquiry must be balanced to determine whether, considering all of the circumstances, admission of the evidence would bring the administration of justice into disrepute.

The Seriousness of the s. 8 Breach

[38] In this case the conduct of the Child Protection Worker and the R.C.M.P. officers was serious. After entering the home, it was incumbent upon M.S. to make some inquiries after being told there were children in the home: to ask T.R. if she was referring to H.L.H. and A.L.H., to ask that the Father come and speak to her, and/or to tell T.R. that the Children had been found outside the home. There was no reason to immediately jump to the conclusion that if in fact there were other children in the residence, they were in danger, or even that they could have been in danger. In the absence of some evidence or indication that would lead one to believe that any children in that residence would be in danger, simply being told to “keep it down” as there were children in the unit did not give M.S. *carte blanche* to search the residence. Cst. E. testified that he could not lay any charges with respect to the suspected cocaine as he knew he had no authority to search that residence, or be in that bedroom. I do not accept that M.S.’s paramount objective in searching the Father’s home was the protection and well being of the Children — M.S. knew the Children were not there. With respect to M.S. searching for other children in the home, I find that M.S. did not have an honestly held belief that there were other children in the home, or if there were other children in the home she believed they were in danger. In the circumstances known to M.S. at the time, she had no authority to search the Father’s home. M.S. had a duty to investigate which does not allow her to disregard individual rights and freedoms; investigations must be done in compliance with the *Charter*.

The Impact of the s. 8 Breach on Charter Protected Interests

[39] The impact of the actions of M.S. on the Father was significant. An illegal or unauthorized search of a person’s home in circumstances that were not exigent or urgent, is extremely serious misconduct by the state. The courts cannot be seen as condoning such conduct. I am cognizant that I am dealing with this matter in the context of Child Protection Proceedings, and the safety and well-being of children is and remains the over-arching concern. But it was known to M.S. that the Father’s children were not in the home. M.S. cannot rely on any urgent circumstances in this case. The circumstances *of this case* demonstrate a blatant disregard of the Father’s right to be free of unreasonable search and seizure. And no circumstances exist to mitigate the the significant impact on the Father of such a blatant disregard of his right. Again it cannot be condoned.

Society’s Interest in an Adjudication on the Merits

[40] This is not a criminal matter, but a child protection proceeding. I agree with

the Director's submission that this child protection proceeding is dealing with the present risk and prevention of future harm befalling the Children. The order I make in these proceedings must be in the best interests of the Children. The *Charter* breach in this case has very little impact on the Children, yet was very serious and has significant impact on the Father.

[41] To determine the best interests of the Children, I have to consider all of the circumstances. To exclude evidence, especially evidence that could be determinative of whether or not the Children are in need of protection, could result in a finding that is not in the best interests of the Children. We as a community have to protect children from harm. I agree with the Court in *V.S. v. Alberta (Director of Child Welfare)*, 2004 ABQB 892, para. 70:

...Whatever remedy might be ordered by a court in the case of a Charter breach by a child welfare worker, police officer or another in authority in the child protection context, it should in no way prejudice the child by limiting the court's access to the true facts of the child's situation.

[42] Taking into consideration the law as set out by the Supreme Court of Canada in *R. v. Grant, supra*, and the fact that this is a child protection proceeding, I find that admitting the evidence in the circumstances of this case would not bring the administration of justice into disrepute.

B. Section 7

[43] After the field tests were completed on the substances found in the residence, and it was determined that the police were no longer required in the residence, Cst. E. and Cst. L. left the residence.

[44] M.S. remained in the residence attempting to engage the Father in safety planning for the Children. M.S. explained her concerns to the Father, being that suspected crack cocaine was found on the Children's bed, she believed the Father was intoxicated, and that the Children had been located outside the home with no supervision, and the Father was unaware the Children were not in the home. The Father attempted to get his adult daughter to care for the Children, but that was not successful. The Children's maternal Grandmother, D.L. who lived nearby agreed to take the Children, and M.S. was satisfied with that plan. D.L. came and got the children. M.S. testified that the Father agreed to a safety plan and she wrote it out later. M.S. did not review the written safety plan with the Father. M.S. left and told the Father that she would talk to him the following day.

[45] It is not clear on the evidence the involvement of the Father in coming up

with the safety plan, or how or if agreement was reached. The safety plan from April 20 expired on April 21. According to M.S.'s Affidavit sworn May 4, 2021 (filed May 6, 2021) the Father told her on April 21 that he had met with his lawyer and would not agree to any further safety plans dealing with the Children. M.S. stated that later in the afternoon of April 21, the Father did agree to extend the safety plan. The Father told M.S. that he had visited the Children the previous day at D.L.'s. M.S. told the Father that *he was not allowed to visit his children without coordinating it with her first.*

[46] On April 22, M.S. again attended the Father's residence and asked him to enter into a Plan of Care Agreement; the Father refused. M.S. stated in the above mentioned Affidavit that the Father agreed to enter a safety plan until the following day. M.S. says that on April 23, the Father further agreed to extend the safety plan until April 26th.

[47] Between April 26 and April 30, M.S. made a number of attempts to contact the Father, but was not successful. On April 30, M.S. attended D.L.'s residence. M.S. could hear one of the Children approach the door, and then heard D.L. approach the door and lock it. M.S. tried to speak to D.L. through the door, and then phoned and texted D.L.; D.L. did not respond. M.S. then contacted the R.C.M.P. for assistance. R.C.M.P. arrived and banged on the door telling D.L. she had to open it. D.L. opened the door, but refused to allow M.S. access to her home. M.S. told D.L. that M.S. needed to confirm the Father was not present and to ensure the residence was safe. M.S. and the R.C.M.P. then entered the residence without permission and searched it. At this time, there was no safety plan in place, and no evidence was called that M.S. had received any information with respect to the safety of the Children before illegally entering and searching D.L.'s home, all in the presence of the Children.

[48] All three of the safety plans that the Director, through M.S., put in place state the "Safety Threat and Description" as "inadequate supervision". M.S. in discussions with the Father, clearly agreed that D.L. could and would provide adequate supervision for the Children or M.S. would not have agreed to place the Children in D.L.'s care. The first safety plan that expired on April 21 did not prohibit the Father from attending D.L.'s residence; it says that D.L. will not return the Children to the Father's care until Child and Family Services advises her to. That safety plan which allowed the Director to investigate the matter of the Children being unsupervised was reasonable.

[49] The safety plan that expired on April 22 and the safety plan that expired on April 26 both have the additional condition that the Father will not be in the

residence of D.L.

[50] Even if the Father agreed that his Children be placed in the care of D.L. to ensure the safety of the children, that arrangement would be unreasonable if it required that the Father have no access to his children. And it would be unreasonable if the Father could only have access on conditions that were unrelated to the “safety threat” that was the concern of the Director. However there is no mention of the Father having access to the Children at all in the safety plans.

[51] None of the evidence, either viva voce or through affidavits, explains why the additional condition that the Father not be at D.L.’s residence, was added, or how that condition addresses the “Safety Threat”. Under the safety plan D.L. was the primary caregiver of the Children. If the Director wanted to ensure that the Children were not left alone with the Father, such a condition could have been easily crafted to ensure the Children were not left alone with the Father. But to deny a father access to his children in their grandmother’s house, in the circumstances of this case, was entirely unreasonable.

[52] The Director submits that the safety plan was agreed to by the Father. The first safety plan may have been, but why was the additional condition added to the subsequent safety plans, and was that ever explained to the Father? The Director says that the Father had the ability to have access to the Children through the Child Protection Workers. None of the safety plans address access to the Children. The second safety plan says “[the Father] will not be in the residence of [D.L.]” and the third safety plan goes even further saying “[the Father] will not be in the residence where [the Children] are residing.”

[53] I find the imposition of this condition on the Father which denied him access to the Children is a clear infringement of the Father’s right to security of the person.

[54] Was this infringement of the Father’s right done in accordance with the principles of fundamental justice? The Director’s attempt to prohibit or limit the Father’s access to his Children was not done in accordance with the principles of fundamental justice. The limit on the Father’s access was not related to the Director’s goal, that is to ensure the Children were adequately supervised; that goal was achieved by removing the children from the Father’s direct care and supervision and placing them in the care of D.L. Taking the further step of not allowing or limiting the Father’s access to his Children while in the care of D.L. was unnecessary and overbroad.

[55] Therefore the Father's right to security of the person was infringed, and not in accordance with the principles of fundamental justice, resulting in a breach of section 7 of the *Charter*.

C. Conclusion on Charter Application

[56] Y.H.'s *Charter* rights pursuant to section 7 and 8 were clearly violated by the actions of the Director in this case. The violations were serious. I have to keep in mind that this is a Child Protection proceeding, and at all stages the best interests of the Children is the overarching consideration.

[57] As referred to earlier, it is necessary to have as much information as possible in order to make a well considered decision on the merits of the case. At the same time I cannot ignore the seriousness of the violations of Y.H.'s *Charter* rights.

[58] In this case I find that a declaration of the *Charter* violation is a just remedy. In declaring that Y.H.'s rights have been violated, hopefully Y.H. will find some vindication in what has been a long and difficult proceeding. As the Supreme Court of Canada stated in *Vancouver (City) v. Ward*, 2010 SCC 27, at paras. 28-29:

[28] ...Vindication focuses on the harm the infringement causes society. As Didcott, J. Observed in *Fose* [1997 (3) SA 786 (C.C.), para. 82], violations of constitutionally protected rights harm not only their particular victims, but society as a whole. This is because they "impair public confidence and diminish public faith in the efficacy of the [constitutional] protection". ...

[29] ... Deterrence, like vindication, has a societal purpose. Deterrence seeks to regulate government behaviour, generally, in order to achieve compliance with the Constitution.

III. TEMPORARY CUSTODY APPLICATION

[59] The Director applies for an Order placing the Children in the temporary custody of the Director pursuant to section 28(1)(c) of the *Act*.

[60] There has been a long, though sometimes sporadic, relationship between the Director and Y.H. The oldest child was born in January 2017, and the first involvement with Social Services was in March 2017. I will not detail the entire history of the relationship here, as it is not necessary for my decision. Much of the evidence I have referred to in dealing with the Charter Application is applicable to the Temporary Custody Application, and I will not repeat it in detail in this part of

my decision.

[61] On April 20, 2021, the Children, who were three and four years old at the time, were found alone, unsupervised in the parking lot of a high school in Yellowknife. The R.C.M.P. received a call from a member of the public, and R.C.M.P. and two Child Protection Workers attended. The Children were known to one of the Child Protection Workers, M.S. M.S. and the R.C.M.P. attended the children's home, while the second Child Protection Worker remained with the Children. At the residence, the Father was found sleeping, and after being woken up and spoken to, a small package of suspected crack cocaine was found on the Children's bed. In September 2019, the Children similarly had been found alone and unsupervised on a street in Yellowknife.

[62] Further, the Children had been apprehended on April 1, 2021, when Child Protection Workers attended the Father's home and found a small scale on the television stand which appeared to have white residue on it, along with a pen shaped item also with white residue on it was found on the floor.

[63] Section 7(3)(i) of the *Act* states:

A child needs protection where the child has been subject to a pattern of neglect and there is a substantial risk that the pattern of neglect will result in physical or emotional harm to the child;

[64] I am satisfied that in the circumstances referred to above the Children are in need of protection pursuant to s. 7(3)(i) of the *Act*.

[65] The Director also submits that the Children were in need of protection pursuant to s. 7(3)(r) of the *Act* which states:

A child needs protection where the child's parent is unavailable or unable or unwilling to properly care for the child and the child's extended family had not made adequate provision for the child's care or custody;

[66] To be clear, I do not find that the Father is unavailable or unable or unwilling to properly care for the Children.

[67] The Director seeks a Temporary Custody Order placing the Children in the custody of the Director for a period of six months.

[68] The Children have been in the care of the Director since April 30, 2021,

almost four months. It is not an overstatement that the relationship between the Child Protection Workers and the Father was not good to start with. In May and June the Father had no access visits with the Children. The relationship seemed to improve with a different worker in July and August.

[69] The improvement in the relationship between Social Services and the Father has to be embraced and fostered. The children deserve no less. I am optimistic that the Order I make will lead to the reunification of the Father and his Children.

[70] Having said that the Father has to realize that the Child Protection Workers are concerned for the Children and their well-being. And the Father has to look after his Children. He has to be aware of who and what is coming into his home. It was undisputed on all the evidence on this case that the father loves his Children, and he can look after them if he is given the chance.

[71] Having said that, I must also say that the Child Protection Workers involved in this case have to keep in mind that it is *the best interests of the Children* that has to be their prime consideration and motivation — always. I cannot imagine the effect that numerous police officers and Child Protection Workers barging into their Grandmother's home had on the Children. The effect it had on D.L. while testifying in the calm sterile environment of the court room while she relived it was apparent. What was the effect on the Children? What could possibly be the reason or rational behind those actions? What was the thinking that day? To see if the Father was in the house? And what would be the harm if he was? From the evidence in this case, the safety plan had expired, there was no authority, based on the evidence, to enter that house.

[72] Though it is not the lack of authority that is my major concern, it is the motivation for, or the thinking behind the actions. The Children had been staying with their Grandmother, a safe place according to M.S. who had agreed to the original "Safety Plan". No evidence was offered as to what had changed, what led to the necessity of the R.C.M.P. and Child Protection Workers barging into the home. The actions of the R.C.M.P. and the Child Protection Workers led to the situation not being safe, to the belief that the Children were in need of protection, and to D.L. not being able or willing to continue to care for her grandchildren.

[73] Everyone has to think long and hard about what is best for the children and about the actions they are taking and the way they are fulfilling their duties — duties as a father, and duties as someone whose occupation it is to support families and to protect children.

IV. CONCLUSION

[74] The Director's Application will be allowed in part. There will be a two month Temporary Custody Order. I find that is necessary to ensure the smooth transition of the Children back into their Father's home, and for it to become their home again. Everyone involved, the Father and the Director, must realize that the goal of the Order is the reunification of this family if that is possible. The Father has to realize that his home has to be a safe and secure place for his Children, that he is responsible for them and their safety. Conditions of the Temporary Custody Order will be set out in the Formal Order.

[75] I want to thank counsel for their excellent presentation, written submissions, and oral argument on this case; it was all extremely helpful.

B.E. Schmaltz
Deputy Judge of the Territorial Court

Dated the _____ day of
December, 2021 at Calgary, Alberta.

**IN THE TERRITORIAL COURT OF THE
NORTHWEST TERRITORIES**

IN THE MATTER OF the *Child and Family
Services Act*,
S.N.W.T., 1997, c.13, as amended

AND IN THE MATTER OF the children:

H.L.H.
Born: 2017

A.L.H.
Born: 2018

Apprehended: April 30, 2021

**REASONS FOR DECISION
of the
HONOURABLE DEPUTY JUDGE
B.E. SCHMALTZ**

There is a ban on the publication, broadcast or transmission of any information that has the effect of identifying (a) a child who is (i) the subject of the proceedings of a hearing under this Act, or (b) a parent or foster parent of a child referred to in paragraph (a) or a member of that child's family or extended family.
s.87 CHILD AND FAMILY SERVICES ACT.