

FAMILY COURT OF NOVA SCOTIA

Citation: *Nova Scotia (Community Services) v. W.W.*, 2021 NSFC 4

Date: 2021-05-11

Docket: FKCFSA 116898

Registry: Kentville, N.S.

Between:

Minister of Community Services

Applicant

v.

W.W.

Respondent

Restriction on Publication:

94 (1) of the *Children and Family Services Act*, S.N.S. 1990, c.5

Judge: The Honourable Judge Jean M. Dewolfe

Heard: March 29, 2021 and March 30, 2021 in Kentville, Nova Scotia

Final Written Submissions: Applicant: April 16, 2021

Respondent: April 23, 2021

Counsel: Angela Swantee for the Applicant
Robert Sutherland, for the Respondent

AND

FAMILY COURT OF NOVA SCOTIA

Citation: *Nova Scotia (Community Services) v. W.W.*, 2021 NSFC 4

Date: 2021-05-11

Docket: FKCFSA 119781

Registry: Kentville, N.S.

Between:

Minister of Community Services

Applicant

v.

W.W. and S.S. and N.S. and H.W. by her guardian *ad litem*, Anna Ashford-Morton
Respondents

**Restriction on Publication: 94 (1) of the *Children and Family Services Act*,
S.N.S. 1990, c.5**

Judge: Justice Jean M. Dewolfe

Heard: April 8, 2021 in Kentville, Nova Scotia

Final Written Submissions: Applicant: April 16, 2021
Respondent: April 23, 2021

Counsel: Angela Swantee and Moira Harding, Articled Clerk, for the
Applicant
Robert Sutherland, for the Respondent, W.W.
Maggie Shackleton, for the guardian *ad litem*, Anna Ashford-
Morton
N.S. and S.S. on their own behalf.

By the Court:

Background

[1] The Minister of Community Services (“the Minister”) seeks to place H.A.L.W (“H.W.”) aged 16 and H.R.A-W (“H.A.”) aged 9 1/2 in permanent care and custody pursuant to the *Children and Family Services Act* (“the *Act*”). The

children's mother is W.W. H.W.'s father has not been involved in her life. H.A.'s father is deceased.

[2] The Court heard separate proceedings with respect to each respective child.

[3] The Minister commenced a protection application with respect to H.A. on December 13, 2019. H.A. had been in W.W.'s care since August 2019 following a previous child protection proceeding. By Interim Order dated December 17, 2019, H.A. was placed in the temporary care and custody of the Minister and has remained in temporary care and custody since that time.

[4] The child H.W. was placed in the care of N.S. and S.S. ("Mr. and Ms. S.") in June 2018 during a previous child protection proceeding. At the conclusion of that child protection proceeding (August 2019), H.W. remained in the care of Mr. and Ms. S. Ms. S is the former partner of H.W.'s older half brother, N.A. Ms. S. and N.A. had had care of H.W. during a previous protection proceeding.

[5] In October 2020, H.W.'s placement with Mr. and Ms. S. broke down. The Minister commenced a protection application with respect to H.W. on October 15, 2020. H.W. was then placed in the temporary care and custody of the Minister and has remained in temporary care and custody since that time.

[6] This Court heard both permanent care applications. The hearing with respect to H.A. was held on March 29 and March 30, 2021. The hearing with respect to H.W. was held on April 8, 2021, which proceeding occurred after my appointment to the Supreme Court of Nova Scotia, Family Division. Pursuant to CPR.92A and the **Judicature Act**, 1997 (2nd sess.), c.5. ss. 8-11, I was able to hear the matter in the Family Court.

[7] Due to COVID-19 restrictions and with consent of the parties, both matters were heard on a document basis, with cross-examination by telephone.

[8] There is significant overlap in evidence between the two matters. Pursuant to s. 96 of the *Act* and by consent, the evidence in the proceeding with respect to H.A. (FKCFSA 116898) was also introduced in the proceeding with respect to H.W. (FKCFSA 119781). Evidence from previous proceedings FKCFSA 090023 (2014) and FKCFSA 110309 (2018) was admitted by consent in both current proceedings pursuant to s. 96 of the *Act*. This evidence provides the background to the current proceedings and is summarized below.

2014 Proceeding

[9] The 2014 proceeding involved both children. At the commencement of the 2014 proceeding, H.W. was not quite 9 years old and H.A. was 2 years old. The initial Agency affidavit referenced child protection concerns for a “significant” period of time prior to 2014, including alcohol abuse by P.A. (H.A.’s father and H.W.’s step father), unfit living conditions, physical and medical neglect of the children, as well as exposure to domestic violence between W.W. and P.A. At the time, H.W.’s school reported significant behavioural issues including sexualized behaviour, and H.A.’s daycare and H.W.’s school both expressed concern regarding physical neglect (e.g. inadequate clothing, diaper rash, no lunch being provided). The Agency noted concerns with respect to the home environment and care provided by W.W.’s grandmother.

[10] In February 2014, the Minister discovered that H.A. had suffered burns from a woodstove and W.W. had not sought appropriate medical attention. W.W. had also allowed her grandmother to care for the children in contravention of Agency direction.

[11] The Minister made a Protection Application and sought services based on substantial concerns of unfit living conditions, inadequate supervision, risk of physical harm, physical neglect and medical neglect.

[12] By Interim Order dated February 26, 2014, H.W. was placed in the care of her 20 year old step brother, N.A. and his girlfriend, S.K. (now Ms. S.). H.A. was placed in foster care.

[13] In March 2014, H.A. was returned to W.W.'s care under supervision, only to be returned to foster care in May 2014 after W.W.'s parenting ability deteriorated.

Bower-Jacquard Report

[14] Sheila Bower-Jacquard completed a Parental Capacity Assessment with respect to W.W. in November 2014. Ms. Bower-Jacquard recounted W.W.'s traumatic history, including her long term relationship with P.A. who was 30 years her senior, and with whom she had started a relationship at age 16. Ms. Bower-Jacquard noted a great deal of instability in W.W.'s life.

[15] At the time, H.W. was described by her school as needy and manipulative. H.W. participated in a psychological assessment which identified a learning disability, parentification and symptoms of ADHD and anxiety.

[16] An occupational assessment identified H.A. as having difficulties in terms of school readiness, self-regulation and speech.

[17] Ms. Bower-Jacquard noted that W.W. could present well but W.W.'s behaviours often did not match the verbal information she provided. She had not regularly attended services, appointments or access. She did not seem to understand the importance of appointments or services for herself and the children as was evident by her long history of failing to attend appointments. She seemed to have little insight into Agency concerns and blamed others for her struggles.

[18] Ms. Bower-Jacquard noted that W.W.'s life choices had led to instability for her children, and the lifestyle they had led had not helped them develop healthy boundaries (p. 45 Report). She noted that W.W.'s coping skills were not well developed, and that she probably had attachment issues of her own which were contributing to her parenting issues. She described W.W. as having a tendency to "project malicious motives onto others", to be impulsive, immature, to seek immediate gratification and to have a low tolerance for frustration.

[19] Ms. Bower-Jacquard administered a CAPI (Child Abuse Potential Inventory), the results of which she considered to be concerning, i.e., rigid attitudes and elevated problems in social relationships, which suggested a heightened risk of child abuse.

[20] Ms. Bower-Jacquard recommended that W.W. participate in a psychiatric evaluation due to concerns as to a possible personality disorder. She also recommended W.W. attend therapy to address a number of concerns including impulsivity and attachment issues, to enhance her emotional regulation and develop healthy relationships. She recommended that W.W. work with a family support worker on a number of issues including learning how to reduce H.W.'s parentified behaviour, and to help the children set healthy boundaries.

[21] Ms. Bower-Jacquard reviewed H.W.'s psychological assessment and H.A.'s occupational therapy assessment. She recommended a calm, nurturing home, for both children with "routine, structure, predictability and consistency while promoting emotional development through an emphatic, compassionate parenting approach, rather than punitive". (pp. 122-123 Report)

[22] In January 2015, both children were placed in the care of P.A. The matter terminated in July 2015 with the children remaining in the care of P.A., and W.W. having reasonable parenting time. At that time, the responsible social worker noted that W.W. had not followed up on many of the services the Agency had requested, and she had been inconsistent in attending her access visits. H.A. had also alleged a physical assault by W.W.

2018 Proceeding

[23] A worker at the Salvation Army in Kentville reported allegations from a person who knew P.A. relating to his care of the children, including H.W.'s exposure to an older boy who had presented with sexualized behaviours. This was not investigated. However, following a second similar referral, the Agency did investigate. H.A.'s school expressed concern as to P.A.'s care of the children.

[24] W.W. contacted the Agency indicating H.W. refused to return to P.A.'s care or go to N.A.'s home. The Minister was concerned about H.W.'s contact with older males and her sexualized behaviour. A file for long-term services was opened.

[25] In April 2018, the Agency learned that P.A. was dying. The children were staying with N.A.'s step sister (no biological relationship to H.A. or H.W.). W.W. intended to seek custody. H.W. disclosed that she had been sexually assaulted by an older boy and that W.W., W.W.'s boyfriend,(C.J.) and the boy's mother had not believed her. H.W. also disclosed inappropriate communication with a 23 year old man.

[26] During a risk management conference on May 8, 2018, Agency workers noted a “multigenerational social network around (W.W. and P.A.) that normalized unhealthy, inappropriate-dysfunctional culture”.

[27] The children were placed with N.A.. However, H.W. alleged verbal and physical abuse by N.A. The Minister discovered that N.A. had allowed the children to be cared for by an individual who was not permitted to have unsupervised access with his own children. The Minister then returned H.W. to N.A.’s step sister, and took H.A. into care.

[28] The initial affidavit of social worker, Jennifer Davidson, set out W.W.’s history with the Agency in detail. She noted Agency referrals in 2005 and 2009 (unsubstantiated), as well as involvement resulting in a Memorandum of Understanding in 2011 which had stemmed from P.A.’s alcohol use and domestic violence between P.A. and W.W. Ms. Davidson also reported parenting concerns in 2013 relating to P.A. and W.W.’s grandmother as well as medical neglect and physical abuse allegations by H.W. relating to W.W.

[29] P.A. died in June 2018.

[30] H.W. began staying with N.A.’s former spouse (Ms. S.) in June 2018.

Dr. Kronfli Report

[31] In late 2018, W.W. participated in a Psychiatric Assessment with Dr. Risk Kronfli. Dr. Kronfli noted (at p. 21) that W.W. had “demonstrated a significant degree of dependence on her current, brief relationship with (C.J.) as a solution to her own parenting deficits, rather than accepting responsibility for her own contribution to the outcome and attempting to overcome her own issues. He concluded (at page 21):

“During this Psychiatric Assessment, there is no current indication that (W.W.) has an Axis 1 diagnosis; however, she does appear to have limited cognitive functioning, comprehension, reasoning and memory deficits. She also exhibits symptoms of internal unexpressed or controlled anger which may cause her to feel overwhelmed when she is required to deal with an issue. As suggested in the 2014 (Bower-Jacquard Parental Capacity Assessment), (W.W.) continues to display cluster C personality traits that include avoidant and dependant tendencies, which cannot be treated with medication.”

[32] Dr. Kronfli recommended Cognitive Behavioural Therapy to help W.W. learn and apply new communication skills and improve self confidence and emotional regulation “especially given her dependence on her relationship with (C.J.)”.

[33] Dr. Kronfli also recommended continued Agency supervision until she had shown the ability to “manage both children’s difficult and risky behaviours and establish the stability, structure, and daily routines that will be required, given the

high degree of their emotional, developmental and behavioural needs”. He expressed concerns about W.W.’s ability to manage the children if she were a single parent.

[34] He noted her reluctance to engage in services historically, and questioned her attachment to H.W. He expressed concern that W.W. would not modify her behaviour for H.W.’s sake, but would be more motivated to do so with respect to H.A. As a result, he stated “... I do not believe she would be capable of becoming a primary care provider for her daughter (H.W.)”. (p. 22)

[35] He stated however that there were no “red flags” in terms of preventing W.W. from exercising unsupervised parenting of H.A.

[36] H.A. was placed in W.W.’s care in January 2019. H.W. continued to reside with Mr. and Ms. S. with access to W.W. W.W. began to receive support from the Kings Family Resource Center and the Native Council.

[37] H.W.’s risky and sexualized behaviours continued and H.A. continued to present with behavioural issues. W.W. attended Cognitive Behavioural Therapy and reported improvements in her functioning. The Minister terminated the

protection proceeding on August 17, 2019 with H.A. remaining with W.W. and H.W. remaining with Mr. and Ms. S.

Current Proceedings

H.A. (FKCFSA 116898)

Procedural Background

[38] This Protection Application with respect to H.A. commenced on December 13, 2019. An Interim Order issued on December 17, 2019 and was continued on January 15, 2020. The Protection Order was granted on March 2, 2020 pursuant to s. 22(2)(i) of the *Act*, reserving the right to call evidence with respect to the allegations in relation to s. 22(2) (b)(f) and (g).

[39] The Disposition Order dated May 25, 2020, consented to by W.W., continued H.A.'s temporary care.

[40] H.A. has been in the temporary care of the Minister since December 10, 2019. He was initially placed in a Place of Safety but in June 2020 he was placed in a long term specialized care program at C. House in HRM, where he has resided since that time.

[41] The Minister's application dated December 13, 2019 recites the fact that H.A. had been the subject of two previous child protection proceedings and had spent a total of 16 months in temporary care between February 26, 2014 and March 20, 2014 as well as May 20, 2014 to July 22, 2015 and June 5, 2018 to January 29, 2019. Currently H.A. has been the subject of Orders for temporary care totalling over 27 months (16 months previous proceedings and over 11 months current proceeding).

[42] The statutory timelines in the current proceeding expires on May 25, 2021 by which time the Court must make a final disposition: S. 45 (1) (a).

[43] In this proceeding, the only plans before the Court are the Minister's plan for permanent care and custody, and W.W.'s plan to have the child returned to her care. No family or community placements have come forward.

[44] A Notice to Indigenous Governing Body and Notice to Band was provided to the Annapolis Valley First Nation on February 24, 2020. The Band has not participated in the proceeding. However, the Native Council has supported W.W. through its Outreach and Advocacy services.

[45] Therefore the Court must either return the child to W.W. (with the possibility of a short period of supervision or continued temporary care until May 25, 2021), or place H.A. in the permanent care and custody of the Minister.

Minister's Evidence

[46] The Minister submitted notes from H.A.'s family Doctor, Dr. Esther Cogswell, records from the IWK regarding H.A. and excerpts from Agency Case Notes (February 3, 2020 to March 4, 2021) which were admitted by consent.

[47] **Justin Ju**, the initial social worker, related that in September and October 2019, very soon after the termination of the previous child protection proceeding (August 2019), the Agency received three referrals from H.A.'s school and one from the Kings County Family Resource Center regarding H.A.'s comments and behaviour.

[48] In mid-September 2019, W.W. left H.A. at the home of her former partner's mother, M.L., with all of his possessions saying she was "done". By November 2019 she was seeking his return.

[49] In November 2019, Mike Cameron from the Kings County Family Resource Center was present at W.W.'s home with W.W. and H.A. H.A. became

agitated and left her home, going to a busy road. Mr. Cameron reported that instead of checking on H.A., W.W. had called M.L. for help.

[50] H.A. also told the vice principal at his school that C.J. called him derogatory names and that C.J. had threatened him, swore at him and kicked him.

[51] H.A. made numerous allegations regarding C.J. when interviewed by a social worker on October 22, 2019.

[52] On November 20, 2019 W.W. and C.J. met with Family Support worker, Beth Roberts. At this meeting, W.W. and C.J. indicated they now realized H.A. was “twice the work” as any other child, and therefore there were times when they became frustrated and raised their voices. They said maybe they should have spent more time with him. They suggested that H.A. could move to the home of C.J.’s mother, J.J.

[53] Shortly thereafter, H.A.’s placement with M.L. broke down because of his behaviour which had included kicking and biting her. W.W. placed H.A. with J.J.

[54] On November 25, 2019 the Minister discovered that W.W. had not taken H.A. to IWK appointments.

[55] On December 5, 2019, J.J.'s husband, D.J., spoke with Mr. Ju. D.J. commented on H.A.'s temper and said that W.W. kept rewarding H.A. and "spoiling" him. The Minister became aware that C.J. was seeing H.A. at J.J. and D.J.'s home.

[56] The Minister took H.A. into care on December 10, 2019.

[57] The Minister did not offer services to W.W. as she had completed most services previously during her 15-year history of Agency involvement. W.W. had previously been offered and participated in family support work, counselling, a parental capacity assessment and a psychiatric assessment.

[58] In February 2020, W.W. said C.J. had told H.A. and his own children that he would break their fingers following an incident involving a DVD collection. She also spoke of financial stress in their home prior to H.A. coming into care.

[59] **Lael Aucoin** took over as the family's social worker in February 2020.

[60] Ms. Aucoin's affidavits chronicle Agency interactions with W.W., C.J. and the children since that time. She also answered questions regarding Mr. Justin Ju's affidavit and Agency case notes.

[61] Ms. Aucoin reviewed W.W.'s "notes" which were represented as journal-style entries and included in her March 9, 2021 affidavit. She identified a number of instances where W.W.'s characterizations of conversations differ from those set out in the Minister's Case Notes, e.g. February 24, 2020 in which W.W. alleges that C.J. was "cleared" to visit H.A.; and October 20, 2020 in which W.W. reports that she was told that H.A. had to increase his medication.

[62] Ms. Aucoin expressed concern with regard to an incident in November 2020 wherein W.W. indicates she accidentally saw H.A. in Berwick during his visit with N.A. Ms. Aucoin noted that N.A.'s version of the event as very different than W.W.'s version.

[63] With respect to appointments, Ms. Aucoin noted that in 2019, the IWK. had closed its file when W.W. had failed to take H.A. for appointments. H.A. had also missed three appointments with his family doctor in 2019 and had missed or been late for several counselling appointments. This is confirmed by the IWK records and Dr. Cogswell's notes.

[64] Ms. Aucoin testified that she was aware of the programs which W.W. and C.J. had completed in the community, but that in the Agency's opinion, they are not sufficient to mitigate the risks to H.A. Ms. Aucoin testified that in light of her

interactions with W.W. and the “chronicity” of the abuse and neglect that the children had suffered and W.W.’s failure to follow Ms. Bower-Jacquard’s recommendations, the Agency continues to have significant concerns as to W.W.’s ability to adequately provide for H.A.’s needs.

[65] **Tamsyn Brennan** is the clinical director of C. House, where H.A. has resided since June 2020. She testified that C. House offers a long term care program to help children develop skills and function successfully in a community setting.

[66] Ms. Brennan testified that H.A. had quickly settled in at C. House and she described him as having done “exceptionally well”. She described concerns regarding W.W.’s communications with H.A., e.g. giving him messages which made him think he was coming home and caused him confusion. She noted that at times he has refused to talk to W.W. Ms. Brennan reported that although W.W. had alleged that H.A. was having “nightmares” in August 2020, when Ms. Brennan asked H.A. he denied this.

[67] Ms. Brennan described an incident at the end of an access visit on September 20, 2020. W.W. had waited outside the door after H.A. had gone inside and told H.A. she was still waiting for a hug. W.W. had given H.A. candy and

suggested he share with the other children. Staff would not allow him to do so before dinner. H.A. became more and more upset. W.W. became agitated in the parking lot while refusing to leave. H.A. was looking out the window, yelling at W.W. Eventually W.W. and the access facilitator left.

[68] In September and October 2020, she noted that H.A. was having increased negative behaviours after telephone calls with his Mom and calls were reduced to twice per week. In December 2020 this was changed so that calls only took place if H.A. requested them, but he has not done so. Ms. Brennan notes that H.A. has had overnight visits with N.A. and that he had spoken very positively about these visits.

[69] She noted that without consulting C. House, W.W. gave H.A. an iPad in November 2020. This iPad contained numerous emails about such things as growing cannabis. H.A. wanted to have internet access and the tablet with him at all times which was not permitted. Therefore the iPad was returned to W.W.

[70] Ms. Brennan noted that H.A. (age 9) has now finally mastered the alphabet and is attending school full time. He sees a counsellor at school and is eager to attend school with a friend since December 2020. She described him as

empathetic, a “people pleaser”, who is prone to being taken advantage of by older kids. He has had no behavioural outbursts in 2021.

[71] **Debra Calnen**, a Case Aide employed by the Agency, testified with respect to the September 20, 2020 visit between W.W. and H.A. She recalled seeing a discussion between C. House staff and W.W. but she could not hear what was said. She remembered H.A. yelling “Mom, help me”, and “These people are bad”, from a window. She described W.W. as “escalating” Initially W.W. did not want to leave the parking lot until H.A. calmed down. Eventually she agreed to leave. She told H.A. she would immediately call him, which she did.

[72] **Cynthia Jobs**, the child in care worker, had also been involved with this family during the 2018 proceeding. She testified that when H.A. first came into care, he presented as angry and would growl, hide and had tried to hit her with a bean bag. Over time she had observed that he is better able to engage and more content. He is doing well with the structure and stability of C. House, and the school notes a big improvement in his behaviour particularly since Christmas 2020.

[73] She reported that H.A. receives medication for ADHD daily. He has seen a psychologist and psychiatrist who recommended that he engage in a

psychoeducational/Autism Spectrum Disorder assessment. This was completed in July 2020 by Dr. Lindsay Bates.

[74] Ms. Jobes expressed concern that on September 20, 2020, W.W. had not consulted with C. House staff, and had therefore set H.A. up for conflict, e.g. giving him candy and suggesting that he share it with the other residents before dinner.

[75] **Dr. Lindsay Bates** was qualified to provide expert opinion evidence as a psychologist with a focus on child psychology, who is qualified to assess and treat learning, attention, mental health issues and developmental concerns in children. She diagnosed H.A. with ADHD (combined presentation), with features of inattention and impulsivity. She recommended that H.A. be treated with medication and receive behavioural support at home and at school. She testified that H.A. has complex challenges in that his cognitive ability is low and he has a history of trauma in addition to his attention issues. He requires a lot of support and caregiver involvement. She noted that H.A. will need to attend a lot of appointments and it is important that his caregiver arrange and follow through in these appointments without being late. She described H.A.'s thinking and reasoning skills to be like that of a 5 or 6 year old. His routine and structured

environment are very important. She testified that if a child is dysregulated, he cannot learn; yelling and chaos in his home environment would cause H.A. to be on “alert” a lot of the time, thereby making it challenging for him to be his best self.

[76] On cross examination, Dr. Bates testified that therapy (DBT/CBT) is not appropriate for H.A. right now; most of the work needs to be done by his caregivers who should be mentally stable themselves and thereby able to liaise with school and mental health, put strategies in place for H.A. and consistently attend appointments on time. She emphasized that if a caregiver has mental health struggles, she cannot support a child like H.A. by modelling behaviour or overseeing his behaviour.

[77] Although she did not diagnose H.A. with a learning disability, he will be reassessed when he has stabilized. Dr. Bates emphasized that this is a critical time for H.A. in that his ADHD impairs his learning and must be addressed so he can learn and behave appropriately.

Respondent’s Evidence

Debra Reimer

[78] W.W. filed a Report by Ms. Debra Reimer, social worker, which was redacted and then entered by consent. Ms. Reimer confirmed that W.W. and C.J. had participated in and completed the Circle of Security, Positive Relationships and Anger Management courses offered at Apple Tree Landing Children's Centre. She noted that she recalls meeting W.W. in 2014, and was impressed by the changes she sees now in W.W.

[79] **Ms. Goldy Simons**, mental health and addictions counsellor employed by the Annapolis Valley First Nation Healing Centre, testified as to her Report dated March 16, 2021 and was cross-examined.

[80] Ms. Simons confirmed that W.W. and C.J. completed a number of programs which she offered: "Calming the Chaos", "Seven Sacred Teachings", "What's Hiding Behind the Misbehaviours" and "Promoting Positive Behaviours". They attended most appointments by telephone due to Covid-19. She noted that W.W. is Aboriginal and called her a "Mama Bear". Ms. Simons did not meet H.A. and was told by W.W. that he had suffered abuse and neglect by P.A., and that he has ADHD and behavioural issues. W.W. admitted to Ms. Simons that there was yelling in the household and that C.J. had "threatened" his children and H.A. after

they damaged his DVD's. W.W. told Ms. Simons that C.J.'s daughter also has ADHD.

C.J., D.J. and J.J.

[81] W.W. filed affidavits of **C.J.**, and his parents, **D.J.** and **J.J.** which were admitted by consent.

[82] In his affidavit, **C.J.** states that he has steady employment and owns a home, and that he and W.W. are "prepared" and "equipped" to parent H.A. on a full time basis.

[83] **J.J.** and **D.J.** filed their affidavits in January 2020 in support of W.W.'s application to have H.A. placed in their care. They noted that W.W. has been in a relationship with C.J. for over two years. They indicated that H.A. lived with them from November 23, 2019 to December 10, 2019. They were willing to continue to care for H.A. until he was returned to W.W.'s care.

W.W.

[84] **W.W.** submitted two affidavits dated January 6, 2020 and March 9, 2021. Her first affidavit dated January 3, 2020 focused on the circumstances surrounding H.A.'s taking into care. She indicates that she allowed H.A. to have access to C.J.,

supervised by his parents, and that Annette Davidson of the Agency told her this was O.K. She also indicated that she and C.J. have unrestricted access to C.J.'s three children. She applied for an order returning H.A. to the care of D.J. and J.J. with or without Agency supervision. This application was dismissed and H.A. remained in the temporary care of the Minister.

[85] In her second affidavit dated March 9, 2021, W.W. provides proof that she had completed several parenting programs through the Kids Action Program and that she and C.J. had participated in programs offered through the Annapolis Valley First Nation Health Centre.

[86] She criticized the Agency for changing access, not returning her calls and exhibiting poor communication. She criticized Place of Safety staff, alleging that H.A. was "often" without clothing due to others wearing them, and that they were not empathetic to him and did not take adequate care of him. She provided what appear to be journal style entries made on various dates between January 3, 2019 and February 7, 2021, setting out repeated criticisms of Agency staff, often purporting to quote H.A.

[87] W.W. alleged that H.A. had refused counselling and suffers from anxiety. She admitted on cross examination that she was not aware he was seeing his school

counsellor. She alleged that the Place of Safety staff had told her that H.A. suffers from anxiety and admitted he had not been diagnosed with this condition.

[88] W.W. conceded that some contacts between Agency staff and W.W. were missing from her “journal” entries in her affidavit, e.g. June 29, 2019.

[89] W.W. admitted that she assumed it was the Agency’s fault when a meeting was cancelled on December 5, 2019 but admitted this was not the case. She “never thought” to ask staff at C. House before suggesting that H.A. share candy with the other children just before dinner on September 20, 2020.

[90] She testified that she has “no idea” why H.A. was taken into care in December, 2019.

H.W. FKCFSA 119781

Procedural Background

[91] The Minister commenced this proceeding with respect to H.W. on October 15, 2020 after taking her into care on October 9, 2020.

[92] Notice was given to Annapolis Valley First Nation on October 15, 2020. The Band has not participated in the proceeding.

[93] By Interim Order dated October 19, 2020, H.W. was placed in the temporary care of the Minister. A Protection Order was granted on December 7, 2020 on the basis of s. 22 (2), (d), (g) and (kb). A Disposition Order was granted on February 24, 2021 continuing temporary care and custody. This is the first review of that Order.

Minister's Evidence

[94] The evidence from the 2014 proceeding (FKCFSA 090023) and the 2018 proceeding (FKCFSA 110309) involving both H.A. and H.W., as well as the evidence from the current proceeding (FKCFSA 116898) regarding H.A. were admitted by consent in this proceeding.

[95] The Minister filed affidavits of social workers, Alli Copp, Lael Aucoin and Emily Sweeney who were cross examined. H.W.'s previous caregivers, Mr. and Ms. S., each filed an affidavit and were cross examined. The Guardian *ad litem*, Anna Ashford-Morton, filed two affidavits and was cross examined.

[96] **Ms. Copp's** affidavit set out the Agency's involvement with H.W. in the 2014 and 2018 child protection proceedings, as summarized above. She also provided the background to the current proceeding.

[97] From June 2018 to approximately July 2020, H.W. had been residing with Mr. and Ms. S., either together or separately.

[98] In October 2020, the Minister commenced the current proceeding with respect to H.W., following the breakdown of her placement with Mr. and Ms. S. approximately three months earlier. Mr. S. reported that H.W. had been living with a step uncle and then a person who she described as a “cousin”.

[99] H.W. reported that Mr. S. had pushed her following an argument. Mr. S. denied the allegation and reported that he had taken away a cell phone when H.W. was having contact with an individual who had sexually assaulted her. Ms. S. reported that H.W. said W.W. had given H.W. the cell phone, and that H.W.’s behaviours worsened after staying with her Mother. Ms. S. also reported that H.W. had “no boundaries” with respect to older men, that she and Mr. S. were not able to keep H.W. safe and that W.W. sabotaged the work they had been doing to protect H.W.

[100] Ms. S. reported that W.W. did normally not take H.W. for a full weekend access visit and would often make plans with H.W. but did not follow through. She had recently picked H.W. up without permission and kept her for five days. Ms. S. reported that W.W. would not cooperate when they tried to implement

boundaries and structure with H.W. and they would struggle with her behaviours after she returned from visits with her Mom.

[101] At that time there were two ongoing criminal court proceedings in which H.W. was the victim and she was not allowed to have internet access.

[102] Mr. and Ms. S. reported that H.W. had begun living with her 22 year old male “cousin” and was not attending school and that W.W. had facilitated this by dropping off her belongings.

[103] On September 17, 2020 Ms. Copp and Ms. Debbie Reimer spoke to H.W. at the home of her “cousin”.

[104] During that meeting, W.W. showed up. She complained that Ms. S. had too many rules and she wanted H.W. to live with her. She indicated she did not want H.W. to leave the area because their relationship was just starting to get better. Ms. Copp explained that H.W. was at risk of sexual exploitation and W.W. had not acted protectively in the past.

[105] The Minister allowed H.W. to continue to stay with her “cousin”. H.W. agreed to go to school. Ms. Reimer agreed to check in on her and W.W. agreed to

provide school supplies. The following week H.W. did not attend school. She told Ms. Copp that W.W. had not shown up to take her to buy supplies as promised.

[106] Ms. Reimer was unable to provide check-ins. The Minister received reports that H.W. and her “cousin” had been seen touching in the community in a way which suggested a sexual relationship.

[107] On October 9, 2020, Ms. Copp and another worker arrived at W.W.’s and C.J.’s home. W.W. advised that H.W. was with C.J.’s’ mother, J.J., and she agreed to ask J.J. to bring H.W. to her home. On arrival, W.W. asked H.W. to confirm that she is a good mother and stated that her children were not in her care because of people lying about her.

[108] H.W. was taken into care and placed in the Bridges program which is designed specifically for youth who are at risk of or have been sexually exploited.

[109] On October 19, 2020 an interim Order of the Court placed H.W. in the temporary care of the Minister, with access at the discretion of the Minister so as to allow H.W. to settle in her placement.

[110] **Lael Aucoin** became the responsible Social Worker in October 2020 and continued in that capacity until late February 2021. Ms. Aucoin confirmed that H.W. had run away from her placement on three occasions since October 2020.

[111] On November 21, 2020, H.W. left her placement. She called to say she would only return if she could have telephone contact with her mother. A Locate and Detain Order was issued and H.W. was returned to her placement.

[112] H.W. was permitted to stay for Christmas with Mr. S. but on December 24 she left his home.

[113] The Agency and Mr. and Ms. S. became aware of a video in which H.W. and her “cousin” had engaged in a sexual act. H.W. was interviewed by police, and was informed that her “cousin” was actually 26 years old.

[114] In January 2021, H.W. also left her placement and made her way to the South West of the Province. The Agency suspected that H.W.’s “cousin” had driven her to that location although H.W. denied this.

[115] **Emily Sweeney** has been the Social Worker for H.W. and W.W. since February 2021. She testified that H.W. is being prepared for independent living in a residence with three other youth. She described H.W.’s behaviour as risky and

described instances where H.W. has cut herself as well as exhibited sexualized behaviour and lack of boundaries with older men. She noted that concerns regarding sexualized behaviour date back to when H.W. was 5 years old.

[116] Ms. Sweeney described H.W. as having a very good relationship with a Youth Support Worker, however, she currently refuses to access counselling as she does not believe she needs it. Ms. Sweeney testified that the Minister will support joint counselling between W.W. and H.W. regardless of the outcome of this proceeding.

[117] Ms. Sweeney disputed a number of comments attributed to her by W.W. in the journal style entries found in her affidavit.

[118] **Ms. S.** denied that Mr. S. had pushed H.W. or interacted improperly with her. She explained that H.W. had lied on occasions when angry or when she wanted to get or do something.

[119] Ms. S. related text conversations between herself and H.W. in May 2020. H.W. had told Ms. S. that W.W. and C.J. were “pissed” at her and were bringing her home early from an access visit. H.W. said that C.J. had been verbally abusive. Ms. S. provided copies of the texts.

[120] Ms. S. denied that she had called H.W. names.

[121] Ms. S. confirmed the statements she had made to Ms. Copp regarding her concerns for H.W.'s safety and W.W.'s undermining of Mr. and Ms. S.'s authority with H.W. H.W. had reported W.W.'s comments which indicated that she blamed Mr. and Ms. S. for the fact that she did not have H.A. in her care. Ms. S. reported that W.W. had proposed that H.A. live with M.S. in late 2020 or early 2021, and suggested that H.W. could take care of H.A. while Ms. S. worked. Ms. S. noted H.W. is very jealous of H.A. and she would not allow her to care for H.A.

[122] Ms. S. supports the Minister's plan for permanent care, and does not believe it would be good for H.W. to be in her Mother's care.

[123] **Mr. S.** supported Ms. S.'s comments and position. His affidavit was admitted by consent.

[124] **Anna Ashford-Morton** was appointed Guardian *ad litem* for H.W. She submitted two affidavits dated November 9, 2020 and March 31, 2020. She testified and was cross examined.

[125] She related her contact with H.W. throughout the proceeding. She noted that H.W. still wants to live with W.W. but is willing to give the proposed semi independent living option "a shot".

[126] Ms. Ashford-Morton recommends that H.W. be placed in the permanent care and custody of the Minister as being in H.W.'s best interests.

Respondent's Evidence

[127] **C.J.**'s affidavit states that he has a stable home and employment so he can provide for H.W., and that he and W.W. have "worked hard together to understand (H.W.) and how best to meet her needs on various levels".

W.W.

[128] W.W.'s affidavit provides a summary of her background, including significant negative comments regarding P.A. and N.A. She attributes Agency intervention in 2015 to "false allegations from (P.A.) and his family". While she alleges that P.A. was unable to properly care for the children in 2018, she indicates she did not tell the Agency because she feared that they would be placed in foster homes. She then alleged that Ms. S. makes negative and abusive comments directed at her through H.W. and criticizes Ms. S.'s care of H.W. She denies buying H.W. a phone.

[129] W.W. provided confirmation that she had completed programs with Kids Action and Annapolis Valley Band in 2020.

[130] She states that as a result of the education she has received through these programs, she will be “especially vigilant” in ensuring H.W. attends school, lives at home and does not engage with older males.

Law

[131] The Court is required to make a disposition that is in the child’s “best interest”: s. 42(1). The factors which the Court must address in reaching this determination are set out in s. 3(2):

Where a person is directed pursuant to this Act, except in respect of a proposed adoption, to make an order or determination in the best interests of a child, the person shall consider those of the following circumstances that are relevant:

- (a) the importance for the child’s development of a positive relationship with a parent or guardian and a secure place as a member of a family;**
- (b) the child’s relationship with relatives; 1990, c.5;**
- (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 or allowed to remain in the care of a parent or guardian;
- (m) the degree of risk, if any, that justified finding that the child is in need of protective services;
- (n) any other relevant circumstances.

[132] S. 42(2) provides:

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

- (a) have been attempted and have failed;
- (b) have been refused by the parent or guardian; or
- (c) would be inadequate to protect the child.

[133] S. 43(3) states that:

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;

[134] S. 42(4) provides that:

The court shall not make an order for permanent care and custody pursuant to clause (f) of subsection (1), unless the court is satisfied that the circumstances justifying the order are unlikely to change within a reasonably foreseeable time not exceeding the maximum time limits, based upon the age of the child, set out in subsection (1) of Section 45, so that the child can be returned to the parent or guardian. 1990, c. 5, s. 42; 2015, c. 37, s. 32.

[135] Past parenting history is relevant to the present circumstances: **N.S.**

Minister of Community Services v. L. (S.E.L.), 2000 NSCA 55. Counsel for W.W. notes that past behaviour informs the present but does not dictate the future, and that people can change. While this is true, the Court must determine whether the evidence of change before the Court is sufficient to address the risks to the child, or conversely, whether the Court is persuaded on a balance of probabilities that return to a parent’s care continues to pose a “substantial risk” to the child, as defined by the *Act*.

[136] The concept of “substantial risk” is aptly summarized by Jollimore J. in **N.S. (Minister of Community Services) v. S.C.** 2017 NSSC 335, as follows:

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.

[137] The statutory timeline for H.A. expires on May 25, 2021. However, the timeline for H.W. does not expire until August 24, 2022. The Minister submits that it is in H.W.'s best interest that this matter not be prolonged to the limits of the timeline. This approach was met with approval by the Nova Scotia Court of Appeal in **T.H. v. Nova Scotia (Minister of Community Services, 2013 NSCA 33)** in which the Court noted children's need for certainty.

Analysis

[138] W.W. and C.J. completed all programming with Goldy Simons by July, 2020 and with the Kids Action Program by September 16, 2020. W.W.'s position is that this is sufficient to meet the Minister's concerns. The Court accepts that W.W. was engaged and participated actively in these programs.

[139] Both Sheila Bower-Jacquard's parental capacity assessment and Risk Kronfli's psychiatric assessment describe W.W.'s traumatic background and experiences which are clearly linked to poor decision making, poor life choices, and her low threshold level for becoming overwhelmed emotionally. In November 2014, Ms. Bower-Jacquard recommended intensive therapy for W.W. on a wide ranging number of issues which directly affect her ability to parent. In January

2019, Dr. Risk Kronfli confirmed Ms. Bower-Jacquard's concerns that W.W. displayed "Cluster C" personality traits, i.e., a personality disorder. He recommended Cognitive Behavioural Therapy (CBT). W.W. began CBT therapy in April 2019. By the end of the previous child protection proceedings in August 2019, W.W. had made progress in CBT and had agreed to access community resources

[140] However, W.W.'s counselling and services were not sufficient so as to prevent H.A.'s placement from breaking down in a very short period of time. Within a month of terminating the child protection proceeding, the Minister began to receive referrals from the school regarding H.A.. By October 2019, W.W. was overwhelmed and had dropped H.A. off to be cared for by her former partner's mother. When that placement failed soon after, she placed him with her current partner's parents.

[141] In her evidence, W.W. expresses no insight into any role she may have played in H.A.'s behaviour. Rather, she and her partner described H.A. as "twice as much work" as other children. This is not consistent with the perceptions of staff at C. House. It appears that when his emotional needs are met, H.A. is a

generally well behaved child who is able to learn and interact appropriately at school and with peers.

[142] Ms. Bower-Jacquard noted personality disorders are often resistant to treatment and require long-term intervention (p. 48 of her Report). Despite significant, specified counselling in 2019, W.W. was unable to gain the necessary insight and skills to address her personality disorder and to allow her to parent H.A. adequately.

[143] W.W. has not engaged in any significant therapy since H.A. was removed from her care in December 2019. The programs W.W. and C.J. completed with Goldy Simons and Kids Action Program cannot replace the specific recommended counselling and services recommended by Ms. Bower-Jacquard and Dr. Kronfli.

[144] Dr. Bates' opinion is that H.A. needs to be parented by a reliable, involved parent who is emotionally stable herself. I find that W.W. is not able to fulfil that role.

[145] The Court notes that despite having completed all noted programs by September 16, 2020, W.W. still acted inappropriately and without insight during the incident outside C. House on September 20, 2020. W.W. admitted she knew

H.A. had difficulty saying goodbye to her, yet she lingered outside and told H.A. she was still waiting for a hug from him. Instead of leaving, she said she felt she needed to stay to make sure he was OK, thereby prolonging the incident. She “redirected” him to share the candy she had given him with the other children, without asking C. House staff, or recognizing that this would set H.A. up for conflict with staff. W.W. admits that there was yelling and conflict in her home, yet she does not connect this with H.S.’s dysregulated behaviour and his poor school performance in her home.

[146] In 2014, Ms. Bower-Jacquard commented at length about W.W.’s lack of coping skills, her unrealistic view of the world, her impulsivity and her tendency to blame others for her problems. Despite attending services since that time, the Court observes the same traits in W.W. now as existed in 2014. Throughout her March 9, 2021 affidavit she blamed the Agency for all communication difficulties. She exhibited no insight into H.A.’s needs or how her chaotic parenting has contributed to his issues. She blamed P.A. for her previous Agency involvement and had “no idea” why H.A. was apprehended in December 2019.

[147] W.W. has continued to miss or be late for important appointments (e.g. with CHOICE and psychologist in January 2020). This is consistent with her behaviour

prior to the 2018 proceeding, as was noted in Ms. Bower-Jacquard's report. This presents a significant risk for H.A. according to the uncontroverted evidence of Dr. Bates.

[148] The Court recognizes that W.W. and H.A. love each other and have a close relationship. As noted by Dr. Kronfli, W.W. and H.W. do not experience the same closeness as W.W. and H.A.

[149] H.A. has not lived with her Mother since 2014, almost 8 years ago. As W.W. herself noted, she and H.W. were just starting to become close prior to H.W. being taken into care. W.W. has been instrumental in the breakdown of H.W.'s placement with Mr. and Ms. S. and undermined their parental authority without any recognition of the potential risks to H.W. She has not had sufficient insight or parenting ability to protect H.W. from harm and has by her inconsistent attention and her inclusion of C.J. in H.W.'s life, exposed her to conflict and harmed her self-esteem.

[150] H.W. has made it clear that she wishes to live with her Mother. However, her wishes are not determinative.

[151] The Court finds that it is not necessary to assess H.W.'s credibility. She has made numerous statements which have been reported to the Court. The Court has not relied on those alleged statements.

[152] I accept that Debbie Reimer has noted positive changes in W.W. since 2014. The Court finds that there have not been sufficient changes during this proceeding to allow W.W. to adequately parent H.A. or H.W.

[153] The Court finds that it is not in H.W.'s best interests to extend this matter to the end of the timeline. W.W. has not been engaged in the intensive counselling she requires since 2019. She has had extensive therapy in the past. She has repeatedly demonstrated the same issues since that time, e.g. blaming others, lack of insight, lack of consistency and organization which continue to significantly and negatively impact her ability to adequately parent H.W.

[154] H.W. needs the certainty, stability and consistency and a positive role model that W.W. cannot provide and will not be able to provide within the time remaining. H.W. needs to be able to focus on her own education, emotional health and independence in the next year and beyond. Joint counselling with W.W. may be part of that plan.

Conclusion

[155] I find that given W.W.'s lengthy history of engaging in services, but failing to apply what she has learned, and her failure to address her personality disorder and traumatic history, that she would not be able to make sufficient progress within the statutory timelines to meet the concerns of the Minister and be able to provide adequate parenting to H.W.

[156] The Court finds that H.A. would be at substantial risk of physical and emotional harm or neglect, if he was returned to W.W.'s care, and orders that he be placed in the permanent care and custody of the Minister.

[157] On the same basis, the Court also finds that H.W. would be at substantial risk of physical and emotional harm and neglect if she were returned to W.W.'s care and orders that she be placed in the permanent care and custody of the Minister.

Dewolfe, J.