

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Nova Scotia (Community Services) v. M.C.*, 2016 NSSC 182

Date: 2016-06-24
Docket: SFHCFSA-092284
Registry: Halifax

Between:

Minister of Community Services

Applicant

v.

M.C., G.H. and S.M.

Respondents

Restriction on publication:

Publishers of this case please take note that s. 94(1) of the *Children and Family Services Act* applies and may require editing of this judgment or its heading before publication.

Section 94(1) provides:

“No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding pursuant to this Act, or a parent or guardian, a foster parent or relative of the child.”

Judge: The Honourable Justice Elizabeth Jollimore

Heard: January 14, 2015, February 8, 9, 10, 11, 12, 2015, March 21 and 22, 2016

Oral Decision: June 24, 2016

Written Release: July 18, 2016

Counsel: Patricia McFadgen for Minister of Community Services
Damian J. Penny for M.C.
Heather McNeill, Q.C., Michelle Cicchino and Mario Garcia, students at law, for G.H.

By the Court:

1. Introduction

[1] The Minister of Community Services seeks an order for permanent care and custody of a girl, S, and a boy, T. The children are half-siblings.

[2] Ms. C is the mother of both children. She asks that both children be returned to her. The girl's father is Mr. H. He asks that his daughter be returned to him. The boy's father is Mr. S.M. Mr. S.M. is incarcerated and offered no plan for his son. Neither Mr. S.M. nor his counsel participated in this final disposition hearing.

[3] Broadly, the Minister alleges that Ms. C cannot control her use of drugs and alcohol. The Minister says Ms. C has a history of violent relationships and that her poor mental and emotional health leave her unable to protect the children whom she has neglected. In similarly broad terms, the Minister alleges that Mr. H cannot control his use of marijuana and that his relationship with S is poor to non-existent.

[4] To obtain permanent care of the children, the Minister must prove that less intrusive alternatives have been tried and have failed, or that the parents have refused these alternatives, or that these alternatives would be inadequate to protect T and S: subsection 42(2) of the *Children and Family Services Act*, S.N.S. 1990, c. 5. The burden of proof on a balance of probabilities is on the Minister.

[5] If I dismiss the Minister's claim, I must resolve the parents' competing claims for an interim parenting order relating to S under section 18 of the *Maintenance and Custody Act*, R.S.N.S. 1989, c. 160.

2. The family

2.1 The children

[6] T, the boy, is eleven. He's been diagnosed with Attention Deficit Hyperactivity Disorder and is prescribed Ritalin. He settled well into foster care and his foster parent had no concerns about T's mood. While in care, T received individual counselling.

[7] S, the girl, is seven. She has been described as "pleasant and energetic". S has also been described as being "strong willed to the point where she will be physically aggressive if she does not get her own way". S was doing well in school when she was taken into care. She received individual counselling, and speech and language treatment while in foster care.

2.2 The children's history in care

[8] Both children have previously been in the Minister's care. Before he was one year old, T was in care for approximately six months in 2005. It is unlikely T has any memory of this. Ms. C was provided with services relating to drug use, domestic violence and stress management both while T was in care and continuing until 2006 after T returned home.

[9] S was born in 2008. Mr. H said he was present daily in S's life for her first year.

[10] A second child protection proceeding was started in the spring of 2010 when S was approximately one and one-half years old and T was five and one-half. Mr. H was in jail and not part of the children's lives in the time leading up to and during the second proceeding.

[11] The second proceeding ended in October 2011 when the children were placed with Ms. C's parents. The children were to have supervised access with Ms. C. The order placing the children with their grandparents was to continue for no less than one year before Ms. C could apply to vary it.

[12] The order restricted Mr. H's access to S, but this was moot because he was in jail. Mr. H was in jail from November 2009 until June 2012: he completed a sentence for assault and mischief and was arrested after his release for violating his parole conditions. He said that his attendance at a Christmas concert violated the terms of his parole.

[13] After Mr. H's release, Ms. C and Mr. H consented to an order that S would have reasonable access with Mr. H as agreed upon by Mr. H and Ms. C.

[14] The current proceeding began in August 2014.

2.3 The parents

2.3.1 Ms. C

[15] Ms. C, the children's mother, is thirty-one. Ms. C is unemployed and takes medication for depression. She's accessed services at Family SOS and the Chebucto Family Resource Centre. Those who provided her with services at these agencies described Ms. C as feeling hopeless and being inconsistently motivated. This isn't surprising. It's difficult to find a bright spot in Ms. C's life: her children were taken and she was told that she may never see them again.

[16] Ms. C was sober for three years before she relapsed in April 2014. She said that her family support worker told her she could stop taking Antabuse if she felt she could abstain without it. Her relapse into drinking and drug use lasted approximately eight months. During this time, the children were taken into care. I note that no referrals were made by those such as doctors or teachers involved with the children on the basis of harm to or neglect of the children. Ms. C regained her sobriety in January 2015.

[17] Ms. C lives in a one bedroom apartment in the same building as her boyfriend, Mr. S. The two have been together for approximately one and one-half years. Mr. S has a criminal record. He said he is trying to turn his life around. Mr. S, like Ms. C, is sober. He completed a detoxification program in 2012 and said he hasn't used alcohol or non-prescription drugs since then. He works for a commercial cleaning company, cleaning stores and some doctors' offices. Ms. C has accompanied Mr. S to work often: Mr. S said he thought he could assist Ms. C in finding similar work.

2.3.2 Mr. H

[18] S's father, Mr. H, is thirty-six years old. He described himself as having an unstable upbringing. His father was convicted for "inappropriately interacting" with Mr. H's sisters and was jailed. As a child, Mr. H witnessed some of these events and he described his father as a pedophile. Mr. H's income is comprised of disability benefit payments.

[19] Mr. H went to jail in 2009, after S turned one. While at the Springhill Institution, Mr. H received training in framing and drywall, dealing with hazardous materials, forklift operation and overhead travelling and crane operation. He is a certified janitor. He received training in re-assembly of DND trucks and working in confined spaces. He also completed his high school equivalency (GED) and a parenting program.

[20] When Mr. H was released, S was three and Mr. H began having visits with S. The visits were arranged through Ms. C. Mr. H said that most times, access didn't happen, but there were times when he would be with S for an entire weekend from Friday morning until Sunday night. Prior to the children being taken into care in August 2014, there were some occasions when S was with her father "all week". Mr. H would use this time for activities, such as skating or working on S's reading skills.

[21] Before this proceeding began, Mr. H applied to vary the *Maintenance and Custody Act* order relating to S. Mr. H made referrals to the agency about Ms. C's drug and alcohol use.

3. The agency's involvement

[22] In determining whether it is in the best interests to remove children from their parents' care, I must be satisfied that less measures which might adequately protect the children have failed or have been refused by Ms. C or Mr. H or if less intrusive measures would be inadequate to protect the children.

[23] At the outset, the application was based on the Minister's assertion that the children were at substantial risk of physical harm, emotional harm, and abandonment: clauses 22(2)(a), (b), (f), (g), (i), (j), (ja) and (k) of the *Children and Family Services Act*.

3.1 Initial placement

[24] Anita Atbin was the agency worker initially involved with the parents. Mr. H asked to have S placed with him. Ms. Atbin didn't canvass this prospect with Mr. H. She didn't ask Mr. H about the complaints Ms. C had made about his home, or investigate these complaints before S was placed into a foster home. S and T were placed into separate foster homes.

[25] Kirsten Nickerson replaced Ms. Atbin. She was the parents' worker from August 2014 until mid-November 2014. By early August 2014, Ms. Nickerson had talked to Ms. C about placing S with Mr. H. Ms. Nickerson said that Ms. C didn't support this because recently S didn't want to visit Mr. H "because of flies at his home and being afraid of his dog".

[26] Ms. Nickerson never went to Mr. H's home to investigate whether his home might be an appropriate place for S or to look into the complaints about the flies and the dog.

[27] When Mr. H asked Ms. Nickerson why S could not be in his care, Ms. Nickerson said Mr. H "had served jail time on two occasions and that he and Ms. C had been involved in domestic disputes." Ms. Nickerson said that Mr. H had taken alcohol to Ms. C's home and consumed liquor with Ms. C, and that on a prior visit to the agency office, Mr. H had smelled strongly of something resembling alcohol. According to her affidavit, Ms. Nickerson "advised that until Mr. H also began to address and acknowledge some of his own issues, it would be difficult to consider him as an appropriate care provider for S."

[28] Ms. Nickerson's comments to Mr. H failed to consider:

- Mr. H was last in jail in 2012. He had not been in jail since S was three years old. After leaving jail, he re-established a relationship with S that included overnight and week-long visits.
- The domestic disputes between Mr. H and Ms. C were verbal arguments.
- Mr. H was never charged with regard to any domestic violence involving any woman.
- Mr. H consumed a small amount of alcohol the one time he took liquor to Ms. C. Ms. C confirmed to Ms. Atbin that Mr. H wasn't drunk.
- In the agency case recording dated August 19, 2014, Ms. Nickerson recorded that Mr. H "smelled strongly of a scent resembling alcohol". She did not raise this with Mr. H at the time. She gave no credence to Mr. H's explanation that the smell resulted from his use of the hand sanitizer in the agency's office.

[29] Anne Simmons first met the parents in mid-October 2014. She has been the parents' worker since mid-November 2014. Ms. Simmons admitted that there was a decision at the outset not to place S with her father, and agreed that the agency "never really looked" at Mr. H as a potential placement for S.

[30] Ms. Simmons was unable to explain why S was not placed with Mr. H even though Ms. C's third child, who was less than two and one-half years old when the proceeding began, was placed with his father under terms of supervision, though the agency's concerns about Mr. H were the same as its concerns about that young child's father. In contrast with Mr. H, the youngest child's father had been arrested for domestic violence and had disciplined the children inappropriately.

[31] I am satisfied that when the proceeding began the agency did not investigate, let alone attempt, a less intrusive placement for S.

[32] During the fall of 2014, both parents began to involve themselves in services recommended by agency staff.

3.2 The agency's first Plan for Care

[33] In December 2014, the agency filed its first Plan for Care which documented its concerns about Ms. C. These were:

- Her substance and alcohol abuse;
- Domestic violence in her relationship with Mr. M and Mr. H;
- Her inadequate parenting skills; and
- Her “mental health surrounding anxiety and depression”.

[34] For Ms. C, the agency wanted: assessment and treatment for alcohol abuse and drug use through Capital Health Addiction Prevention and Treatment; regular visits with her family doctor to address her substance abuse, depression and anxiety; hair follicle testing; participation in a psychological assessment; and personal counselling with Jackie Barkley.

[35] The Plan also identified the agency's concerns about Mr. H which were:

- His substance and alcohol abuse;
- Domestic violence in his relationship with Ms. C;
- His criminal activity; and
- His inadequate parenting skills.

[36] For Mr. H, the agency recommended: assessment and treatment for substance abuse through Capital Health Addiction Prevention and Treatment; participation in the New Start Counselling program; attending Family SOS; participation in a psychological assessment; and personal counselling with Wayne Hollett.

[37] Additionally, both parents were required to work with a family support worker.

[38] The Plan provided that after the parents completed psychological assessments, there would be a case conference and the agency would then determine whether the children could be safely returned to their parents' care.

[39] The Plan for Care noted “No services have been refused” by the parents.

3.3 January 2015 - October 2015

3.3.1 New Start Counselling

[40] The agency wanted Mr. H to take part in counselling at New Start Counselling. Mr. H attended the entirety of an initial session at New Start. When he learned that the focus of New Start's counselling was domestic violence, Mr. H said New Start wouldn't be helpful for him and he didn't attend any more sessions. Mr. H denied that he'd ever been violent with any intimate partner. There was no evidence of domestic violence in any of his relationships.

[41] At the conclusion of the hearing, the Minister was explicit that domestic violence was no longer a basis for her claim that S would not be adequately protected in Mr. H's care.

[42] Ms. Simmons repeatedly suggested Mr. H attend New Start Counselling for his anger. It is not clear to me that it is appropriate or helpful to direct a person whose problem is managing anger to attend a program on domestic abuse. The services of New Start Counselling are not directed to individuals with problems managing their anger: the services are focused on the perpetrators of domestic abuse.

[43] Poor anger management and domestic abuse are not the same. People who cannot manage their anger may explode at anyone for any reason in any circumstance, while those who abuse their intimate partners are often perfectly capable of controlling their emotions - focusing and timing their aggression and intimidation so it is never public.

[44] On his own initiative, Mr. H arranged for and completed a ten week anger control training program offered by Self Help Connection. He attended every session and often arrived early. Alyson Boyce, a program educator and co-facilitator at Self Help Connection, described Mr. H as "an asset" to the program and said he was a "positive participant" each week.

[45] After Mr. H completed the Self-Help Connection program, his dealings with agency personnel demonstrated his improved ability to manage his frustration. Ms. Simmons agreed that before Mr. H completed the Self-Help Connection program, his frustration was expressed through anger and swearing. She acknowledged that after he completed the program, Mr. H was more controlled. He would go for a walk if he felt himself becoming upset and he would tell an agency worker that he was going to end a phone conversation rather than abruptly hanging up.

[46] Though Mr. H didn't complete programming at New Start Counselling, I'm not satisfied that this is a less intrusive alternative which has failed or been refused, having regard to subsection 42(2) of the *Children and Family Services Act*. On the contrary, I am satisfied that Mr. H identified an appropriate service and undertook it on his own, with positive results.

3.3.2 The involvement of family support workers

[47] Parents are sometimes referred to family support workers for individually tailored parenting instruction. Often this is done in conjunction with the parent's visit with the children.

[48] Initially, the parents worked with D.G. Ms. C's meetings began in late September 2014. Mr. H's meetings began in December 2014.

[49] On January 30, 2015, D.G.'s work with both parents was ended. Both parents had meetings scheduled with D.G. the following week. The meetings were cancelled on short notice.

[50] It remains a mystery why D.G.'s work with the parents was ended.

[51] D.G. testified that at the end of January 2015, he was called into a meeting with a supervisor who told him that a confidential source had reported that D.G. was having a sexual relationship with Ms. C, and drinking alcohol and using drugs with her. D.G. said he was told that the report was thought to be untrue and would not be investigated. He was removed from this case in any event.

[52] In contrast with D.G.'s explanation, Anne Simmons testified that D.G. was removed from this case because he didn't understand his role and that his comments and suggestions to Ms. C that she go to a detoxification centre in Cape Breton on November 3, 2014 overstepped his role, and created the possibility of conflict between his advice and that of Ms. C's addictions counsellor.

[53] Certainly, it makes sense that if D.G. was giving Ms. C advice contrary to the advice of her addictions counsellor – and thereby undermining her recovery – this should stop. However, there was no explanation why, if D.G. had overstepped his bounds in early November, he would remain engaged as the family support worker for three more months.

[54] The parents weren't told why D.G. was no longer their family support worker. When D.G. ceased to be Ms. C's family support worker, he also ceased to be Mr. H's family support worker on the basis that the parents must be served by the same worker, even though the difficulties with D.G. (whatever they were) didn't relate to Mr. H.

[55] D.G. testified that Mr. H was diligent about attending appointments and was open to participating. D.G. said that Mr. H made progress during their sessions and that he understood his role as a parent as it related to consistency, setting limits, creating routines, not rewarding bad behaviour, and not discussing adult issues with children. D.G. said that Mr. H understood the importance of praise, values and manners, and positive discipline. According to D.G., Mr. H was "very aware" of his role as a parent. D.G. attended Mr. H's apartment "numerous times": he saw no flies there.

[56] D.G. testified that access visits between Mr. H and his daughter were not approved by the agency. He said that he did not recall contacting Ms. Simmons about this or discussing this with any social worker.

[57] D.G. said that his family support sessions with Ms. C were "very productive" and she had "made progress". He visited her home which he said was "clean and tidy" every time he visited.

[58] It appears that the parents' work with D.G. was effective and their progress was positive. This work ended on January 30, 2015.

[59] The parents did their psychological assessments in February 2015 and the reports were received on April 13, 2015. Two months later, on June 15, 2015, a case conference was held and a new family support worker was requested on June 19, 2015 – four and one-half months after D.G.'s work ended.

[60] Chris Edwards was assigned to be the new family support worker on July 31, 2015. It's part of Ms. Simmons' job to introduce the family support worker to the parents. Ms. Simmons testified that she went on vacation for a month and didn't return until August 4. She said the introduction would "normally be done by the assigned worker until" she returned from her vacation. No worker did this. Ms. Simmons met with Mr. Edwards on August 24. Mr. Edwards met Ms. C on August 26, 2015 and Mr. H on August 27, 2015.

[61] Ms. Simmons couldn't explain why it would take almost seven months for Chris Edwards to be assigned and begin work with the parents. She agreed that this was a "long time" for the parents to go without the services of a family support worker.

[62] I must put this delay in context. The first disposition order was granted on January 21, 2015. Given S's age, the final disposition deadline was January 21, 2016. For almost seven months of that twelve month period, the parents were without a family support worker to assist them. Ms. C and Mr. H met Mr. Edwards on August 26 and 27, respectively. On September 25, there was a risk management meeting when the agency decided to seek permanent care of the children.

[63] Chris Edwards testified about his involvement with the parents. Mr. Edwards said that he was to address domestic violence, substance abuse and inappropriate discipline with both parents.

[64] Mr. Edwards agreed that Mr. H always denied the claims of domestic violence, and said there were no reports of any inappropriate discipline involving Mr. H. Mr. H spoke truthfully about his use of marijuana to Mr. Edwards, saying it was the only effective treatment for his anxiety. In fact, Mr. H told Mr. Edwards that he was high during their first meeting. According to Mr. Edwards, he didn't observe anything about Mr. H (such as a smell, bloodshot eyes or difficulty concentrating) which would indicate that Mr. H was under the influence.

[65] Mr. Edwards described the positives of Mr. H's parenting: he was always engaged, he had taken other parenting courses, he could speak to parenting techniques that Mr. Edwards described, he was willing to discuss domestic violence though he denied it was relevant to him, he listened attentively, and he made comments that demonstrated his understanding of all aspects of parenting: the importance of consistency, routine, and descriptive praise, different parenting styles, not rewarding inappropriate behaviour, not discussing adult issues with children, setting safety limits, setting homework time, teaching correct behaviour, teaching respect, using positive discipline, and understanding children's feelings and misbehaviour.

[66] Mr. Edwards testified that he was aware Mr. H had completed a parenting program with Family SOS in November 2014, however Mr. Edwards made no inquiries to determine what that course covered.

[67] Mr. Edwards agreed that Ms. C seemed to show a good understanding of what her children were experiencing. He observed three visits between Ms. C and the children and agreed that these seemed to “be going quite well”.

[68] Mr. Edwards didn’t consult with Amy Coates, a worker at Family SOS who provided support to Ms. C, or with the Chebucto Family Services Centre, where Ms. C also sought support. He didn’t read Ms. C’s plan for her recovery from addictions. This background information could have been useful to him in providing services to Ms. C.

[69] I see no failures in the parents’ participation in family support work. If there were shortcomings, given the lengthy hiatus in providing a family support worker to the parents, I would have concerns about the Minister’s failure to make this service available.

3.3.3 The parents’ psychological assessments

[70] According to the Plan for Care, once the parents’ psychological assessments were completed, there would be a case conference to discuss the outcome of the assessments. As well, the Plan for Care would be reviewed to “determine what, if any, further interventions are required and whether the children can be safely returned to the care of their parents.”

[71] The assessments were received on April 13, 2015 and the case conference was held on June 15, 2015.

[72] In child welfare proceedings, parents’ counsel often voice concern that psychological assessments are requested by rote and used to fuel the Minister’s case, rather than to direct the Minister’s actions in assisting families.

[73] Here, David Cox recommended that counselling and other interventions for Ms. C take into account her cognitive characteristics. Mr. Cox said that Ms. C would “have difficulty benefiting from an approach which emphasizes the acquisition of insight and abstract concepts”. He said concepts needed to be translated into concrete terms which could be explicitly connected to Ms. C’s own life. Mr. Cox also recommended that straightforward, concrete language be used with Ms. C and that as little information as possible be presented to her at one time. He said it “might be useful to provide brief, point-form written summaries of important information or agreements” to prevent later misunderstanding or misrepresentation.

[74] Mr. Cox recommended consideration of diagnostic assessment and treatment of adult ADHD for Mr. H, but cautioned it “may be of limited benefit” because of what Mr. Cox described as Mr. H’s personality traits, attitudes, and habitual behaviours. There was no action by the agency on Mr. Cox’s recommendations relating to Mr. H.

[75] Jackie Barkley was providing personal counselling to Ms. C. Ms. Barkley said she hoped that the psychological assessment would let her know if there were cognitive issues that she should be aware of, in working with Ms. C. However before Mr. Cox's report was finished, Ms. Barkley had recommended that Ms. C's counselling end and the counselling was terminated. Mr. Cox's recommendations relating to Ms. C could be put to no use.

[76] I see no failure in the parents' participation in the psychological assessments. I am concerned the assessments did little to inform the agency's provision of services to the parents.

[77] In October 2015, the Minister filed a second Plan for Care. In this, she sought permanent care and custody of the children. The Plan again noted that the parents had refused no services.

[78] In the absence of failed or refused services which are less intrusive alternatives to permanent care, the Minister must prove that any other less intrusive alternative would not be adequate to protect the children. My concern remains the children's best interests.

[79] I'll consider each parent in turn.

4. Ms. C

[80] At the final disposition hearing, the Minister identified her "essential child protection concerns" about Ms. C. They were:

- Drug and alcohol abuse over a period of many years including relapses following periods of sobriety;
- Domestic violence over many years and with several different partners;
- Mental and emotional health and functioning, as well as an inability to recognize risk factors and place her children's needs above her own; and
- Neglect and risk of physical and emotional harm.

4.1 Ms. C's drug use and alcohol abuse

[81] The Minister argued that the children could not be adequately protected from harm while in their mother's care because of her use of drugs and abuse of alcohol.

[82] Ms. C testified that she began to use alcohol and drugs when she was eighteen or nineteen years old – in 2003 or 2004. There were concerns about her use of drugs and alcohol in 2005 when T was born. It appears the concerns were resolved because T was returned to his mother in 2006.

[83] A second child welfare proceeding began in 2010, after a referral that Ms. C had been under the influence of alcohol while caring for the children. When that proceeding ended the children were placed with Ms. C's parents in October 2011: the Minister was concerned that Ms.

C was still drinking. Ms. C denied this.

[84] The Minister didn't oppose the children's return to Ms. C in April 2013: there had been no reports that Ms. C was abusing alcohol. According to Ms. C, she did not drink for three years.

[85] Twelve months passed before the Minister received any referrals about the family.

[86] Between April and August 2014, the Minister received referrals about Ms. C. The first referral from Mr. H, on April 29, revealed that Ms. C, T and S were kicked out of the home they occupied with her youngest son, J, and J's father, Mr. J.M. It was Mr. J.M. who kicked them out. Mr. H said that Mr. J.M. did this because Ms. C "had gotten drunk". Mr. H said that Ms. C was with a couple of her friends and Mr. H didn't believe the friends were drunk. Following this referral, both children were interviewed. Aside from Mr. H's referral, there's no indication that Ms. C was drinking.

[87] The second referral came on June 18 from the police: there was a physical fight between Ms. C and Mr. J.M. in the children's presence. According to the police, there was no sense that Ms. C or Mr. J.M. were drinking or under the influence of drugs. This was the second instance of violence between the two known to the police and the third, in total. Within hours of the incident, Ms. C had told her worker at Family SOS that her relationship with Mr. J.M. was over. The worker noted Ms. C "was fully aware of the fact that her relationship needed to end as it was an unhealthy relationship and that it could have a negative impact on her and her children", and her fear of what life would be like financially as a single mother.

[88] On July 7, there was a referral from Mr. H that Ms. C was drinking. When this was investigated, the police found that there was no alcohol in the home. However, Mr. S.M., the father of Ms. C's older son, was present though he was under house arrest and supposed to be elsewhere.

[89] On July 18, Mr. S.M.'s sister called the agency and reported that Ms. C had been drunk the previous evening. The police had been to the home on July 17 and arrested Mr. S.M. who was drunk. The police report made no reference to Ms. C or the children. When agency workers searched the house they found no evidence of alcohol. Ms. C suggested that this referral was made because Mr. S.M.'s sister was mad at her because of what had happened to Mr. S.M.

[90] On July 28, Mr. H called the agency. The agency notes say Mr. H reported the police wouldn't remove his daughter from Ms. C's home because the police didn't believe Ms. C was under the influence. Mr. H said that he took liquor to Ms. C's home in lieu of \$20.00 he owed her and they drank together: he said he had "sips", while she drank.

[91] Save one, the referrals about Ms. C's drinking weren't substantiated. The substantiated referral was Mr. H's referral on July 28 – when he himself provided liquor to Ms. C.

[92] While the referrals had little substantiation and seemed maliciously motivated, at the end of July 2014, Ms. C admitted she was using cocaine and using her older son's Ritalin. Ms. C

self-referred to Capital Health's Addictions Program and was, in fact, meeting with a counsellor when agency workers came to tell her the children were being taken into care.

[93] During visits to Ms. C's home following up on the referrals, workers found her home was tidy and the children had clean and folded clothes. Each child graded and successfully completed the school years. The Minister identified no concerns from the children's school or doctor: neither the school nor the doctor contacted the Minister with any concerns about T or S.

[94] Shortly after her children were taken into care, Ms. C took a combination of prescription drugs which caused her to have a seizure. By October 2014, Ms. C was making progress in dealing with her emotions without resorting to drugs or alcohol. She participated in two different group programs in the fall of 2014, but did not fully engage in those programs. In late 2014, she began to take Antabuse and admitted that she had a problem with drugs and alcohol.

[95] The Minister has made drug testing available to Ms. C. She participated in five tests between July 12, 2015 and August 10, 2015: each test was negative for the screened subjects.

[96] In discussion with Nicole Clarke who works at the Chebucto Family Resource Centre, Ms. C has come to see that her relapses into the abuse of alcohol and use of drugs occurs when she is partnered with someone who also drinks or uses drugs.

[97] Ms. C said she was sober for three years before her relapse in 2014. She said that she used drugs only when she was drinking. This is consistent with the evidence.

[98] Ms. C began to take Antabuse in late 2014. She admitted to using marijuana in early January 2015. There is no indication of any slip in her recovery other than that.

[99] Ms. C's been in recovery since the fall of 2014 and sober since January 2015. She isn't taking Antabuse. Her last appointment with an addictions counsellor was before Christmas 2015.

[100] The Minister questioned Ms. C's ability to maintain her sobriety in the absence of any external supports. The Minister argued that Ms. C lacks sufficient supports to prevent her from relapsing into substance abuse.

[101] Ms. C cannot prove that she will not relapse. She was adamant that she has no cravings for drugs or alcohol. She said she is supported by her mother, with whom she speaks daily, and that she can call Angela Sarty, her addictions counsellor, at any time. At the very outset of the proceeding Ms. C's mother confirmed that they spoke often via Skype or on the phone.

[102] Ms. C said her current partner, Mr. S, has been clean for four years and that he is a support to her. In November 2012, Mr. S was arrested for violating the terms of his house arrest. According to police records, as the police began to search him, Mr. S told the police they would find some marijuana in his pocket. Mr. S's possession of marijuana is the only evidence which challenges his claim that he has been clean for four years. Following this, Mr. S's pre-sentence report of May 2013 said that he showed a "high level of insight" into his addictions problems

and he'd "successfully sought treatment leading to long term recovery."

[103] I am satisfied that Ms. C is not using drugs or abusing alcohol. She understands the consequences of any relapse. In light of her progress in dealing with her addictions, I find that her past drug use and alcohol abuse do not render it unsafe to return the children to her home.

4.2 Ms. C's exposing the children to repeated domestic violence

[104] In the past, Ms. C has had intimate partners who have committed acts of domestic violence against her. These partners do not include Mr. H or her current partner, Mr. S.

[105] Police documents show that since 2006, Ms. C has been involved with four partners who have each engaged in some sort of violent behaviour which attracted police attention:

In July 2006, Ms. C and M.H. got into an argument while drinking. She told him to leave. He left and then banged on the door to get his belongings. His banging cracked a window in the door. The police were called. This is the only recorded instance of any domestic violence involving M.H.

In June 2007, Ms. C called the police when Mr. S.M. (her older son's father) smashed her window and entered her home.

In August 2010, Ms. C called the police, concerned that D.T. was coming to her home to smash her windows. Ms. C and D.T. had broken up earlier that day. (The children were in care with the agency when this happened.) There was contact with the police later that month when D.T. assaulted Ms. C.

In June 2014, there was a referral about domestic violence between Ms. C and Mr. J.M., the father of her younger son. This complaint is one basis for this proceeding.

[106] There is no indication that Ms. C has ongoing contact with M.H. or D.T.

[107] Ms. C has ongoing contact with her younger son who lives with Mr. J.M. and the agency has approved Mr. S to supervise Ms. C's contact with the boy. I don't know whether there's ongoing contact between Ms. C and Mr. J.M. The agency has approved J's living with his father and having contact with his mother, so the agency must be satisfied this arrangement poses no risk to the boy of being exposed to domestic violence between his parents.

[108] There is currently no contact between Ms. C and Mr. S.M., the father of her older son. Mr. S.M. is in jail.

[109] Ms. C has been involved in at least two relationships which do not involve domestic violence: her relationship with Mr. H and her current relationship with Mr. S.

[110] Ms. C's current partner, Mr. S, consented to the production of his police records. These show that Mr. S has faced charges for:

- threatening a justice system participant (January 2013);
- threatening his children's mother (February 2012);
- attempting to burn down their home by igniting the contents of the kitchen garbage pail (August 2011); and
- threatening neighbours and other children (undated, prior to February 2012).

[111] The police records reveal no involvement by Mr. S with the police since February 2013. There have been no reports of any domestic disturbances involving Mr. S and Ms. C.

[112] While Ms. C has had abusive partners in the past, not all of her relationships have been abusive and her current relationship is not an abusive one. Ms. C's counselling with Jackie Barkley included discussion of Ms. C's relationships and being independent from men.

[113] Ms. C also said that she came to understand her pattern of partnering with abusive men during her counselling with Nicole Clarke.

[114] While Ms. C was unwilling to suspend her relationship with Mr. S, she did talk to him about the need of going back to a friendship. As well, Ms. C has maintained some distance from Mr. S. They live in the same building, but don't share an apartment.

[115] The trend in Ms. C's relationships is away from partners who are abusive. Even before this proceeding began, she understood the harm that abusive relationships could pose for her children. Ms. C's current understanding of these relationships is adequate to protect the children from the harm that would accompany exposure to domestic violence.

4.3 Ms. C's emotional and mental health

[116] The Minister argued, based on Mr. Cox's assessment, that Ms. C is self-defeating, avoidant and has depressive personality traits.

[117] The Minister has not established any connection between Mr. Cox's assessment and the adequacy of Ms. C's parenting.

[118] The children's history has shown that when Ms. C is abusing alcohol and using drugs, her parenting is deficient. This is when there are referrals to the agency. There is no evidence which shows that her parenting is inadequate when she is sober, despite these personality traits. In her testimony, Ms. Simmons characterized Ms. C's access with the children as "positive" and "for the most part, going great".

[119] The Minister has not proven that Ms. C's mental and emotional health prevent her from adequately protecting the children.

4.4 Ms. C's endangering the children's physical and emotional health

4.4.1 The children's emotional health

[120] Both children saw counsellors while in care.

[121] T's counsellor was Andrea Boyce. The focus of T's counselling was described as allowing T to process his experience of being in care and trauma experienced while living with Ms. C. Ms. Boyce testified that there are spikes in T's anxiety level resulting from his repeated experiences of being in care. According to Ms. Boyce's reports, T has talked about his mother's substance abuse, his repeated exposure to domestic violence against his mother, the repeated loss – from his life – of his mother's boyfriends, and his separation from his sister who was placed with a different foster family. Ms. Boyce wasn't questioned about this so I don't know how T coped with these circumstances and whether, or what, effect they had on him.

[122] Ms. Boyce said that T is anxious about returning to his mom's home: it's suggested that Mr. S will be present in Ms. C's home and T doesn't know Mr. S. Ms. Boyce said that T blames himself for failing to stop his mother's substance abuse which led to this proceeding.

[123] Ms. Boyce said that T was very upset to be away from his mother and from his sister and that he had experienced "a lot of positive moments during visits" with his mother.

[124] In the absence of information from Ms. Boyce about how T is dealing with the circumstances of life with his mother, I cannot assume that her parenting is not good enough to protect him. T has had some difficulties in care but I cannot tell whether these are because of his ADHD, because he's been separated from his mother and siblings, because he is not in a culturally appropriate foster home or because of his upbringing prior to being in care.

[125] S's counsellor was Sarah Lamb. According to the Minister, "even if there were no child protection concerns" about either parent, S "would be subject to serious emotional harm" if she was placed in the care of either parent. The Minister says this because S has repeatedly told her foster parents, the child in care worker, access facilitators and her parents that she does not want to live with either of her parents. The Minister's argument is that since S said she doesn't want to live with either parent, she would experience serious emotional harm if she had to do so.

[126] The Minister attached much significance to S's comments. S was five when the proceedings began. She is now seven.

[127] According to Sarah Lamb, the focus of S's therapy was to help S feel settled, safe and secure in her foster placement and to give S the opportunity to process any experiences that led to her being in care.

[128] S had positive visits with Ms. C. S didn't attend all visits, but those she attended went well. Ms. Lamb testified that S generally had a very close relationship with her mother and she could recall no instance when S mentioned fear of returning to her mother.

[129] Ms. Lamb testified that S has been "very avoidant of most subjects" and S would say that she's not comfortable talking about something. When S didn't want to talk about something, she would act silly or change the subject.

[130] S was placed with the same foster parents with whom she'd earlier been placed. S has said she would like to stay with them; they are not interested in adopting her if she is placed in the Minister's permanent care. Agency notes report that S would hug and kiss her foster parents and tell them she loved them. Almost immediately after being placed, S accompanied her foster family on a vacation. She has also been taken on an airplane ride, in December, to search for Santa Claus.

[131] The Minister's argument that S would experience serious emotional harm if she was required to live with a parent is not persuasive on its own, nor in these circumstances. It's easy to understand why a young child would want to stay in a home that offers her more than the homes of her parents. However, the contest is not to see which home a child prefers, but whether either parent offers a home that is "good enough". The Court of Appeal accepted this formulation in *M.S. v. Children's Aid Society of Inverness-Richmond*, 2005 NSCA 78 at paragraph 30 and it was described more extensively in *Nova Scotia (Community Services) v. K.B.*, 2010 NSSC 131 at paragraph 6, where Justice D. Campbell wrote "the test for a permanent care order is not that there are alternative caregivers available who would be capable of doing a better job of raising a child. Instead, the test is whether the father can do a "good enough" job."

[132] The Minister has not proven that Ms. C cannot do a good enough job. The children both have a positive connection with Ms. C. They have experienced the disruption of being taken into care: their history shows they have recovered from this.

4.4.2 The children's physical health

[133] Leaving aside the obvious harm that might befall the children if their mother was caring for them while drunk or high, the Minister referred to two circumstances to substantiate her claim that Ms. C has endangered the children's physical health. Both relate to S. First, when this proceeding began, S was sunburned on her right shoulder. Second, one year after S was taken into care, she was operated on to repair a hole in her ear. The hole developed after a tube placed in her ear fell out.

[134] Ms. C said she was treating S for her sunburn. S said that Mr. H applied cream to the burn and that he did it in a way that didn't hurt, but that it hurt when her mom put cream on the sunburn. Ms. Atbin recommended that S be taken to a doctor about the sunburn. S was taken into care the next day. There's no indication that S was ever taken to a doctor about the sunburn by the Minister's workers or the foster parents.

[135] S has her mother's colouring and complexion, making her susceptible to sunburns. I do not find, however, that S's sunburn evidenced Ms. C endangering S's physical health to an extent that would require the Minister's intervention.

[136] Tubes were implanted in S's ears while she was in the care of her grandparents. Ms. C followed up with this, based on information she received from her mother. Months after S was taken into care, it was during an annual medical check up that the Minister learned there was a problem with one of S's ears and surgery was arranged.

[137] The Minister adduced no evidence to show that Ms. C endangered S's physical health in how she followed up with S's implanted tubes. There was no indication that S missed any medical appointment or scheduled check-up or that S was experiencing discomfort or pain. There was no evidence that the problem arose while S was in her mother's care. I cannot conclude that the Minister has shown Ms. C is unable to adequately protect S, based on the evidence the Minister has provided.

5. Mr. H

[138] At the final disposition hearing, the Minister identified her "essential child protection concerns" with regard to Mr. H were:

- Drug abuse (marijuana) over a period of many years. Mr. H initially reported that his marijuana use was to treat his anxiety, but more recently reported its use to treat post-traumatic stress disorder, which he said doesn't respond to other treatments. Mr. H demonstrated no insight into the impact that his drug abuse has on his ability to parent.
- His inability to focus on S's best interests as opposed to his own; and
- Mr. H had been absent for much of S's life and was never in a primary care-giving role to her.

[139] In closing submissions, the Minister acknowledged that there is no evidence of Mr. H being involved in domestic violence with any partner.

5.1 Mr. H's marijuana use

[140] Mr. H said he has used marijuana for more than twenty-five years. He's thirty-six and began to use marijuana as a child. He said that marijuana no longer makes him high, but makes him feel calmer and more in control of his anxiety.

[141] Mr. H said he has PTSD symptoms and has seen his family doctor for them. He has not been diagnosed with PTSD. Mr. H has tried various drugs (Valium, Lectopam, Lorazepam, Ativan and Wellbutrin) and said that none of these alleviated his symptoms and often they worsened them, so he used marijuana. Mr. H felt that his ability to function, to process his

thoughts and to reason were not impaired by his marijuana use.

[142] Ms. Simmons made little effort to determine Mr. H's circumstances. She testified that she visits her clients in their homes on a bi-weekly basis. She had only been to Mr. H's home twice in the seventeen months that she was his worker. She said that Mr. H would come to the agency's office once every one to two months and, if she was there, she would see him at that time.

[143] Ms. Simmons didn't contact Mr. H's drug counsellor, Erin Dalton, for a report about Mr. H. She didn't seek information about Mr. H's marijuana use from his family doctor, nor did she talk to Mr. H about whether there were possible alternatives to his use of marijuana.

[144] Mr. H attended a meeting with Chris Edwards, the family support worker, while under the influence of marijuana. Mr. Edwards said he "didn't see any signs" that Mr. H was high and that Mr. H appeared "very similar" to the way he appeared at every other meeting.

[145] Mr. H said he has never used marijuana in front of S and wouldn't do so if S was in his care. There is no evidence contradicting this claim or indicating that he was ever under the influence of marijuana while parenting S.

[146] Mr. H said he would take "the steps necessary to eliminate" his marijuana use if S was placed with him.

[147] For fifteen months, Mr. H has been involved in personal counselling with Wayne Hollett. As part of their counselling, Mr. H discussed his use of marijuana. This prompted Mr. H to talk to his doctor about alternatives. Mr. H began to use exercise (his bicycle or weights) as an emotional outlet. Mr. Hollett reported that Mr. H had some success in reducing his marijuana use from time to time.

[148] Mr. Hollett also reported that he couldn't observe whether Mr. H was high during their meetings. He never thought Mr. H was high. Mr. H told him that he had used marijuana before some of their meetings. According to Mr. Hollett, Mr. H was able to talk about his perception of Mr. Hollett's comments and how Mr. Hollett's comments would affect his attitudes and behaviour. He was able to consider Mr. Hollett's views. Mr. Hollett said that his time with Mr. H wouldn't indicate that marijuana affected Mr. H's logic. Mr. H was "cognitively attentive and emotionally reactive in an appropriate way". Mr. Hollett's assessment of how marijuana affects Mr. H is consistent with Mr. H's self-assessment.

[149] The Minister offered no evidence to show that Mr. H's use of marijuana impaired his ability to provide adequate protection for S.

5.2 Mr. H's inability to focus on S's best interests

[150] As noted in paragraph 125, S has told her foster parents, social worker, access facilitators and her parents that she does not want to live with either of her parents. The Minister says that S's statements "speak to the significant trauma that S has experienced and the substantial risk of

emotional harm should she be forcibly re-integrated” into either parent’s home.

[151] The foster parents and Katie Brown, S’s worker, describe S as strong-willed. S is vocal if she is asked to do something she doesn’t want to do.

[152] S’s foster parents and her worker said S had panic attacks when faced with the prospect of access with her father. S has never seen a doctor about her panic attacks and there is nothing in the description of these attacks that allows me to distinguish them from what parents now call a “meltdown” and what was once called a “temper tantrum”.

[153] Ms. Lamb said that children who have experienced upheaval try to control their circumstances. Here, the Minister has empowered S to control her access with her parents and with her father, in particular.

[154] The Minister attaches significant importance to the comments of this young girl.

[155] It is difficult to reconcile the Minister’s assertion that S has experienced significant trauma in Mr. H’s home with the Minister’s simultaneously expressed concern that Mr. H has been absent for much of S’s life and has never been in a primary care-giving role to her.

[156] It’s reported that S has identified why she didn’t want to go to her father’s home. Her reasons? There were flies in his home. Her father had a dog that jumped up on her. No one employed by the Minister has ever taken any step to determine the truth of these comments.

[157] Mr. H said that he bought the dog (Angel) as an Easter gift for S in 2014. He said she didn’t show any fear of the dog, but would tell Angel to “go away” sometimes. S didn’t like it if the dog licked her or jumped on her. S also told Ms. Lamb that she missed the dog. Mr. H provided video clips showing S playing with Angel.

[158] I was provided with the reports of access supervisors who were present when S spent time with Mr. H. Their observations noted no concerns in Mr. H’s care for S. He provided her with appropriate things to do, praised her efforts, played games with her, and interacted positively. I describe these visits more fully at paragraphs 171-176.

[159] In February 2015 Mr. H filed a parenting plan. At that point, he’d moved into a two bedroom apartment and had furniture, clothing and toys ready for S. He planned to have S attend a nearby elementary school, to continue with her existing family doctor, to arrange for a dentist for her and to continue her counselling with Sarah Lamb, if required.

[160] Mr. H resided in this apartment until recently when he began to share an apartment with his girlfriend, K.C. The two have been in a relationships since 2012. K.C. is employed and has two children of her own (aged 12 and 10) who are known to S. K.C. is a support to Mr. H, as is Mr. H’s sister.

[161] S.C. is K.C.’s sister. She’s been a friend of Mr. H’s for fourteen years. S.C. said that during their friendship, she had “never seen him [Mr. H] or known him to be inappropriate

around children.” She said he “has always composed himself in a gentle and caring way.” S.C. saw Mr. H and S play together and observed that Mr. H would attend to S’s hygiene (cleaning her, brushing and braiding her hair) during these visits.

[162] Accepting the Minister’s position would place me in stark contrast with the jurisprudence in private custody disputes where children’s wishes are merely a factor to be considered in determining their parenting arrangements.

[163] A child’s wishes are only one of a series of factors to be considered in determining the child’s best interests: clause 3(2)(j) of the *Children and Family Services Act*. Even there, I believe they must be moderated by concern for the child’s mental and emotional level of development, as noted in clause 3(2)(f) of the *Act*.

5.3 Mr. H’s absence from S’s life

[164] There are two periods when Mr. H was absent from S’s life: when he was in jail and during this proceeding.

[165] S was born in 2008 and Mr. H was present daily for her first year. He was jailed from November 2009 until June 2012. When he was released, S was three. She is now seven.

[166] Following his release, Mr. H and Ms. C consented to an order that S would have reasonable access with Mr. H as agreed upon by Mr. H and Ms. C. Mr. H said that most times, access didn’t happen, but there were times when he would be with S for an entire weekend from Friday morning until Sunday night. Prior to the children being taken into care in August 2014, there were some occasions when S was with her father “all week”. Mr. H would use this time for activities, such as skating, or working on S’s reading skills.

[167] A series of video clips of Mr. H spending time with S were introduced into evidence. These brief videos showed S playing with her father, at home and outside. In one, she is playing with the dog that was given to her as an Easter gift. In another, they sing and, in still another, Mr. H appears to dress up as a princess.

[168] In the two years following his release, Mr. H successfully re-established a relationship with S.

[169] I am far more concerned with the agency’s role in Mr. H’s recent absence from S’s life.

[170] Since S was taken into care in August 2014, she has had only four visits with her father. The first visit took place on February 14, 2015 – six and one-half months after she’d been in care. There were three further visits on May 22, 2015, June 10, 2015, and September 14, 2015.

[171] During the Valentine’s Day visit at McDonald’s, S initially responded to her father’s questions through the access facilitator. She spoke to him after he asked her if she’d like her room in his new apartment painted pink and purple and then began to initiate exchanges with him. She coloured, played games on his phone and “interacted positively”, according to the facilitator. She brought a Valentine for her father and made one for his girlfriend. After the visit

ended, S said she “might go to her next visit” with him.

[172] The next visit was more than two months later on May 22, 2015. It also took place at McDonald’s which, according to the access facilitator’s notes, was important to S’s decision to attend the visit. At this visit, S ran up to her father when they entered McDonald’s and initiated hugs with him. She was more open in starting conversations with her father during this visit. They talked about Mr. H’s partner and her children, who S knows. They played games and coloured, he painted her fingernails. According to the facilitator “The interaction between S and her dad appeared comfortable and natural on her part.”

[173] S’s third visit took place on June 10, 2015 at the agency office. Again they played games; S laughed and sang according to the visit notes. She was very affectionate and, at the end of the visit, S asked when the next visit was.

[174] During the summer of 2015, no access was scheduled at all between S and her father, nor was Mr. H provided with monthly schedules of when his access ought to occur in June, July and August 2015. According to Ms. Simmons, since S wasn’t attending visits in June, no visit schedule was put in place for July. This is wrong: Mr. H **did** have a visit in June and S even asked when her next visit was at the end of the June visit.

[175] After her positive visit in June, three months passed before S saw her father again. This visit occurred at the agency’s office. The visit on September 14, 2015 began with S reluctant to engage with her father. After fifteen minutes she began to interact with him, assembling a scooter, playing with toys, rough housing and tickling. She asked if they could go to the Oval to use her scooter at their next visit.

[176] From the outset, agency workers explained that S didn’t want to visit Mr. H and they couldn’t “force” her. When questioned about S’s access with her father, agency workers framed their answers in the context of “forcing” her as if force was required to compel her compliance.

[177] Mr. H has had only four visits with his daughter since August 2014. He says that during the visits, S was guarded at the outset and then opened up and appeared to really enjoy her time with him. He gave her gifts which she accepted and enjoyed. They’ve exchanged letters two or three times.

[178] Mr. H complained that the Minister has not done enough to encourage his daughter’s contact with him. For example, his visits were restricted to the Agency’s office (twice) and to McDonald’s (twice). He believed that visits in the community – at the library or at the Oval – would offer more to do. Mr. H purchased a scooter as a birthday gift for S in 2015. While S wanted to go outside to ride the scooter, she was not permitted to do so because of a “communication breakdown”: the access facilitators had not been advised by Anne Simmons that S could go outside to play with her father.

[179] There is a typical pattern for the development of access between parents and children who are in the Minister’s care. First visits are supervised at agency offices. From there they move through a series of stages of lessening supervision, increasing distance from the agency

offices (to the community and then to the parent's home) and increasing duration.

[180] In every order granted since this proceeding began, I have ordered – and the Minister has consented to - allowing Mr. H access with S, with the access to be on terms and conditions that might include supervision. Here, the Minister has done little to modify its typical pattern for developing access despite the highly unusual circumstances of this case. There has been no allowance for telephone calls between Mr. H and S; no arrangement where he could be present at her activities (such as school concerts) to demonstrate his interest in her; no efforts to have S attend at places where she might “coincidentally” meet her father and have a brief impromptu visit.

[181] Mr. H suggested that another professional work in tandem with Ms. Lamb to address S's re-unification with him. He did this after being expressly told that Ms. Lamb's mandate was not to re-unify S with her father. His suggestion was rejected.

[182] Agency staff asked Mr. H to suggest options for a ninety minute visit with S. He suggested a visit on the Halifax Common, where S could use her scooter. Both Katie Brown and Anne Simmons made a point of testifying that Mr. H didn't come forward with his plan within the time frame the agency required. Ms. Simmons said she gave a direction for community visits. However, there was a “communication breakdown” among agency workers and this didn't happen.

[183] S enjoyed visits to McDonald's. Her worker, Katie Brown, testified that S's “eyes lit up” at the prospect of going to McDonald's. In fact, S said that if she wasn't going to McDonald's she didn't want to see her father - even though she did attend visits with him that weren't at McDonald's. S's foster mother opposed access visits that involved going to McDonald's on the basis that S was either being bribed to attend or being manipulated into attending. I can appreciate these concerns – if these were normal circumstances. These were not normal circumstances and if it took a trip to McDonald's to ensure there was contact between S and her father, this should have happened.

[184] In his visits with S, Mr. H has shown that he is able to establish rapport with S. S, herself, commented to the access supervisors that she would “act shy” around her father. Her behavior with him is similar to the behavior Ms. Lamb described: acting silly and shy. S didn't act uncomfortable around her father.

[185] I am not satisfied that Mr. H's absence from S's life during this proceeding is a circumstance that puts her at risk and requires her placement in permanent care. By far, I am more concerned by the agency's failure to provide appropriate access between S and her father.

5.4 Mr. H's criminal history

[186] The Minister didn't identify Mr. H's criminal history as one of its essential concerns about Mr. H, but she did introduce extracts of Halifax Regional Police records into evidence. The records do not depict a person who lives a lawless lifestyle. They do not depict frequent impairment. They do not depict recent violence. They depict a person whose financial

circumstances are marginal and whose acquaintances are not always on the right side of the law.

[187] Mr. H was last in jail in 2012 as a result of an assault he committed in 2008. He was released on June 21, 2012 and said he had not been charged since 2008. Specifically, on January 14, 2016, Mr. H swore his affidavit, stating “I have not been charged since 2008 and have not spent time in jail since June 21, 2012”.

[188] Earlier, on December 13, 2015, Mr. H signed an undertaking which noted that he understood that it was alleged that he had committed the offence of breaking and entering, contrary to clause 348(1)(a) of the *Criminal Code*. The offence was alleged to have occurred on November 2, 2015.

[189] On February 3, 2016 Ms. Simmons filed an affidavit attaching an information, sworn by Tracey Chatterton of the Halifax Regional Police, stating her reasonable grounds to believe that Mr. H did unlawfully break and enter into a condominium building with the intent to commit an indictable offence there, contrary to clause 348(1)(a) of the *Criminal Code*. Ms. Chatterton swore the information on January 14, 2016. Mr. H was arraigned on this charge on January 28, 2016.

[190] Mr. H explained that he wasn't truthful about this because he was afraid what would happen if he told the truth. He kept this information from his counsellor and from agency workers. It is not surprising that he did. His lack of truthfulness about this does not cause me to doubt his evidence about other matters. He was forthright in describing other circumstances (his use of marijuana and his previous time in jail) which would be considered negative. I do not accept this omission as a basis for discrediting all of Mr. H's testimony.

6. Disposition of application under the *Children and Family Services Act*

[191] The Minister's application for permanent care and custody of T and S is dismissed. The Minister has not discharged the burden on her. T shall be returned to his mother. His parenting is not contested by his father.

[192] There is a contest about the appropriate parenting arrangements for S. Both Ms. C and Mr. H seek her primary care.

7. The *Maintenance and Custody Act* application

7.1 Paramount consideration

[193] Both parents seek primary care of S. Neither has proposed any particular access arrangement for S. My paramount consideration is S's welfare: subsection 18(5) of the *Maintenance and Custody Act*.

[194] Between the parents, S's primary home has been with her mother. Her half-brother, T, resides with her mother. Another half-brother, J, has access with T and S. For S, the parenting arrangement which offers her the greatest consistency with her past parenting and the greatest

contact with her half-siblings is one where she resides with her mother.

[195] In contrast, Mr. H proposes an arrangement where S would live with two older children who are known to her, but not related. She would live with a step-mother. This is a known person, but not a relative.

[196] My decision to place S with her mother reflects the goal of minimizing further upheaval in her life. She has twice been in care and she has once lived an extended period with her maternal grandparents. Both of her parents are adequate: Ms. C has the advantage of being a known home containing S's half-brother. Reports filed by Andrea Boyce, T's counsellor, noted the close relationship between T and S and T's protective feelings toward S.

[197] S shall be in her mother's primary care.

7.2 Information

[198] Both parents shall be entitled to request information directly from those who provide care or services to S, and to receive information directly from them. Those who provide care or services to S include doctors, dentists, daycare staff, teachers and counsellors. Depending on S's situation, there may be others. Neither parent shall require the permission of the other to obtain this information. This shall be reflected in a separate order under the *Maintenance and Custody Act*, which each may provide to those from whom they seek information.

7.3 Decision-making

[199] Each parent will be primarily responsible for making routine or day-to-day decisions for S while S is in his or her home. Each is responsible for arranging any needed childcare while S is in his or her home. Each parent shall have access to S's health card number. If there is a health emergency, the parent who has care of S will make whatever decision is required to respond to the emergency and will let the other know as soon as possible about the emergency. Each parent may take S to the doctor or dentist as needed. When this happens, the other parent will be told.

[200] If there is a major decision to be made, such as where S attends school or whether she receives discretionary health treatments, the parents shall discuss these. If they cannot agree, Ms. C shall make the final decision. I expect that both parents will be diligent in looking for indication that S may need counselling.

7.4 S's home

[201] Neither parent will take S from Nova Scotia to live anywhere else, without the other parent's permission or a court order authorizing the relocation.

[202] S will not be removed from Nova Scotia without the other parent's authorization. This authorization must be signed, dated and witnessed. The only exception is if S needs emergency medical treatment outside Nova Scotia. If this happens, the parent who takes S from Nova

Scotia must give the other written confirmation of the emergency and the necessity of medical treatment outside Nova Scotia as soon as practicable.

7.5 General governing terms

[203] For twenty-four hours before and during their time with S, the parents must not use non-prescribed drugs and alcohol and they must not abuse prescribed drugs.

7.5.1 Transition

[204] The Minister will return S directly to Ms. C.

[205] Because Mr. H has had so little contact with S for so long, it will be necessary for their relationship to be re-established. This has been done successfully in the past. Both Ms. C and Mr. H must manage this so that S is not allowed to control the situation. If the parents wish to participate in a settlement conference to discuss the transition, this can be scheduled.

[206] There have been difficulties between Ms. C and Mr. H which have focused on the time that Mr. H has with S. The complaints and disagreements are not good for S. The difficulties have played a part in creating the crisis that the family has been dealing with for the past two years in the child welfare proceeding.

[207] It may take some time for S to settle on returning to Ms. C's home. For the first two weeks that S is home, Mr. H can telephone her daily for no more than fifteen minutes each day.

[208] I order that Mr. H's initial access with S be supervised by Veith House, with its reports to be sent to each parent and to the court. I order access be supervised simply to allow S a period of time to become familiar again with spending time with her father, before she has time one-on-one with him. Once a single contract of supervised access has been completed, access shall continue on the terms I outline in this decision. I expect that the supervised access at Veith House will consume the summer of 2016 and some time beyond. Other members of Mr. H's households may attend this access, as permitted by staff at Veith House.

[209] I don't know how the *Maintenance and Custody Act* variation application will proceed. No date has been set for a hearing. In case it is delayed, I am outlining an interim parenting arrangement that will create certainty for the next year.

7.5.2 Transfers

[210] Many of S's transfers are scheduled so that S can be picked up from or returned to school. When this can't happen, the transfers should happen in a public place, such as a coffee shop. If the parents wish to use the supervised access exchange services of Veith House, this may be stated in the order.

7.5.3 Summer schedule

[211] Beginning in June 2017, starting on the Friday evening following the last day of school, S shall begin to alternate her time between Mr. H's home and Ms. C's on a weekly basis, switching homes every Friday evening at 5:00 p.m. This weekly alternation shall continue until the Thursday afternoon before the first day of school in September when the school year schedule will begin. In even-numbered years, the first week of the summer schedule shall be with Mr. H. In odd-numbered years, the first week of the summer schedule shall be with Ms. C.

7.5.4 School year schedule

[212] Commencing on the Thursday afternoon before the first day of school in September, the school year schedule will start. The school year schedule will run from the Thursday afternoon before the first day of school in September until the Friday evening following the last day of school in June. During this period, S shall be with Mr. H on every other weekend from Thursday after school until Sunday evening when S will be returned to her mother's home. S will be with her mother the weekend before school starts and with her father for the first weekend of the school year schedule every year.

[213] This year, the school year schedule will begin as soon as the contract for supervised access at Veith House ends.

[214] The school year schedule will be suspended or modified as I outline in paragraphs 211, and 215 to 217: during the summer, Christmas, March break and at Easter.

7.5.5 Christmas schedule

[215] The school year schedule shall be suspended during the period from December 24 to December 27 annually. Commencing in 2016 and continuing in even-numbered years, S shall be with Mr. H on December 24 from 3:00 p.m. until 8:30 p.m. and on December 26 from 10:00 a.m. until December 27 at 10:00 a.m. So, in even-numbered years, S will be with Ms. C from 8:30 p.m. on December 24 until 10:00 a.m. on December 26. In 2017 and in odd-numbered years, S shall be with Mr. H from 8:30 p.m. on December 24 until 10 a.m. on December 26. At all other times from noon on December 24 until 10:00 a.m. on December 27 in odd-numbered years, S shall be with Ms. C. The family shall return to the school year schedule at 10:00 a.m. on December 27 each year.

7.5.6 March break schedule

[216] S's school year schedule will be modified only slightly during the March Break: during this week, she shall be with Mr. H from Wednesday (during the March Break) at 5 p.m. until being returned to school on Monday.

7.5.7 Easter schedule

[217] The school year schedule shall be suspended during the days comprising the Easter weekend: from Thursday after school until Tuesday morning when school resumes. Mr. H and Ms. C will alternate spending Easter with S annually. Starting in 2018 and continuing in even-numbered years, S shall be with Ms. C from after school on Thursday until she returns to school on Tuesday morning following the holiday weekend. In odd-numbered years beginning in 2017, S shall spend this time with Mr. H.

7.5.8 Other

[218] If there are any occasions when the parents agree to alter this schedule, they may do so. Otherwise, the schedule shall not be changed.

8. Conclusion

[219] I conclude that it is in the best interests of the children that I dismiss the Minister's application for permanent care and custody of T and S. Ms. McFadgen shall prepare this order for review by the parties to the Minister's application, and issuance.

[220] I order that both parents attend the court's Parent Information Program in person within the next six months.

[221] Ms. MacNeill shall prepare a discrete order permitting each parent to access information about S directly from third parties as I outlined in paragraphs 198, and the interim parenting order under the *Maintenance and Custody Act* for review by Mr. Penny.

[222] In terms of reviewing the orders, a party reviewing an order has ten days from the date the order is provided to comment on the form of the order. If the drafter hears no complaints with regard to the form of the order within ten days from the date the order is provided, then the order should be sent to me for my review.

Elizabeth Jollimore, J.S.C. (F.D.)

Halifax, Nova Scotia