

IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Nova Scotia (Community Services) v. F.B. , 2012 NSSC 181

Date: 20120509

Docket: SFHCFSA-077020

Registry: Halifax

Between:

Minister of Community Services

Applicant

v.

F.B. and W.G.

Respondents

Judge: The Honourable Justice Elizabeth Jollimore

Heard: March 20, 22 and April 19, 2012

Counsel: Sarah K. Gordon for the Minister of Community Services
F.B. on her own
Eugene Tan for W.G.

By the Court:

[1] The Minister of Community Services has applied for an order placing A, who is now almost nine months old, in its temporary care and custody. The respondents are A's mother, Ms. B, and Ms. B's former partner, Mr. G.

[2] The Minister originally began a child protection application on August 31, 2011 when A was less than one week old. The bases for the application were clauses 22(2)(b), (d) and (g) of the *Children and Family Services Act*, S.N.S. 1990, c. 5. At that time, the Minister sought an order that A remain in its care and custody, having supervised access with Ms. B. Various services were sought with regard to Ms. B. These included that:

she be referred to, attend and participate in the STOP (Safety Through the Offender's Partner) Program and comply with recommendations from the Program;

she complete a mental health assessment and comply with its recommendations;

she be referred to, attend and participate in the services of an assigned family skills worker; and

she self-refer to, attend and participate in the New Start Counselling Program.

[3] Historically, the Agency's concerns with Ms. B have related to domestic violence, physical abuse and her mental health. Mr. G was charged with sexual assault against a thirteen year old and there were concerns about his contact with Ms. B's other children, then aged two and four years old. Ms. B was advised that Mr. G was not to be in her home until concerns relating to domestic violence could be alleviated. Regardless, he was present in her home on a number of occasions. During the final two months of her pregnancy in July and August 2011, Ms. B didn't co-operate with the Agency to address concerns about domestic violence and the child sexual abuse charges. The two older children were apprehended.

[4] The five day hearing was held on September 2, 2011. Ms. B consented to participating in the services the Minister wanted. Justice Campbell held that there were reasonable and probable grounds to believe that A was in need of protective services. His Lordship could not determine whether there was substantial risk and noted that, in fact, the determination of whether there was substantial risk need not be finalized until the interim hearing was completed. Rather than order A be placed in the Minister's care, Justice Campbell ordered that A remain with Ms. B under supervision. He also ordered that Ms. B and A couldn't reside with Mr. G and that Mr. G's contact with A would be on terms and conditions set by the Agency.

[5] The order from the five day hearing was explicit in stating that Ms. B would cooperate and comply with all reasonable requests, inquiries, directions and recommendations of any Agency staff. The order included the provision that "any representative of the Agency [. . .] has

the right to enter the residence of the child”. In the event of Ms. B’s non-compliance, the Minister would be entitled to take A from her and return the matter to court. Protection and Supervision orders were granted on November 23, 2011 and January 19, 2012 respectively. These orders were on the same terms of supervision.

[6] On March 12, 2012, A was taken from her mother at the Agency office by social workers employed by the Department of Community Services. They gave Ms. B a notice stating that A was being taken into care and telling Ms. B that a child protection application would be started as soon as possible and, in any event, no later than five days’ time. This application is pursuant to section 46(5)(1) of the *Children and Family Services Act*. Section 46 governs review applications. My order is to be made in A’s best interests as defined by section 3(2) of the *Act*.

[7] The application first came before me on March 19. At that time, Ms. B’s counsel was seeking to be removed. He’d filed no application and I did not hear his request. Both parents let me know that they were contesting the Minister’s application. Because March 19, 2012 was the final date by which the five day order must be made, it was necessary for me to make a decision. The only evidence was that in the affidavit of Kimberley Hankin, a social worker employed by the Minister. In the absence of any other evidence, I granted the Minister’s application.

[8] My schedule didn’t allow for a prompt hearing of the Minister’s application in a single sitting, but counsel believed it could be dealt with in two half-days so hearing time was scheduled on March 20 and 22 to complete the hearing.

[9] On March 20, I granted the application by Ms. B’s counsel to be removed as her counsel. Ms. B said that she’d had two lawyers provided to her through Legal Aid certificates and she was ineligible for further representation from Legal Aid. She participated without counsel.

[10] On March 20, I heard from Melissa Rogers (Ms. B’s Parenting Journey worker), Roxanne LaPierre (Ms. B’s access facilitator), Susan Sly (a long term social worker at the Department of Community Services) and Lori Muise (a long term child protection worker at the Department of Community Services). On March 22, I heard from Tammie Leedham (a social worker in the long term unit) and Kimberley Hankin (the long term social worker for this family). This wasn’t sufficient time to conclude the hearing, so it was adjourned for completion on April 19, when I heard from Ms. B. Mr. G didn’t testify.

[11] One of the options available to me under subsection 46(5) is to make a further order pursuant to section 42. The Minister seeks an order under clause 42(1)(d), placing A in its temporary care and custody. If this is done, section 44 provides that I may impose reasonable terms and conditions, including terms of access, assessment and treatment on Ms. B or A.

[12] Both parents seek the return of A to Ms. B and return to the *status quo* of the January 19, 2012 supervision order.

The evidence

[13] In determining the application, I had an affidavit from Kimberley Hankin and earlier affidavits filed in this matter on behalf of the Minister. The Minister's other witnesses were Melissa Rogers, Roxanne LaPierre, Lori Muise, Susan Sly and Tammie Leedham, all of whom were identified in Ms. Hankin's affidavit. All witnesses were available for cross-examination. Ms. B testified.

[14] The earlier affidavits filed on behalf of the Minister recount observations from Agency staff and referrals from the police and unnamed sources of Ms. B becoming upset or "hysterical" in the presence of her children and the children failing to respond to this behaviour. There are references to her multiple uncontrollable emotional outbursts. Ms. B has admitted that, despite an order that Mr. G have no contact with A except as arranged by the Agency, she has allowed contact. Agency workers were aware of this and did not take A into care.

[15] Ms. B completed the STOP (Safety Through the Offender's Partner) Program and prepared a safety plan. The December 30, 2011 report from Mary McGrath at the STOP Program was an exhibit to Ms. Hankin's affidavit. Ms. B was ordered to comply with the Program's recommendations. In her December 30, 2011 report, Mary McGrath recommended Ms. B should have a "psychological/psychiatric assessment, and accept any recommended treatment that may arise from the assessment". This recommendation has not yet been put into place by the Agency, which is having difficulty finding someone to prepare the assessment.

[16] Ms. McGrath's report concludes that Ms. B "attended all sessions" and "showed a good understanding of the educational aspects of the program, she showed interest in the topics presented, and she was participative [sic]. She got along well with the other group members, and was always appropriate with them." This Program ended on December 21, 2011.

[17] Melissa Rogers works in the Parenting Journey Program, which is offered by the Native Council of Nova Scotia. Ms. Rogers wrote an eleven page report covering the period from August 24, 2011 to January 23, 2012 which was provided as an exhibit to Ms. Hankin's affidavit. The report said that Ms. B was doing well in the program and concluded

[Ms. B]'s shown such a positive outlook that there is no doubt in my mind that she will be able to successfully implement all of the skills she has gained. I have discussed [Ms. B]'s Safety plan she has created for her home and it sounds as though she has taken every opportunity to address any concerns that could arise in the future in regards to safety around any form of physical and sexual abuse. She has worked hard to gain the skills to discuss the warning signs of these situations for both her as well as an age appropriate manner for the children.

[18] Ms. B's first appointment at the Reproductive Mental Health Clinic was on February 8, 2012.

[19] Two events precipitated A being taken into the Minister's care on March 12. One occurred on February 23 and one, on March 12.

February 23, 2012

[20] On February 23, 2012 Melissa Rogers, from the Parenting Journey Program, was with Ms. B when Kimberley Hankin made an unannounced visit. This sort of visit is specifically permitted by the various orders. According to Ms. Hankin's affidavit, Ms. B "appeared upset" at Ms. Hankin's presence and Ms. B "became very argumentative, and stated she felt 'punished' and 'judged'. [Ms. B] also stated that [Ms. Hankin] was the only one who thought she was 'crazy'."

[21] During this visit, Ms. Hankin told Ms. B that the father of Ms. B's oldest child planned to apply for this child's custody. According to Ms. Hankin's affidavit, Ms. B "lost control of her emotions, yelling and swearing at me". She says that there were attempts to calm Ms. B, who "escalated and ordered me out of her home." Ms. Hankin continues:

I was told not to return, and [Ms. B] yelled, screamed, stomped her feet, swore, and engaged in name calling. [A] was a few feet away in her baby seat, and did not appear to have any reaction to the outburst. Ms. Rogers picked [A] up from her car seat.

[22] Ms. Hankin says that Ms. B continued to "escalate" and went upstairs, where she continued to scream and bang things around. Ms. Hankin and Ms. Rogers discussed the baby's failure to react "to this type of noise and commotion". Ms. Hankin left after about twenty minutes. Ms. Rogers was to stay and care for A, and to contact Ms. Hankin if the situation didn't change and Ms. B wasn't able to care for A.

[23] In her affidavit, Ms. Hankin records the content of a phone call she had later that day with Melissa Rogers. Ms. Hankin reports that she was told that Ms. B "threw her phone, purse, and ripped a sign from the window", Ms. B "repeatedly 'punched' her fist into her hand". Ms. Rogers talked Ms. B out of leaving the home to drive somewhere. The baby, A, didn't "flinch or react" to Ms. B's behaviour and fell asleep at one point. Ms. Rogers reported that Ms. B "blamed her older daughter for everything that [Ms. B] is going through" and "appeared" to continue to defend Mr. G. Ms. Rogers wrote a letter to Ms. Hankin about events on February 23, 2012. Her letter confirms this description and this is consistent with the information Ms. Rogers gave when cross-examined.

[24] According to Ms. B, she was in a good mood when Ms. Hankin arrived and she "was getting upset" when Ms. Hankin mentioned the coming custody application about Ms. B's oldest child. Ms. B didn't want "legal stuff" discussed in front of A and repeatedly asked Ms. Hankin to leave. When Ms. Hankin didn't leave, Ms. B yelled at her. Ms. B says "I wasn't part of the conversation, so I went upstairs. Yes, had a hissy fit, rolled up in a little ball on my bed, said choice words, cried for 15 minutes straight. It took [Ms. Hankin] that long to leave. Melissa asked her to leave. She left when Melissa asked."

[25] Ms. B said “After I stopped crying, I talked to Melissa for forty minutes. I walked around to get ready for my long list of things to do”. She said that she “dumped” her purse on the floor, not to be violent, but because she does this every day as part of getting organized. Ms. B said that “Melissa twisted everything.” In addition to upending her purse, Ms. Rogers reported in her letter that Ms. B was “yelling profanities at the top of her lungs” and was “completely irrational for about a two hour period yelling and crying during all of this there was no emotional response from [A] to [Ms. B]’s actions.”

[26] The next day, Ms. Hankin met Ms. B in the Agency’s reception area and asked to meet with her to discuss what had happened. Ms. B refused to meet with Ms. Hankin and to answer her questions.

[27] Three days later, on February 27, Ms. Hankin met with Ms. B at the Agency’s office. Ms. Hankin describes Ms. B by saying “She did not appear receptive to any discussion” and said she “did not have time because I have things to do”. According to Ms. Hankin, during this conversation Ms. B denied throwing things on February 23 and said that A was fine. Ms. B blamed Ms. Hankin for what had happened and refused to discuss the visit and risk to A, denying any wrongdoing or impact on A. Ms. B said that she had her appointment at the Reproductive Mental Health Clinic and was told she didn’t need further follow up. The following day, February 28, Ms. Hankin confirmed with Colleen Flynn at the Reproductive Mental Health Clinic that a second appointment “would be scheduled with the team, as it was determined [Ms. B] required follow up”: a concern had been identified with regard to Ms. B’s emotional regulation. Ms. Flynn agreed that a psychiatric assessment was a good option to pursue.

March 12, 2012

[28] Ms. B was scheduled to have a supervised access visit with her two older children on March 12. According to her, she took A with her to the visit. She was somewhat late in arriving and describes the visit as follows: “The kids weren’t even hungry. They were whiny – they didn’t want lunch or me.” Ms. B says she asked Roxanne LaPierre, who was supervising the visit, “What’s wrong?” Ms. B described the children as ‘pushing, shoving, [the child C] kicked me, head butted me. I almost cried. Wow. Ouch. He was flailing around like he does. Kids in tantrums, ploughing right into each other, throwing things.” Ms. B said Ms. LaPierre “wasn’t blinking an eye – not helping.” At this point in her testimony, Ms. B was close to tears and said that she “can’t be there when my kids are like this, I can’t be there”. Ms. B said it was about fifteen to twenty minutes after her arrival when she was trying to calm the children; they were “aggressive, eccentric”. “They wouldn’t listen to Roxanne at all. [The child, C] was yelling and screaming.” Ms. B says she took C on her lap and said “I’ll have to leave if you don’t calm down”. When she said this, Ms. LaPierre told her that she must leave, she couldn’t blame C. Ms. B said “I couldn’t handle it” and told Ms. LaPierre this was “wrong”. Ms. LaPierre asked Ms. B to leave. She left crying.

[29] According to Ms. LaPierre, Ms. B was late for her visit and arrived, unhappy and flustered. When she realized the children had already had their lunch, she was impatient. Ms. LaPierre suggested that Ms. B wait until half-way through the visit to see if the children were

interested in eating and Ms. B agreed. Ms. LaPierre said that the children are able to sense their mother's mood and they feed on it, the children will act up to get a response from her: one child will torment the other and then hug Ms. B and say "I love you mummy". Ms. LaPierre said Ms. B was losing her patience. The children were fighting and Ms. B yelled at C. She was unable to redirect or calm C and she became verbally aggressive with him, grabbing his arm and saying "you don't want me here, I don't know why I come."

[30] Ms. LaPierre said that "Everyone in the visit seemed worked up. It wasn't a healthy productive visit. I suggested it wasn't a good day" and that the visit end and everyone start fresh at the next visit. Ms. B was very upset, she cried and put A in the stroller. Ms. LaPierre said that Ms. B was "rough" putting A into the stroller, "aggressive with [A's] arms and belts". The older children both asked why their mother was sad and Ms. B yelled at C, saying it was his fault. Ms. LaPierre said that she then told Ms. B to leave. She described Ms. B as "whipping the stroller around". The stroller caught on a chair and Ms. B kicked the chair out of the way into the wall. Ms. B was screaming and crying.

[31] After this, Ms. LaPierre and Susan Sly, a social worker, told Ms. Hankin that they'd seen Ms. B "in an agitated state, yelling and swearing, in the access area of the Agency office" while A was with her. Ms. LaPierre and Ms. Hankin then met with Tina Wells, a case work supervisor.

[32] Ms. Hankin, Ms. LaPierre and Tammie Leedham, another social worker, left the building. Ms. B was having a cigarette in the parking lot and A was with her, in the stroller. Ms. Hankin says that Ms. B began to yell at her. There was an exchange about whether Ms. B kicked the wall during access and Ms. B became more agitated. Ms. Hankin says she attempted to de-escalate the situation and asked Ms. B to return to the office to discuss what had happened. Ms. B refused and continued to "present as agitated, yelling and swearing. She accused Ms. LaPierre and [Ms. Hankin] of lying [about kicking the wall]."

[33] Tammie Leedham next tried to calm Ms. B and have her return to the Agency office. Ms. B refused and said she was going home. Ms. B made negative comments about the Agency and others. According to Ms. Hankin, Ms. Leedham told Ms. B that Ms. B needed to talk to the Agency workers so they could be sure that Ms. B was calm and that A was safe.

[34] Ms. Hankin says that she approached another Agency worker, a social worker named Lori Muise, who was in her vehicle and speaking, by phone, with the supervisor Tina Wells. Ms. Hankin says that she "advised that [Ms. B] was refusing to come to the office and appeared to be out of control" and that Tina Wells said another social worker would be sent to the parking lot to assist. At this point, Ms. B and A were outside with Roxanne LaPierre, Tammie Leedham and Kimberley Hankin. Lori Muise was also outside and Ms. Muise phoned 911 for assistance. Another social worker, Mike Mansfield, came out of the building. He had a Notice of Taking into Care, so the Agency workers could remove A from Ms. B on the basis that A was at "imminent risk" of harm.

[35] Ms. B held on to A's stroller and wouldn't let go. She was screaming and crying, according to Ms. Hankin, who tried to unbuckle A to remove her from the stroller. Ms. B held A. Ms. Hankin said it was several minutes before she could "safely remove [A] from the situation": when Ms. B let go of A and the stroller, Ms. Hankin ran with the stroller to the building and Ms. LaPierre ran to open the door for her. Ms. B was running after them. Ms. LaPierre took A into the building. When Ms. Hankin turned, she said Ms. B was swinging her fists at Ms. Hankin's face and head. Ms. Hankin says that she "blocked [Ms. B's] punches with open hands and guided [Ms. B's] arms downward". When she stepped back, Ms. B advanced and continued to punch.

[36] Ms. B says that after she was given the notice that A was being taken "from that point on, I went over the top". She said she was very stressed out and had flashbacks of the traumatic experience when A was apprehended at the hospital. Ms. B said that what was happening didn't hit her immediately. She put her hands on her face and when she pulled them away, Ms. Hankin was bolting for the door. Ms. B said "I know better than going after her." She didn't describe chasing Ms. Hankin to the building door, but referred to "coming to" and realizing "this won't do me any good". She said she went upstairs to get the stroller, her keys and other items from stroller. She testified that she was fine after that. She said that on the way up in the elevator, she was "distracted and crying" but she was "fine" on the way down.

[37] Ms. Hankin says that Ms. B came up in the elevator with Ms. Leedham and Mr. Mansfield. According to Ms. Leedham, Ms. B was screaming and banging on the elevator walls. A second 911 call was placed by the Agency's receptionist. Both RCMP and Halifax Regional Police responded to the calls. By the time they arrived, Ms. B had left the building and the Agency staff requested a "wellness check" on Ms. B.

[38] According to Ms. Hankin's affidavit, it was then that the Agency staff held a risk management conference to discuss the situation where concerns were identified about Ms. B's

recent lack of engagement with family support work and the Native Council of Nova Scotia and, over recent weeks, a noticeable increase of concern for [Ms. B]'s emotional instability and apparent inability to control her behaviour and negative reactions.

Review hearing

[39] This is a review hearing, provided for by section 46 of the *Children and Family Services Act*. Section 46 outlines the process for review hearing. The possible orders I can make in a review hearing are noted in subsection 46(5):

(a) vary or terminate the disposition order made pursuant to subsection (1) of Section 42, including any term or condition that is part of that order;

(b) order that the disposition order terminate on a specified future date; or

(c) make a further or another order pursuant to subsection (1) of Section 42, subject to the time limits specified in Section 43 for supervision orders and in Section 45 for orders for temporary care and custody.

[40] The option of varying or terminating the disposition order pursuant to subsection 42(1) brings other options into consideration. The options are to:

(a) dismiss the matter;

(b) return A to Ms. B, subject to supervision for a specified period;

(c) place A in a third party's care under supervision for a specified period;

(d) place A in the Agency's temporary care and custody for a specified period;

(e) place A in the Agency's temporary care and custody for a specified period after which A would be returned to Ms. B or another person for a further specified period; and

(f) place A in the Agency's permanent care and custody.

[41] The Minister argues that pursuant to clause 46(5)(c), I should make an order for A to be placed in its temporary care and custody as allowed by clause 42(1)(d) of the *Act*.

[42] According to subsection 46(4), I am to consider a number of factors: whether the circumstances have changed since the last disposition order; whether the plan for A's care that the court applied was being carried out; the least intrusive alternative that's in A's best interest; and whether the requirements of subsection 46(6) have been met.

Subsection 46(4)

[43] The Minister argues that circumstances have changed since the last disposition order of January 19, 2012 and the change is the "two serious incidents" when Ms. B "lost control of her emotions" on February 23 and March 12.

[44] To determine whether circumstances have changed since the last disposition order, I reviewed the affidavit that Ms. Hankin filed in support of the Minister's motion for the disposition order. In it, Ms. Hankin described a meeting with Ms. B at her home on October 13,

2011. Ms. B's family skills worker and Ms. Rogers were also present. There was discussion of the fact that Ms. B "did not cope well with anyone challenging her choices or behaviour as she became argumentative, defensive and dismissive". In the course of this discussion Ms. B "began to lash out" at Ms. Hankin, she became argumentative and wouldn't listen. While this meeting occurred at Ms. B's home, it isn't clear whether A was present.

[45] Ms. Hankin's affidavit describes another visit with Ms. B at her home on November 17, 2011. Ms. Rogers and another representative from the Native Council were present. This is another meeting when Ms. B "became upset and yelled". At a later point in the meeting, Ms. B became upset and left the room. This meeting occurred at Ms. B's home, but I don't know whether A was present.

[46] I conclude that the incidents on February 23 and March 12 show a change in circumstances since the last disposition order was granted on January 19, 2012. Each incident was a complete loss of emotional control by Ms. B. On each occasion on February 23 and March 12, Ms. B was in the company of Agency staff and others who provide her with support services, however they weren't able to re-direct her behaviour as it appears they could in the past, and were required to assume responsibility for A.

[47] The Plan for A's care that the court applied in January 2012 was being carried out: A was living with her mother, subject to the Agency's supervision. Ms. B had completed the STOP program and she was working with a family skills worker. She had not yet begun her mental health assessment or the New Start counselling program. In light of the incidents that have brought this matter to my attention, it is most unfortunate that these are the two services which have not yet begun.

[48] I am not constrained by subsection 46(6).

Section 22

[49] The particular subsections relating to the Minister's application are 22(2)(b), (d) and (g) of the *Act*. Each of these clauses refers to "substantial risk". This phrase means "a real chance of danger that is apparent on the evidence" according to subsection 22(1). Clauses 22(2)(b), (d) and (g) are described below:

22(2)(b): there is a real chance of danger that is apparent on the evidence that A will suffer physical harm inflicted or caused by Ms. B or caused by Ms. B's failure to supervise and protect A adequately;

22(2)(d): there is a real chance of danger that is apparent on the evidence that A will sexually abused by Ms. B or Mr. G or another person, where Ms. B or Mr. G knows or should know of the possibility of sexual abuse and fails to protect A; and

22(2)(g): there is a real chance of danger that is apparent on the evidence that A will suffer emotional harm (demonstrated by severe anxiety, depression, withdrawal, or self-destructive or aggressive behaviour) and either Ms. B doesn't provide services or treatment to remedy or alleviate the harm or Ms. B refuses to provide services or treatment to remedy or alleviate the harm or Ms. B is unable to consent to services or treatment to remedy or alleviate the harm.

[50] Here, the Minister asks me to place A in its temporary care and custody on the basis of clause 22(2)(g): no argument is made with regard to physical harm or sexual abuse.

[51] Mr. G argues there's an "evidentiary gap" that precludes me from finding that A's failure to react to her mother's outbursts is proof of a substantial risk of emotional harm.

[52] This argument by Mr. G skims over the complexity of clause 22(2)(g) which requires that the Minister prove that there's a real chance of danger that's apparent on the evidence that A will suffer emotional harm **and** that Ms. B doesn't take steps to alleviate the harm to A or she refuses to take steps to alleviate the harm or she is unable to consent to things that would alleviate the harm. Here, the Minister has adduced no evidence with regard to the issue of Ms. B's response to the substantial risk of emotional harm that the Minister alleges exists. Even if I was to find that there is a real chance of danger that A will suffer emotional harm, clause 22(2)(g) is conjunctive and the Minister must also prove the second aspect of the clause: that Ms. B doesn't provide services or treatment to remedy or alleviate the harm or Ms. B refuses to provide services or treatment to remedy or alleviate the harm or Ms. B is unable to consent to services or treatment to remedy or alleviate the harm.

[53] Ms. B has been ordered to participate in a mental health assessment and to participate in anger management counselling. The Minister has complained about Ms. B's diligence in pursuing these services.

[54] My last consideration pursuant to subsection 46(4) is the least intrusive alternative that's in A's best interests, so I look to subsection 3(2) of the *Act* where best interests are defined:

- (a) the importance of a positive relationship with Ms. B and a secure place as a family member for A's development;
- (b) A's relationships with relatives;
- (c) the importance of continuity in A's care and the possible effect on A of the disruption of that continuity;
- (d) the bonding that exists between A and A's parent or guardian;

- (e) A's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs;
- (f) A's physical, mental and emotional level of development;
- (g) A's cultural, racial and linguistic heritage;
- (i) the merits of a plan for A's care proposed by an agency, compared with the merits of A returning to Ms. B;
- (k) the effect on A of delay in the case's disposition;
- (l) the risk that A may suffer harm through being removed from, kept away from, returned to or allowed to remain in Ms. B's care;
- (m) the degree of risk, if any, that justified the finding that A is in need of protective services; and
- (n) any other relevant circumstances.

[55] A few of considerations are not relevant or are of limited importance: A's wishes and views and her religious upbringing. While A has attended church with her mother, at her current age of almost nine months old, I do not attach much importance to this.

[56] When I consider the other factors to determine the least intrusive option that's in A's best interests, I am mindful of A's young age. It is at this point in A's life when the foundation for her relationship with Ms. B and her family is being secured. She has been in her mother's care for almost all of her life. At her age, any delay is significant. There is no concern about A's physical needs. Ms. B received support for her education through the Aboriginal Peoples' Training and Education Commission and support for her parenting through the Native Council of Nova Scotia. While this wasn't discussed directly, it alerts me to A's cultural, racial and linguistic heritage. In light of the circumstances which have resulted in the Agency's involvement with Ms. B and A, I find there is greater disadvantage in removing A from her mother's care than in having A remain there.

Conclusion

[57] Having regard to subsection 46(4) of the *Act*, I have found that there has been a change in circumstances since the last disposition order was granted and that the plan for A's care has been carried out. The least intrusive option that is in A's best interest is for her to be returned to Ms. B. I dismiss the Minister's application for A's temporary care and custody.

[58] A is in the Agency's care. She shall be forthwith returned to Ms. B. All parties are being notified of the release of this decision at 8:30 a.m. on May 9, 2012. A shall be returned to Ms. B by 5 p.m. on May 9, 2012.

Halifax, Nova Scotia

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