

**SUPREME COURT OF NOVA SCOTIA**  
**FAMILY DIVISION**

**Citation:** *Nova Scotia (Community Services) v. A.R.*, 2018 NSSC 86

**Date:** 2018-04-24

**Docket:** *SFHCFA-101610*

**Registry:** Halifax

**Between:**

Minister of Community Services

Applicant

v.

A.R. and G.B.

Respondents

**Judge:** The Honourable Justice R. Lester Jesudason

**Heard:** March 12, 13, 14, 15, 16, 2018, and April 9, 2018

**Written Release:** April 24, 2018

**Counsel:** Elizabeth Whelton Q.C., for the Minister of Community Services  
Laura McCarthy for A.R.  
G.B., not participating

**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.”

**By the Court:**

**1.0 Overview**

[1] The Minister of Community Services has applied for permanent care and custody of four children who are 9, 4, 2 and 2 claiming that their mother, Ms. R, neglected them, housed them in unfit living conditions and failed to protect them from repeated exposure to domestic violence. Ms. R has a fifth child who was taken into the Minister's temporary care and custody at birth, approximately 10 months ago. He's the focus of a separate child protection proceeding.

[2] The present proceeding has gone on for approximately 21 months. The challenges faced by Ms. R during this period have been daunting. For Ms. R, 21 months to overcome those challenges may seem like little time when one considers:

- She's been the victim of repeated intimate partner/domestic violence perpetrated by Mr. B, a person she loved, who's the father of her four younger children.
- She understands that her four older children have witnessed the domestic violence and have been emotionally harmed by what they have seen.
- She's been expected to leave Mr. B and raise all five of her children on her own. To do this, she would need to secure new housing and a stable source of income. She wasn't working when this proceeding started because she was looking after the children. She relied on Mr. B for transportation and doesn't have a driver's license.
- She's been expected to make these significant changes to her life while juggling attending access visits with the children and participating in services mandated by the Minister.
- She's only been permitted to see her children on the Minister's terms and conditions.
- She's been told that, despite regularly attending access and participating in services, the Minister will be seeking to place her four older children in the Minister's permanent care with a plan to have them adopted by people she'll never know. The Minister also opposes her having further contact with the children if placed in the Minister's permanent care.
- She's had to prepare for and attend a multi-day trial fighting to have those children returned to her care.

[3] In contrast, from the perspective of the children, 21 months likely feels like an eternity. During this period, they have:

- lived in foster care away from their mother with the older girls living separately from their younger twin brothers;

- required professional assistance to deal with medical and emotionally harmful issues they experienced while living in Ms. R's care; and
- lived in uncertainty about their futures. The girls worry about what will happen to them if they are returned to Ms. R's care. The boys, taken into care when they were only about 8.5 months old, have spent close to 70% of their lives in foster care. They would have little to no memory of what life was like in Ms. R's care.

[4] The preamble to the *Children and Family Services Act* (“*CFSA*”), recognizes that children have a sense of time that's different from adults and that services provided and proceedings taken under the *CFSA* must respect the children's sense of time. Furthermore, decisions made under the *CFSA* must not be dictated by feelings of sympathy for parents whose circumstances are extremely challenging. Rather, the paramount consideration for decisions is the best interests of the children: section 2(2).

[5] I have much sympathy for Ms. R. Life hasn't always been fair to her and she has many commendable qualities. She's very much a victim of challenging circumstances and shouldn't be blamed for them. Despite this, I regrettably conclude that it's in the children's best interests that they be placed in the Minister's permanent care and custody. Simply put, there would be a substantial risk of harm to the children if returned to Ms. R's care now and the children's futures can wait no longer. My reasons follow.

## **2.0 Introduction**

[6] The Minister of Community Services seeks an order for permanent care and custody of two girls, S and C, and twin boys, Ki and Ke. Ms. R is the mother of all four children. GB is the father of C, Ki and Ke. S's father hasn't had any involvement in her life for many years. The parties agree that he does not meet the definition of a parent under the *CFSA*.

[7] The permanent care application is made under section 42(1)(f) of the *CFSA*. Given that this proceeding was started on July 15, 2016, it is governed by the version of the *CFSA* in place prior to it being amended in March 2017. There is a second child protection proceeding involving the Respondents' youngest child, D, who is less than a year old. That proceeding is ongoing and must be completed by October 12, 2018.

[8] Mr. B didn't participate in the trial despite having notice of it. He hasn't shown up at any appearances in this matter since August 2016. The fact that he hasn't participated in this proceeding since August 2016 has deprived me of hearing his version of events. Furthermore, he's not participated in any services sought by the Minister and there's no evidence that he has taken any measures to address any of the child protection concerns.

### 3.0 History

[9] Ms. R and Mr. B began their relationship in 2012. They lived in New Brunswick. Ms. R's mother and sisters also live in New Brunswick.

[10] In August 2014, Ms. R and Mr. B decided to move to Nova Scotia with S and C. Ms. R says this was done because Mr. B had troubles with the law and individuals in New Brunswick which placed him at a risk of harm. He promised Ms. R that life would be better for the family after they moved to Nova Scotia.

[11] Ms. R believed him and was optimistic that things would get better in Nova Scotia. Unfortunately, Mr. B didn't keep his promise. Ms. R says that he started hanging out again with people who were negative influences and that his drinking significantly increased. He wasn't around much and often stayed out partying with his new friends until 3-4 a.m. in the morning. Ms. R says she felt stuck and isolated because she didn't know anyone in Nova Scotia.

[12] When Mr. B did come home, the couple often argued. She says Mr. B became a "control freak" who "acted like he was the boss". She was required to do almost all of the parenting alone.

[13] Ms. R became pregnant. The twins, Ke and Ki, were born in November 2015. Things worsened for the couple after the twins' birth. Ms. R says she had to look after all four children without any help from Mr. B. She says she basically stayed in the apartment with the children while Mr. B stayed out at all hours with his friends. She says it bothered Mr. B that she would spend all her time looking after the children instead of spending it with him. This led to conflict.

[14] On June 24, 2016, Mr. B returned to the family home around 3:00 a.m. The couple got into an argument. Ms. R says Mr. B had been drinking all day and she had found a Facebook post of another woman who Mr. B was seeing. She claims Mr. B was sneaking out diapers and formula to give to this woman.

[15] The argument quickly escalated and became physical. According to Ms. R, Mr. B grabbed her by the sweater and ripped it. He threw a jug containing juice at the wall and scratched her neck. He picked up Ki and threatened to leave with him. He made holes in the walls with a knife. He also threatened to kill Ms. R's mother if Ms. R called her.

[16] The altercation lasted for about 45 minutes. Mr. R managed to call her mother who, in turn, called the police. The police arrived and arrested Mr. B.

[17] On June 24, 2016, the Minister received a referral from the Halifax Regional Police about the incident. The police advised that Ms. R's mother called to report that Mr. B had been drinking, had become violent, shoved Ms. R, held Ms. R by the neck, and threatened to leave with the children.

[18] Later that day, an Emergency Duty Worker attended at Ms. R's home along with two police officers. The worker asked Ms. R about the incident. Ms. R said that Mr. B had been drinking, expressed concerns that Mr. B may have been doing drugs, smashed the window, stabbed the walls with a knife, called her names and that the incident woke up one of the babies. Ms. R described Mr. B as being out of control so she called her mother hoping that Mr. B would calm down. She said that they have had screaming matches before since they started dating in 2012 but nothing like "this". She said that Mr. B was in jail until July 5, 2016, and she didn't have plans to reconcile with him and felt that "he needs help". She said she could raise the children on her own as Mr. B "wasn't helpful anyway".

[19] The Agency received a copy of the witness statement Ms. R provided to the police on June 24, 2016. In it, she confirmed:

- Mr. B's actions were a "regular thing";
- He had been verbally abusive and then became physically abusive and dragged her across the floor by her sweater and arms;
- He was randomly breaking cups, punching the wall and grabbed a knife and stabbed the wall;
- The twin infants were present and at one point Mr. B grabbed Ki and said he was leaving with him. Mr. B was intoxicated;
- He threatened to shoot her mother if her mother called the police;
- He had smashed her phone to try to prevent her from calling her mother or the police;
- He threatened to punch her in the face. He smashed glasses, punched holes in walls and stabbed the walls with a knife;
- She was fearful of Mr. B and she can't have him back to the home as "he will come here and beat the crap" out of her. She said that she would have to move if he was released. She said Mr. B never assaulted the children but had similarly assaulted her about 10-15 times in the past; and
- She did not want Mr. B back and thought he would "get her" and "steal" the children.

[20] Agency workers attempted to contact Ms. R at her home to determine her plan to protect the children upon Mr. B's release. Ms. R advised that she didn't want the Agency involved and didn't require a safety plan. She said that Mr. B was being held until July 21, 2016, and told the workers not to call her again or come back or she would call the police and tell them she was being harassed. The workers advised Ms. R that they had concerns about the safety of the children and that if she did not cooperate, a court application would have to be made.

[21] The Minister commenced this proceeding on July 15, 2016. An Order was sought which placed the children in the care of Ms. R, subject to the supervision of the Minister on terms and conditions that included that Mr. B would have no contact with Ms. R or the children.

[22] The interim hearing was held before me on July 20, 2016. Ms. R appeared without counsel. Mr. B took part by telephone from the Burnside Correctional Facility. Ms. R advised that she may be seeking to leave Nova Scotia with the children but would not do this before the next court appearance. A Supervision Order was granted which included a non-removal condition and a no contact provision for Mr. B.

[23] On July 25, 2016, Agency social worker, Ashley Vallee, met with Ms. R at her home to discuss her proposed move to New Brunswick. Various family members of Ms. R were also present including her mother and her sister. They had come to Nova Scotia and were assisting Ms. R to pack up her belongings so she could relocate to Moncton. Ms. R indicated that she was hoping to move back to Moncton by the end of the week and confirmed she would be willing to work with the Agency in Moncton. She indicated that she did want to reconcile with Mr. B but only if he got help.

[24] On July 26, 2016, Ms. Vallee faxed a summary of the file involving Ms. R and Mr. B to Central Intake in Moncton requesting a transfer of the file. Later that day, Ms. Vallee received a call from the New Brunswick Agency advising that it would review the information and that a social worker would be assigned to the file in New Brunswick.

[25] On July 26, 2017, the Agency attempted to contact Ms. R through her mother's cell phone number. The mother advised that her boyfriend was coming from Moncton the following day with a truck and they were going to pack up Ms. R's belongings and take Ms. R and the children back to New Brunswick.

[26] On the same day, the Agency received information from the Crown's Office indicating that Mr. B had been released on a surety. The conditions of his release included that he was to have no contact with Ms. R except through the child protection proceeding, was to have no contact with the children, and not be within fifty meters of Ms. R's home.

[27] On July 27, 2016, Ms. Vallee and another social worker went to Ms. R's home. They observed the children. Ms. Vallee advised Ms. R that she had been speaking with Agency counsel and that if the Agency was going to support her move to New Brunswick, another court date would have to be arranged. Ms. Vallee claims that Ms. R then started yelling and screaming and was insisting that she would pack the truck and be gone that afternoon. Ms. Vallee left.

[28] The Agency held a Risk Management Meeting. It was determined that Ms. Vallee would go to Ms. R's home again and make it clear that the Agency would not condone Ms. R moving back to New Brunswick with the children contrary to the existing order and without making an appropriate plan. If she didn't present such a plan, the Agency would take the children into care.

[29] Ms. Vallee went back to Ms. R's home. She was accompanied by several social workers including the long-term social worker, Charnell Brooks, and several police officers. Ms. R and the children were present along with various family members including Ms. R's mother, sister and 8-year-old niece.

[30] Ms. R was asked whether she would go to a woman's shelter with the children. She refused and insisted she was going to Moncton with her family.

[31] Ms. Vallee then consulted with her supervisor and a decision was made to take the children into care. Ms. R claims that when she was advised by Ms. Vallee that the Agency would be doing this, she agreed to go to a shelter with the children but Ms. Vallee advised that the Agency's decision had already been made.

[32] Things quickly become confrontational. The children were removed by the workers with the assistance of the police. Ms. R says it was a very hurtful experience for her and the children. She didn't get to say goodbye to the children as she was blocked off from them by a police officer. Ms. R says the children were very upset and crying. Her niece was also initially mistakenly taken by the workers. Ms. R and her family members were extremely upset and things escalated with people yelling and swearing at the workers. She says her niece still has nightmares about the incident.

[33] When the children were taken into care, the workers noted concerns with respect to hygiene, potential developmental delay, and behavioural issues. Two workers took the infant twins to a pediatrician at the IWK Hospital who noted that both boys appeared to have some developmental delay issues.

[34] S and C, who were 7 and 2, were placed in one foster home. Ki and Ke, who were about 8.5 months old, were placed in a different foster home.

[35] The Minister filed a motion for a variation of the Interim Order on July 29, 2016. The variation was heard before Justice Jollimore on August 3, 2016. On that day, she granted an order placing the children in the temporary care and custody of the Minister on various terms and conditions.

[36] The interim hearing was completed on August 11, 2016. Ms. R retained her current counsel before that appearance. The Minister's counsel advised that the Minister didn't object to Ms. R relocating back to New Brunswick but required a plan from her outlining where she would live and how she would care for the children. Ms. R's counsel indicated that Ms. R would submit a plan to the Minister later that day.

[37] When the parties next appeared before me on August 26, 2016, Ms. R's counsel confirmed that Ms. R was no longer seeking to move back to New Brunswick but would be staying in Nova Scotia. There was discussion about setting up services for Ms. R in the HRM including counselling, parenting support and an access schedule with the children.

[38] On October 6, 2016, the children were found, with the consent of Ms. R, to be in need of protective services under s. 22(2)(g) of the *CFSA*.

[39] The first Disposition Order was made on January 3, 2017, so all disposition orders in relation to the children were to have terminated by January 3, 2018.

[40] The Minister filed a plan seeking permanent care and custody of the children on June 12, 2017.

[41] The permanent care trial was commenced on December 13, 2017. Ms. R filed a plan to have the children returned to her care on that date. At the request of the parties, the timelines were extended in the children's best interests to permit the conclusion of the trial. I set additional dates to complete the trial on January 16, 17, 18, 29, 30, and February 1, 2018, but due to Ms. R's lawyer advising she had to be a witness in another proceeding during some of those dates, the parties subsequently requested the trial be rescheduled to consecutive dates in March. The evidence was completed during the March dates and the parties came back for oral argument on April 9, 2018.

#### **4.0 The Law**

[42] The purposes of the *CFSA* are to protect children from harm, to promote the family's integrity and to assure children's best interests: subsection 2(1).

[43] In *CFSA* proceedings, the children's best interests are paramount. At different points in a child protection proceeding, the *CFSA* directs me to consider "the best interests of a child" when making an order or a determination. When that happens, subsection 3(2) dictates that I consider those enumerated circumstances which are relevant. I broadly group them into five general areas: the child's existing relationships; the child's present needs; the child's preferences if they are reasonably ascertained; future risk; and other relevant circumstances.

[44] This is an application for a final disposition order. The statutory deadline has already been exceeded. I am required to consider the best interests of the children. The only options open to me under subsection 42(1) are:

(a) Dismiss the matter and return the children to the care of Ms. R;

or

(b) Place the children in the agency's permanent care and custody.

[45] Justice Saunders in *Children's Aid Society of Halifax v. B.(T.)*, 2001 NSCA 99, describes the limited options available to me once the maximum time limits are reached in paragraph 19 as follows:



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

[46] At paragraph 25 of that same decision, Justice Saunders noted that “temporary placement with a relative, neighbours or other extended family is no longer available” once the maximum time limit is reached, so this cannot be considered.

## **5.0 Burden of Proof**

[47] The Minister bears the burden of establishing on a balance of probabilities that the children continue to be in need of protective services and that a permanent care order is in their best interests: *Catholic Children’s Aid Society of Metropolitan Toronto v. MC*, [1994] 2 S.C.R. 165 at paras. 37-38.

## **6.0 The Parties’ Positions**

[48] The Minister seeks permanent care and custody of the children. The Minister claims that the children continue to be in need of protective services as there remains a substantial risk of physical or emotional harm or neglect to them pursuant to subsections 22(2)(b), (g) and (i) of the *CFSA*.

[49] The main areas of concern advanced by the Minister are:

- Unfit living conditions;
- Inadequate parenting skills and neglect;
- Domestic violence; and
- Lack of a plan to prevent ongoing substantial risk of physical and emotional harm.

[50] Ms. R disputes these concerns. She asks that the children be returned to her care. She says that she does not want to have contact with Mr. B or his family and does not want them to be part of her or the children’s lives. She further says that she’s agreeable to an order providing her with sole custody of the children which prohibits Mr. B from having contact or access with the children.

## **7.0 Substantial Risk**

[51] “Substantial risk” is a real chance of danger that is apparent on the evidence: subsection 22(1) of the *Children and Family Services Act*. It is the real chance of physical or emotional harm or neglect that must be proved to the civil balance of probabilities standard. That future

physical or emotional harm or neglect will actually occur need not be established on a balance of probabilities: *MJB v. Family and Children Services of Kings County*, 2008 NSCA 64 at paragraph 77, adopting *B.S. v. British Columbia (Director of Child, Family and Community Services)*, (1998), 160 D.L.R. (4<sup>th</sup>) 264, at paragraphs 26 to 30.

[52] If the Minister doesn't establish that the children continue to be in need of protective services, then the children must be returned to Ms. R. If the Minister establishes that the children continue to be in need of protective services, I must consider the children's best interests, as between being placed in the Minister's permanent care and custody or being returned to Ms. R: *Catholic Children's Aid Society of Metropolitan Toronto v. M.C.*, [1994] 2 S.C.R. 165 at paras. 37-38; s. 42(1) of the *CFSA*.

## **8.0 The Minister's Concerns**

### **(a) Unfit Living Conditions**

[53] When the children were taken into care on July 27, 2016, the family lived in a residence in the North End of Halifax. In late August 2016, Ms. R moved into an apartment where she stayed until mid-June 2017 when she was evicted for failing to pay rent. She then briefly stayed at a friend's place before moving in with her father and his girlfriend in their apartment. She moved again with them in November 2017 into another apartment. She continued to live at that apartment at the time of the trial. Ms. R's father has never permitted the Agency to attend his residence and Ms. R agreed that the children could not live there.

[54] The Minister asserts that Ms. R housed the children in unfit living conditions before they were taken into care on July 27, 2016, and that she continued to reside in unfit living conditions after she subsequently left that home and moved into her apartment in late August 2016.

[55] Witnesses called by the Minister gave evidence about the condition of Ms. R's two residences. For example, Ms. Vallee testified that when the children were taken into care on July 27, 2016, the home was dark and cluttered with lots of garbage bags in the living room, piles of dirt, and a sticky substance on the floor.

[56] The superintendent of the building which contained the apartment Ms. R subsequently moved into in late August, 2016, gave evidence about the apartment being in a "deplorable condition" after Ms. R moved out in mid-June 2017. The superintendent testified it contained 2-3 inches of cigarette butts, the bedrooms and walls were dirty and there were handprints on the ceiling and holes in the walls.

[57] Ms. R denies that she housed the children in unfit living conditions prior to them being taken into care. She also denies that the apartment she subsequently moved into was kept in a "deplorable condition". To the contrary, she says it was always part of her routine to keep her residences clean. She admits however, that when the children were taken into care on July 27, 2016, her home was somewhat untidy and disorganized because she and her family had packed almost the entire home up in contemplation of the move to New Brunswick. However, she says

the condition of her home that day was not representative of its general condition. She also says that the garbage bags were not full of garbage but contained the children's toys and clothes.

[58] The Minister has not persuaded me on the evidence that the living conditions in which Ms. R housed the children were unfit. I accept Ms. R's claim that the condition of the home as viewed on July 27, 2016, was not reflective of the day to day condition of the home and can be partly explained by the fact that she was in the midst of packing and preparing for the contemplated move to New Brunswick. I come to this conclusion for the following reasons:

- When the police spoke to an Emergency Duty Social Worker on June 24, 2016, the worker noted that the officer indicated that the "kids rooms presented as clean and were hazard free". The Emergency Duty Social Worker went to Ms. R's residence later that evening and, while noting the home was "messy" with toys, blankets and clean diapers on the floor, indicated that there were "no visible hazards": Exhibit 4, Pages 12-13. The worker didn't suggest the home conditions were in any way "unfit". In my view, there is a difference between having a "messy" home where toys from four young children may be scattered, and a home which constitutes "unfit living conditions".
- Ms. Vallee was in Ms. R's home on July 25, 2016, a mere two days before the children were taken into care. She recorded that she observed the kitchen and living room areas but reported no concerns about the condition of the home that day except that there were toys and bags of garbage in the living room. It doesn't appear that she looked into the garbage bags to see what they contained. There was no suggestion by her in her affidavit or recordings that the living conditions were "unfit": Affidavit of Ms. Vallee sworn to on July 29, 2016, Exhibit 3, Tab 4, Paragraphs 14-15; Agency Recordings for the Family, Exhibit 4, Page 24).
- When this proceeding was commenced, the Minister sought and obtained a supervision order which continued to place the children in Ms. R's care in her home. Presumably, the Minister would have assessed the condition of the home before seeking a supervision order. Thus, if, as the Minister now asserts, the living conditions were unfit to house the children, one has to question why the Minister would come to court asking for a supervision order which sought to leave the children in those unfit living conditions.

[59] Similarly, I do not accept the Minister's suggestion that after Ms. R moved into her apartment in late August 2016, she kept the apartment in "deplorable condition" as suggested by the superintendent. The superintendent didn't move into the building until February 2017, a few months before Ms. R left. Other witnesses called by the Minister contradicted the evidence of the superintendent and spoke positively about the condition of Ms. R's apartment. I refer to the following:

- The landlord testified that he inspected the apartment after Ms. R moved out and there was nothing beyond normal wear and tear left behind. There was no dirt or holes in the wall. He said the condition of the apartment was "close to normal" and he was expecting to see more

damage as tenants often bang walls when moving out with furniture. He didn't describe seeing inches of cigarette butts, dirty handprints on the ceilings or any holes in the wall.

- Gil McMullin, Ms. R's family support worker, testified that he had been in the apartment on as many as twenty different occasions and had no concerns about the conditions of the apartment in terms of cleanliness, holes in the walls, etc. He had toured the apartment and believed he had viewed the master bedroom, dining room, living room and kitchen. He noted no concerns whatsoever.
- Jackie Barkley, the counsellor appointed by the Minister to provide services to Ms. R, was also in the apartment on multiple occasions. She described it as being "fine" and did not observe any unfit conditions, dirt or holes in the wall. She noted that Ms. R had a beautiful new couch and that Ms. R had pictures from the children in the apartment.

**(b) Inadequate Parenting Skills and Neglect**

[60] When the children were taken into care on July 27, 2016, concerns were noted with respect to hygiene, developmental delay, and behavioural issues. Ms. Vallee testified that, given the appearances of the twins, they were taken to be assessed by a pediatrician at the IWK Hospital almost immediately after being taken into care.

[61] In her affidavit sworn to on July 29, 2016, Ms. Vallee describes some of the concerns with respect to the children when they were taken into care as follows:

- The twins' faces and clothes were dirty.
- C's feet were black with dirt and her clothes were dirty. She had on a pair of long cut-off shorts with a rip on one leg from the base to the top of her inner thigh.
- Ki was noted as having significant cradle cap. His head gave off a strong odour of urine and the creases of his arms and legs were dirty and gave off a strong odour.
- Ke appeared to be more fragile and less mobile. He was observed to be unable to hold himself up despite being 8 months old.
- The pediatrician who assessed the twins on July 27, 2016, noted that Ke had plagiocephaly (flat head) and had developmental delays in gross motor skills. Ki also had developmental delays with gross motor skills and had plagiocephaly which was not quite as pronounced as Ke's.
- Ke had "dirty cradle cap" and had a rash on his bottom.
- The twins were referred to the Early Intervention Program and physiotherapy.

[62] On August 2, 2016, the girls were taken to the IWK for assessment. C was noted as having some early cavities and some speech delay issues and was referred to the Progress Centre for Early Childhood Development. S required dental surgery to remove a number of teeth which were decayed. Surgery took place the following day and S had eight teeth removed and two adult teeth capped due to decay. She also required dental work done on some of her other teeth.

[63] The Minister asserts that the above demonstrates inadequate parenting skills and neglect on the part of Ms. R. The Minister further asserts that the children would continue be in a substantial risk of harm if returned to Ms. R's care.

[64] Ms. R admitted to some of the concerns, but denied others. Her evidence included:

- She agrees that the children were relatively unclean when the workers arrived on July 27, 2016. However, she says that this was because the family was packing to move and she hadn't had chance to get the children cleaned and dressed for the day. She says that when the workers apprehended them, S and C had just finished eating and the twins had just finished drinking their bottles. Thus, the observations on July 27, 2016, were not representative of their general day to day condition.
- She always had a clean home and regularly cleaned the children as part of their routine. She generally carried wipes and Q-tips to clean them.
- She was aware that Ki had a diaper rash when he was apprehended. This was a recurring problem with both twins and was not uncommon as they both were in diapers. She had zincofax cream to apply to assist with cleaning and treating the rash.
- She was aware that Ki had cradle cap; however, this was not because she did not bathe him. She bathed the twins regularly and applied baby oil to assist with the cradle cap based on previous instructions she had received from doctors.
- She always had clean clothes for the children. While S had a full wardrobe of beautiful clothes, she sometimes preferred to wear clothes which were more worn and torn. However, if S was leaving the house, Ms. R would make sure she wore proper clothes and had her hair done.
- She agrees C had some difficulties with pronunciation of words which she still has to this day.
- She acknowledges that there were some areas of parenting that she needed help which she had been neglecting. She has engaged in parenting classes which she's found helpful, particularly her sessions with Mr. McMullin. She wants to continue to improve her parenting and remains open to learning more. She has also engaged in additional self-learning.

- She acknowledges that she wasn't as diligent and mindful of the children's medical and dental needs as she should have. She accepts this was her responsibility and that she failed to live up to this responsibility.
- She disagrees that the twins weren't able to sit up when they were apprehended and says they were able to do so before then. The twins had an Exersaucer to help them get used to weight-bearing. She was unaware that the twins had gross motor delays but accepts that taking the twins to more regular appointments to their doctor could have assisted in identifying delays and implementing measures to correct them.
- After the twins were born, she didn't go out much and was largely isolated in the home looking after the four young children. It was difficult to transport the children outside the home especially since the twins were unable to walk. This contributed to the children not seeing the doctor as often as she should have taken them. She realizes that she should have reached out more to community nurses and aids so that the children's medical and dental needs were met. She's now mindful of this.
- S had problems with her teeth since she was two and had prior dental surgery in New Brunswick. Bad teeth are common in Ms. R's family and, after they moved to Nova Scotia, they didn't have a dentist. She realizes that given the family history of problems with their teeth, this should have prompted her to take S to the dentist more often and that this was a failure on her part. She's committed to ensure that the children have proper dental care in the future.

[65] When I review the evidence, I accept that prior to the children being taken into care, Ms. R had neglected some of their needs, particularly on medical and dental issues. I also accept Ms. R's evidence that looking after four young children largely on her own would present challenges for her to take the children to regular medical appointments especially given the fact she didn't have a driver's license. However, just because something is challenging doesn't excuse parents from ensuring their children's needs are appropriately met.

[66] On the other hand, I have difficulty accepting all the allegations put forward by the Minister to support the claim of neglect. For example, if the children were as habitually dirty and unkept as described by Ms. Vallee when she and other workers took them into care on July 27, 2016, I question why none of those observations were noted by Ms. Vallee when she saw the children in Ms. R's home, a mere two days earlier on July 25, 2016. Notably, despite acknowledging that she and a social work student met with Ms. R and the children that day, Ms. Vallee raises no concerns about the children's condition: Exhibit 3, Tab 4, Page 27 and Exhibit 4, Page 24. This appears consistent with Ms. R's claim that the children's condition on July 27, 2016, wasn't reflective of their general condition and is more reflective of the fact that she was in the midst of packing and hadn't yet cleaned or dressed them properly after they had finished eating that morning.

[67] Furthermore, when the Emergency Duty Worker went to Ms. R's home a month earlier on June 24, 2016, she observed all the children. She noted, "The twins were smiling, appeared

clean and happy in their mother's care...The home appeared calm and the children were happy". Again, there were no concerns noted about the children's condition: Exhibit 4, Page 14. Similarly, the police did not suggest that there were any concerns about the condition of the children when they went to Ms. R's residence on June 24, 2016.

[68] It should also be noted that S was 7 at the time she was taken into care so would have been going to school for a few years. The Minister introduced no evidence that there were ever any concerns expressed by teachers or any third parties about S's condition when she went to school. The absence of any such reports is consistent with Ms. R's evidence that she ensured S was cleaned and properly dressed when she left the home.

[69] Furthermore, I found the Minister's reference in Ms. Vallee's affidavit to concerns noted by the pediatrician who assessed the twins the day they were taken into care to be somewhat selective. The pediatrician was not called to give evidence but her reports to Ms. Vallee went in by agreement: Exhibits 28 and 29. While the Minister focussed on the negative portions of those reports to support the claim of neglect, the pediatrician doesn't state that the children were neglected or even use the word neglect. Furthermore, while the Minister has focussed on the areas of concerns, the reports also say:

**Report on Ke dated July 27, 2016 [Exhibit 28]**

"You were concerned about [Ke's] medical well-being and specifically if there were features of dehydration... You also noted that there were a few scattered marks on his forehead and a rash on his cheeks. You were requesting a physical examination and medical assessment... that afternoon".

"The general examination of his skin was relatively clear. He did have on both cheeks very small red plague-like lesions that appeared to be excoriated. I believe these to be areas of eczema. He had good head control. He was somewhat unstable when sitting independently."

"Ke has plagiocephaly which is likely of a positional nature. This is a common problem in infants and is amendable to intervention and improvement with physiotherapy".

"I believe that the red eruptions on both of his cheeks are eczema or atopic dermatitis. Again, this is a common problem..."

"I do not have any concerns based on today's examination about dehydration. Ke is a good size..."

**Report on Ki dated July 27, 2016 [Exhibit 29]**

"Ki has posterior plagiocephaly which is a common problem in young infants..."

"I did not identify significant diaper dermatitis..."

"In terms of his growth, Ki appears to be a good size..."

[70] In quoting the above, I'm not suggesting that the Minister didn't have legitimate concerns with respect to the twins' care. According to the pediatrician, Ms. Vallee raised specific concerns about dehydration with respect to Ke, and rashes and marks on both children. There is no specific reference, however, to other concerns about either of the twins having dirty clothes, dirt in the creases of their arms or legs, or giving off a strong odour of urine. Certainly, none of those issues were noted by the pediatrician. Furthermore, asserting that the plagiocephaly or diaper rash found are indicative of "inadequate parenting or neglect" also isn't something stated in the pediatric reports relied upon by the Minister. Rather, the pediatrician describes those issues as being "common problems" in young infants. Similarly, just because twins, like any children, may be delayed developmentally, doesn't automatically mean that the delay was due to neglect by a parent. Indeed, the evidence suggested that the twins were able to weight bear within days after being placed in the Minister's care which raises a question as to the extent of their development delay and may support Ms. R's claim that they were able to weight bear prior to being taken into care.

[71] If the Minister wanted me to draw the conclusion that the conditions observed by the pediatrician were due to inadequate parenting or neglect on the part of Ms. R, the Minister should have presented me with more persuasive evidence to reasonably draw that conclusion. For example, to support the claim that S's teeth were neglected, the Minister introduced pictures of the poor condition of S's teeth before and following her surgery. By contrast, there were no pictures introduced which depicted the overall condition of the children when they were taken into care. I also note that in the Notice of Child Protection Application, the Minister never specifically alleged neglect (s. 22(j) of the *CFSA*) as a ground under which the children were in need of protection. The Minister never sought to amend her pleadings to include "neglect".

[72] Furthermore, at this final stage of the proceeding, the issue is not so much whether Ms. R has been guilty of inadequately meeting some of the children's needs in the past. Rather, the issue is whether the children would continue to be at a substantial risk of harm due to concerns of inadequate parenting or neglect if returned to Ms. R's care. Here, the Minister has failed to persuade me on the balance of probabilities that a substantial risk of harm continues to exist due to these concerns. I rely on the following:

- Ms. R candidly acknowledged ways in which she failed to address the children's needs prior to them being taken into care. I accept her evidence that she has gained insight into these concerns. Indeed, answers to questions posed to her during the trial demonstrated, in my view, that she has gained such insight. She attached to her affidavit of December 22, 2017, information she received from her family support sessions with Mr. McMullin including notes she made: Exhibit 17, Exhibit "D". This suggests that she was paying attention to what Mr. McMullin was teaching her.
- Ms. R's engagement with family support work is supported by the evidence of Mr. McMullin. He worked with Ms. R from August/September 2016 to January 2018. He said that his focus was on working with Ms. R on issues of parenting and care of the children and that the goal was to meet weekly with her but sometimes it would be biweekly. Much of the



work related to day to day care of the children on issues such as discipline, accessing community resources, nutrition, etc..

Mr. McMullin described his interactions with Ms. R as being positive. He said she appeared to absorb what he was teaching her and described her as being engaged in conversations, attentive, and even curious. For example, he said there were times he would discuss topics with Ms. R and, the next time he saw her, Ms. R had done her own research on those topics. Mr. McMullin said he appreciated this. He also observed Ms. R during access visits with the children. He felt she handled them appropriately in terms of implementing the strategies he had taught her.

- Jessica Sampson, Case Aide Worker, assisted with the supervised access Ms. R had with the children in the Agency's Office or at the Clayton Park Library. Sometimes that access would involve all five of Ms. R's children (the four children in this proceeding and D, the youngest child who is the subject of the second proceeding). Ms. Sampson spoke positively of Ms. R's interactions with the children as well as Ms. R's ability to manage all of them despite their young ages and different interests. She testified that Ms. R always brought individual snacks and crafts for the children tailored to their interests and wishes and had "very appropriate" interactions with them. She described the children as clearly loving Ms. R and said Ms. R did well even when she was required to correct their behaviours. She described Ms. R as being engaged. In terms of her physical care of the children, Ms. Sampson said Ms. R "does it all" and was able to give them their snacks, coordinate taking them to bathroom together and would get them ready to go when it was time for the visits to end.

[73] Many parents find themselves the subject of child protection proceedings where, like Ms. R, they may have had initial parenting deficiencies. These parents are not permanently deprived of their parental rights simply because they had those initial deficiencies. Rather, they are given the chance to learn and take advantage of the educational opportunities presented to them through services put in place such as family support work. The goal is to address those deficiencies so that the risk of harm can be reduced to an acceptable level so that the children can be safely reintegrated into their parents' care without the Minister's involvement.

[74] Here, I am satisfied that Ms. R has taken advantage of the educational opportunities given to her in areas where she was inadequately parenting the children. With the assistance of services, she has gained insight into same such that there no longer remains a substantial risk of harm to the children based on those concerns should they be returned to her care.

### (c) Domestic Violence

[75] I accept, based on the evidence, that Ms. R was the victim of repeated incidents of domestic violence perpetrated by Mr. B which culminated in the physical assault of June 24, 2016, leading to his arrest. In her statement to the police, she indicated that she had been similarly physically assaulted 10-15 times in the past. When asked about that reference, Ms. R said the previous assaults were all verbal arguments which did not escalate to physical assaults.

She did acknowledge that on one such prior occasion, Mr. B cut the phone line in the residence to prevent her from calling the police or her mother.

[76] Even if I accept Ms. R's evidence, verbal and emotional abuse can constitute domestic violence. It can be very harmful to children, particularly young children who are unable to protect themselves from exposure to same.

[77] Ms. Brooks, the primary social worker assigned to this file, arranged for Ms. R to receive counselling services from Jacqueline Barkley, MSW, RWS, to deal with the domestic violence she experienced. Mr. McMullin also discussed domestic violence with Ms. R but was mostly limited to providing her with information directing her to resources as opposed to doing any therapeutic work. Ms. Brooks also arranged for S and C to receive therapy from Andrea Boyce, MSW, RSW, to deal with the negative effects of their exposure to domestic violence.

[78] Both Ms. Barkley and Ms. Boyce provided reports and gave oral evidence at the trial. I will discuss their evidence below.

### **Counselling with Jacqueline Barkley**

[79] Ms. Barkley was qualified, by agreement, as a private therapist with expertise in counselling women, victims of abuse and trauma.

[80] Ms. Barkley worked with Ms. R over approximately 18 sessions from October 2016, to April 2017. Some of the issues which she was asked by Ms. Brooks to address with Ms. R were unfit living conditions, neglect, domestic violence, anger, minimizing, externalizing, and race identify issues. Ms. Barkley determined that Ms. R lacked self-esteem and was vulnerable due to her life circumstances. She said Ms. R developed "street fighter" responses when she felt disrespected or judged. Consequently, this made it hard for Ms. R to accept appropriate criticism. Instead, she would go on the offensive and get angry: Exhibit 15, Tab 1B, Page 6.

[81] Ms. Barkley said counselling sessions with Ms. R started off positively during the period from October 2016 to December 2016. Ms. Barkley was hoping that they would continue to have steady progress.

[82] Unfortunately, progress stalled during the period from January 12, 2017, to March 28, 2017. In her report submitted on March 28, 2017, Ms. Barkley noted:

- Ms. R acknowledged not having undertaken any of the appropriate assertive strategies that Ms. Barkley had discussed with her earlier in January.
- Ms. R discussed having permitted [Mr. B] to visit and "come get his things". When Ms. Barkley challenged her regarding the no contact order, Ms. R said Mr. B told her the condition was "dropped". Ms. R agreed, at Ms. Barkley's urging, to notify Ms. Brooks immediately that he had been there.

- Ms. R acknowledged, feeling glad to see Mr. B, having missed him, feeling bad for him, hopeful that he had attended anger management, feeling attracted to him but also feeling that she had more control over the situation. Ms. Barkley emphasized to Ms. R the need for a more objective view of the dynamic between her and Mr. B.
- Ms. R acknowledged some fear of “the truth” and fear of answers that may not be what she wants.
- Ms. Barkley said it was not possible to accurately assess Ms. R’s progress but was hoping to re-establish continuity of service and re-commitment from Ms. R.

[83] In April 2017, Ms. Barkley made a decision to terminate her counselling work with Ms. R. In an email she sent to Ms. Brooks explaining her decision on April 7, 2017, Ms. Barkley stated, amongst other things:

- When she attempted to discuss issues with Ms. R, Ms. R would interrupt her and talk over her. Ms. R felt that all her difficulties were due to the inappropriate intervention of DCS and “lies”;
- Ms. R reported that she is “suing” DCS;
- When Ms. Barkley asked Ms. R what issues she believed she needed work on in counselling, Ms. R replied the issues were “their lies [DCS]” and she didn’t need to change anything.
- She believed that Ms. R had become entrenched in unidimensional views of her situation and was no longer open to suggestions in counselling. Ms. Barkley felt Ms. R didn’t believe she would benefit from therapy and was therefore unwilling to provide counselling to Ms. R who now sees litigation “as the way forward”, excluding insight and even partial responsibility for her circumstances.

[84] Ms. Brooks convinced Ms. Barkley to try to continue with her counselling efforts with Ms. R. Ms. Barkley saw Ms. R for three more sessions. In her report covering the period from April 7, 2017, to May 31, 2017, Ms. Barkley noted the period was “marked by considerable instability” about whether to continue counselling and that Ms. R was still denying accountability. Ms. Barkley noted that the stakes for the future of the five children were “very high”.

[85] Unfortunately, further sessions were not productive and Ms. Barkley had to again terminate counselling. In an email she sent to Ms. Brooks on August 10, 2017, she indicated:

- Each time she resumed counselling with Ms. R, things reverted to a circular discussion in which Ms. R asserted she did not feel she has any problems and is perfectly capable of

taking care of the children and was only doing counselling because others told her she had to do it.

- Ms. R continued to talk over her and said that Ms. Barkley was the only person raising issues regarding her behaviors that needed changing in order to plan for a return of all five children.

[86] Counselling between Ms. Barkley and Ms. R never resumed. Ms. Barkley testified she didn't make progress with Ms. R in addressing the domestic violence issues between Ms. R and Mr. B. She also testified that heightened conflict, anger and relationship dynamics creates instability for children and a parent's ability to appropriately parent them.

[87] In her affidavit sworn to on December 22, 2017, Ms. R says the counselling ended because she and Ms. Barkley mutually agreed they couldn't work together and Ms. R felt their personalities were clashing in a way that didn't seem to be reconcilable. Ms. R said that she had since applied through Victim Services to get funding for a new therapist. During the trial, she introduced evidence which revealed that she has started counselling with a new therapist on February 4, 2018, with the following goals:

- continuing to build on emotional skills practiced with previous therapist
- having support for educational achievement plan
- reinforcing wellness practices
- self-care in the aftermath of domestic violence trauma

### **Therapy with Andrea Boyce**

[88] Ms. Boyce was qualified, by agreement, as having expertise in the treatment of trauma and counselling of children. Amongst other issues, she was asked to address S's and C's exposure to domestic violence in Ms. R's home.

[89] Ms. Boyce started therapy with S in March 2017 and saw her for close to 30 sessions.

[90] Ms. Boyce noted that while S made slow gains in therapy, the exposure to repeated experiences with domestic violence had taken a toll on her. Specifically, in her reports and oral evidence, Ms. Boyce stated:

- Trust is a huge issue for S because S's experience with her caregivers is that she hasn't been able to trust them.
- S is now aware that children are never to blame for what happened in their family and that her foster parent is there to look after her while Ms. R addresses the issues that led to S being brought into care.

- While S loves her mother, S doesn't see her mother as having changed and doesn't trust her. S sees that Ms. R has had a new baby with Mr. B since she was taken into care. Thus, she doesn't trust her mother that the relationship with Mr. B is over. S has lost hope that Ms. R will change.
- S talked about repeated exposure to fighting between Ms. R and Mr. B and how scary it was for her and her siblings. She tried to stop the violence herself and begged Ms. R to make Mr. B leave the home.
- S spoke about how Ms. R wasn't able to look after her like her foster parent has done.
- S was relieved that her baby brother, D, was placed in foster care as she didn't believe Ms. R would be able to protect him.
- S has been in foster care for close to two years. S has been in a heightened state of trauma and a constant state of arousal which Ms. Boyce says negatively impacts on healthy brain development. S has been able to see that her experience in foster care is very different than what she experienced at home.
- When a child like S is constantly in fear, it creates a heightened sense of arousal as part of a "fight or flight" response. It creates vulnerability for the child as the child is unable to go back into a calm state. If not addressed, the child can continue to develop anxiousness and become aggressive as the child perceives she has to protect herself from threats. This can, in turn, impact on the child's ability to have empathy. Furthermore, children's repeated exposure to trauma creates a high likelihood of damage to them when they become adults and can impact negatively on their relationships and long-term development.
- When Ms. R suggested to S in January 2018 that S would be going home again soon, S's anxiety rose. She became anxious and started getting into fights at school after being in a period of stability.
- S is fearful about going back to live with Ms. R. Her experience is that life with Ms. R isn't a safe environment and S has no reason to believe that Ms. R has made changes to ensure the environment will be safe. Ms. Boyce believes it would be harmful to return S to Ms. R's care.
- S is doing fairly well now. She needs calmness, safety, stability and certainty. She has four years of being in an unstable environment with Ms. R and Mr. B and the possibility of going back to Ms. R's care is weighing on S.

[91] Ms. Boyce started therapy with C in August 2017 and saw her for approximately 15 sessions. She gave similar evidence about the effects that repeated exposure to domestic violence has had on C and how returning her to Ms. R's care would destabilize C. She opined it would cause C to go back into a hypervigilant state and would have long-term negative effects on C's

ability to form healthy relationships. She also noted that C had some shared experiences with S and some experiences which were different. Ms. Boyce's evidence about this included the following:

- C is doing well in therapy. She has learned the difference between “helping hands” and “hurting hands”. She has learned to follow cues and follow reinforcement. Consequently, C's aggressiveness has come way down in her foster home and in school.
- C talked a lot about the fighting and domestic violence in Ms. R's home and how her older sister, S, would try to stop it. C talked about her fear.
- C witnessed Mr. B being abusive to Ms. R which was very traumatizing. Ms. R would also get very angry.
- When told by Ms. R that she would be returning home soon, C said to Ms. Boyce that “if Daddy hits Mommy, she will hit Daddy”. Thus, instead of feeling secure, the fight or flight response has resurfaced in C who feels she will have to fight because Ms. R has not shown she can protect herself or the children.

[92] While Ms. Boyce did not provide any therapy for Ki and Ke, she testified that they would have been exposed to domestic violence for a large portion of their lives during which time their brains would be developing in the area of attachment.

[93] Ms. Boyce also met directly with Ms. R. Ms. Boyce felt Ms. R was minimizing the children's experiences of witnessing abuse and domestic violence and wasn't understanding how the trauma they experienced has negatively impacted on them. Ms. Boyce testified that, when trauma is minimized, trust cannot be rebuilt. Furthermore, when parents don't validate children's experiences, it keeps the children in survival mode and can prevent their healthy development. It also perpetuates the children's feelings of helplessness and vulnerability and can impede their long-term relationships.

[94] As my colleague, Justice Jollimore aptly stated in *Nova Scotia (Minister of Community Services) v. S.C.*, 2017 NSSC 336, there is a difference between parents who are poor, and poor parents. I would likewise suggest that there is also difference between a parent who is poorly treated by her partner, and being a poor parent.

[95] The *CFSA* appears to recognize this distinction in section 22(2)(i) which requires that parents, whose children have been harmed by repeated exposure to domestic violence, obtain services or treatment to remedy or alleviate the substantial risk of physical and emotional harm created by that exposure.

[96] Here, I have no evidence that Mr. B has done anything to address the harm caused to the children by repeated exposure to domestic violence. While Ms. R has participated in services, they have not progressed to a point where the concerns of repeated exposure to domestic violence have been meaningfully addressed. Indeed, while I commend Ms. R for engaging in

services with a new counsellor on February 4, 2018, this is past the January 3, 2018, statutory deadline for this proceeding to have concluded. Furthermore, this counselling appears to be still in its initial stages.

[97] I don't say this to be critical of Ms. R or to judge her negatively as a person. Intimate partner/domestic violence is complex. It involves power dynamics which often do not make it easy for the victim to simply leave and address the impact of that violence. Breaking the cycle of violence is easier said than done. It can take time. Thus, blaming Ms. R for being a victim of domestic violence or suggesting that she is a poor parent simply because of poor treatment by Mr. B is not appropriate.

[98] Notwithstanding this, in child protection cases, the children's needs drive the timelines for addressing issues. It is the children's sense of time which must be respected. Their best interests must be paramount. Furthermore, the focus of domestic violence must be on the impact that it has on the children.

[99] A number of cases have discussed the negative impact that exposure to domestic violence has on children. The following are two examples from Nova Scotia:

i) *M.A.B. v. L.A.B.*, 2013 NSSC 89 – Justice MacDonald stated:

Children are harmed emotionally and psychologically when living in a home where there is domestic violence whether they directly witness the violence or not. Exposure to domestic violence is not in the best interests of children (para. 15).

ii) *Nova Scotia (Community Services) v. E.P.B.*, 2010 NSSC 292 – Justice Jollimore ordered that two children be placed in the Minister's permanent care and custody seven weeks before the maximum time limits in the child protection proceeding were exceeded. In doing so, she stated:

There are less than seven weeks before this matter must be finally resolved. Ms. B argues that she has "taken the first – and most difficult – step toward providing herself and her children a safe and secure life" and that she "has broken the cycle of abuse and control that she has experienced...". I agree that Ms. B has taken the first step. I acknowledge the difficulty of that step. I do not agree that she has broken the cycle of abuse and control that she has experienced. Ms. B has only recently begun to address the abuse and violence that has characterized so many of her adult relationships. It is too early to say that the cycle has been anything other than interrupted. Her commitment to breaking the cycle of violence is uncertain.

[100] Here, Ms. R has been a victim of domestic violence perpetrated by Mr. B. That's not her fault. Her children, particularly S and C, have been profoundly negatively impacted by being

exposed to that domestic violence. After this child protection proceeding was commenced, Ms. R admitted she saw Mr. B on more than one occasion despite there being a no contact order in place. She acknowledged to Ms. Barkley that she was glad to see him and that she missed him. During one of those times, she became pregnant and subsequently gave birth to their child, D.

[101] In her affidavit sworn to on December 22, 2017, Ms. R describes seeing Mr. B in breach of the order as a “very poor lapse in [her] judgement”: Exhibit 17, Paragraph 89. While Ms. R self-describes her actions this way, one can empathize why, when feeling alone and isolated after having her children taken into the Minister’s care, she turned to Mr. B’s company. While, as a judge, I cannot condone Ms. R’s failure to abide by the no contact provision of the order, I don’t fault her for having those feelings of isolation and loneliness especially after having the children she dearly loves taken away from her care.

[102] Ms. R says her relationship with Mr. B has permanently ended. In her affidavit she says, “Without [Mr. B] around, the children will not be around domestic violence, mental violence, illegal substances or anything of that nature” [Exhibit 17, Paragraph 79]. She also says:

“I am aware that I need help from someone to address some of my past...traumas I experienced. I understand the level of ignorance I had regarding my rights and the children’s rights was unacceptable and I could have improved the children’s circumstances if I had properly addressed the abuse, stress and isolation I was experiencing in the home with the children. These issues and the poor coping and strategizing I used needs to be addressed and I am prepared to do that once someone is available” [Exhibit 17, Paragraph 84].

[103] I commend Ms. R for wanting to move past her relationship with Mr. B. I commend her for looking forward and summoning the immense courage and resolve it must take to break free permanently from a relationship which she acknowledges has not been a healthy one for her or her children.

[104] However, while I commend Ms. R’s courage and resolve, again, my focus must be on the children’s best interests. By her own evidence, she acknowledges that she still has much work to do and needs help to address the issues of past trauma and abuse she experienced which have negatively impacted on the children. Thus, when I consider the impact of repeated exposure to domestic violence on these children, and the lack of progress made in terms of addressing this concern, I conclude that the children would continue to be exposed to a substantial risk of harm if returned to Ms. R’s care now and that doing so is not in their best interests.

[105] Sadly, these children have been in the Minister’s care for a significant portion of their lives. This is far from desirable. These children need stability and certainty now which Ms. R cannot currently provide. Indeed, despite being aware that the Minister was seeking permanent care and custody of the children since June 12, 2017, she’s only now recommending counselling to help her address the impact of domestic violence and gain further insight into same. This gives me no comfort that she can safely protect the children from these concerns and help the children move past their unfortunate experience of being repeatedly exposed to domestic violence when



they lived with her. Indeed, as noted by Ms. Barkley and Ms. Boyce, given the lack of progress which Ms. R has made in addressing these issues, returning the children to her care now would likely cause them to destabilize. It would also likely negatively impact on their healthy development at a time when they are just showing signs of getting over their unfortunate past experiences with repeated exposure to domestic violence.

[106] Ms. R presented as an articulate and intelligent woman. Her efforts with Mr. McMullin demonstrated that she's able to take advantage of educational opportunities to improve her parenting. I am therefore hopeful that, with additional time, Ms. R can gain more insight into the negative impact that exposure to domestic violence has on children, and how it is essential that parents protect children from such exposure. Unfortunately, however, I don't have the luxury of giving her that additional time. The statutory timelines have already been exceeded. Simply put, time has run out. Thus, I find that the Minister has met the burden of establishing that returning the children to Ms. R's care now would place them at a substantial risk of harm due to the ongoing concerns involving domestic violence and that doing so is not in their best interests.

**(d) Lack of plan to prevent ongoing substantial risk of physical or emotional harm**

[107] On December 13, 2017, the day the permanent care trial started, Ms. R filed a Plan for the return of the children to her care. She subsequently filed an affidavit on December 27, 2017.

[108] In her Plan filed on December 13, 2017, Ms. R indicated:

- There had been a breakdown in the relationship between her and Ms. Barkley. She had applied to Victim Services to obtain funding for individual therapy and was on a waiting list. She expected that future therapy sessions would address the risk of substantial harm, domestic violence, inadequate parenting skills and neglect as well as reflection on how her choices and behavior created the circumstances which exposed the children to risk.
- She had submitted an application for housing in the HRM and would accept an apartment as soon as one was made available to her
- She had also submitted an application to DCS Income Assistance.
- Her alternative plan was that she would relocate with the children to New Brunswick where her mother and other family lives.

[109] When the trial recommenced approximately three months later on March 12, 2018, very little progress had been made towards realizing Ms. R's plan. As noted earlier, she only recommenced counselling with a new counsellor in February 2018. She had still not submitted all the paperwork required by DCS Income Assistance so had no secure source of income. She also had not secured alternative housing in the HRM but was continuing to live with her father and his girlfriend in their apartment which she acknowledged could not house the children.

[110] During cross-examination, she appeared to initially be under the misapprehension that if the Minister's application for permanent care was dismissed, the children could continue to remain in their foster placements and be transitioned into her care over a few weeks while she sorted out these unknowns. She suggested that if that couldn't happen, she would take the children to a shelter.

[111] Again, the time limits for this proceeding to end have already been exceeded. My options are limited to returning the children to Ms. R's care or placing them in the Minister's permanent care and custody. There is no third option of "waiting and seeing" what happens by maintaining the status quo and giving Ms. R more time to see if she can make her plan a reality. The children's best interests demand that this proceeding end now.

[112] Thus, even putting aside the concerns about domestic violence, at the time of the trial Ms. R had not secured stable housing and had not completed the steps to secure a stable source of income to support the children. Furthermore, during the course of this proceeding, access had only progressed to a limited basis in the community. Given that Ms. R had not secured stable housing, no access visits had occurred in a home setting. Thus, there have been no home visits by Agency workers to assess where the children would live, or how Ms. R could care for the children on her own in their new home.

[113] Again, this proceeding has been going on for close to 21 months. The Minister's plan for permanent care was filed last June. Despite this, I was given no clear plan as to where Ms. R would live with the children and how she would be able to financially provide for them. This supports the Minister's assertion that the children would continue to be in a substantial risk of harm if I dismissed the Minister's application for permanent care and simply returned the children to Ms. R's care now without these steps being taken.

[114] The Minister has met her burden of satisfying me that it is in the children's best interests that they be placed in the Minister's permanent care and custody. Circumstances have not changed to mitigate the substantial risk of harm and less intrusive alternatives, including services to promote the integrity of the family, have been tried and have failed to address the child protection concerns which still exist.

## **9.0 Ms. R's Request for Access**

[115] Subsection 47(2) of the *CFSA* reads:

Where an order for permanent care and custody is made, the court may make an order for access by a parent...but the court shall not make an order unless the court is satisfied that:

- (a) permanent placement in a family setting has not been planned or is not possible and the person's access will not impair the child's future opportunities for such placement
- (b) ...

- (c) the child has been or will be placed with a person who does not wish to adopt the child;  
or
- (d) some other special circumstance justifies making an order for access.

[116] Ms. R requests post-permanent care access with the children. The Minister opposes this request. The children were described as being “bi-racial” by Ms. R and the Minister’s primary plan is to have all four children adopted in a culturally appropriate home together. If that cannot happen, the Minister’s secondary plan is to seek to have S and C adopted together, and Ki and Ke adopted together. The Minister would recommend to the adoptive parents that they maintain the sibling contact between all four children.

[117] Once permanent care is ordered, the burden is on a parent to show that an order for access should be made. I should consider both the importance of adoption and the benefits and risks of making an order for access. Given that the hope of preserving the family within the legislated time limits is lost and that the focus becomes a stable placement plan, the circumstances justifying post-permanent care access are rare and limited: *Children’s Aid Society of Cape Breton Victoria v. A.M.*, [2005] N.S.J. 132 (C.A.); *Children and Family Services of Colchester County v. K.T.*, 2010 NSCA 72.

[118] Here, Ms. R has not persuaded me on the evidence that there is a special circumstance pursuant to s. 47(2) (d) that justifies making an order for post-permanent care access. I therefore deny her request for same.

## **10.0 Conclusion**

[119] I grant the Minister’s application for an order placing S, C, Ke and Ki in the Minister’s permanent care and custody and order there be no post-permanent care access for the Respondents.

[120] I know this is not the outcome Ms. R wanted. I have no doubt that she loves her children dearly and that they, in turn, love her. It troubles me that she has been a victim of repeated domestic violence and now has to deal with the heartbreak of having her four oldest children placed in the Minister’s permanent care and custody. However, notwithstanding the sympathy I have for her, the children’s best interests, as opposed to Ms. R’s best interests, must be paramount. The child-centered focus of child protection cases means that the best interests of children trumps the wishes and interests of the parents: *C. (G.C.) v. New Brunswick (Minister of Health and Community Services)*, [1988] 1 S.C.R. 1073, paragraph 14.

[121] This proceeding has gone on for close to 21 months. The children have been in the Minister’s care for close to 20 months. Their lives and futures have been placed on hold while Ms. R has been given time to try to address the issues which led to them being taken into care. The children’s futures cannot wait any longer. Their best interests require permanent placements with people who not only will love them, but will also protect them from any substantial risk of harm. They deserve stability and certainty after a lengthy period of turmoil. Unfortunately, Ms. R

cannot currently provide them with this and their best interests require me to place them in the Minister's permanent care and custody.

[122] I direct that the Minister's counsel prepare the appropriate form of Order reflecting my decision.

Jesudason, J.