

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

**Citation:** *Nova Scotia (Community Services) v. A.D.*, 2020 NSSC 328

**Date:** 2020-11-19

**Docket:** 110299

**Registry:** Sydney, NS

**Between:**

Minister of Community Services

Applicant

v.

A.D. and C.M.

Respondents

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**LIBRARY HEADING**

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**Restriction on Publication**

**Section 94(1) of the *Children and Family Services Act* applies to this decision and provides as follows:**

**94(1) 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 a relative of the child.**

**Information that would identify the children, parents or foster parents in this proceeding has been anonymized so that this decision can be published.**

**Judge:** The Honourable Justice Kenneth C. Haley

**Heard:** October 5 (Voir Dire), 6, 7, 8, 21 and 23, 2020

**Final Written Submissions:** November 2, 2020 and November 10, 2020

**Written Decision:** November 19, 2020

**Summary:** The Minister of Community Services seeks permanent care of the Respondents' children, R.C. and D.C. pursuant to s. 42(1)(f) of the *Children and Family Services Act*.

The children were taken into care **June 2018**.

The conduct of the Respondents opened the door to an investigation by the Minister to ensure the children were not at risk of harm.

**Issues:** Permanent Care and Custody vs. Dismissal

**Result:** Case Dismissed

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.  
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**Judge:** The Honourable Justice Kenneth C. Haley

**Heard:** October 5 (Voir Dire), 6, 7, 8, 21 and 23, 2020, in Sydney, Nova Scotia

**Final Written Submissions:** November 2 and November 10, 2020

**Counsel:** Danielle Morrison, for the Applicant  
Rosemary Osasere for the Respondent, A.D.  
Steve Jamael for the Respondent, C.M.

By the Court:

**INTRODUCTION/BACKGROUND:**

[1] This is the application of the Minister of Community Services (hereinafter called the “Minister”) dated June 6, 2018, pursuant to section 42(1)(f) of the *Children and Family Services Act*, seeking an order for permanent care of the children, D.C, born [ ], and R.C., born [ ].

[2] This was a contested hearing which was heard by the Court on October 5 (voir dire); 6, 7, 8, 21 and 23, 2020.

[3] The Court heard from the following witnesses, namely:

1. Stacey Munroe – Foster Parent
2. Colleen Petite – Case Aide
3. Tracey Penticost – Case Aide
4. Dr. Reginald Landry – Psychologist
5. Renee Wilson – Child Welfare
6. Jennifer MacNeil – Child Welfare
7. Lisa Robinson – Child Welfare
8. A.D. – Respondent

9. Kaitlyn Boutilier – C.M.’s partner
10. Matt Dalton – Friend of C.M.
11. Shermaine Steele – Friend of C.M. and A.D.
12. G.C. – Grandfather
13. Graham Cassidy – Case Aide
14. C.M. – Respondent

[4] During the course of the hearing, the Court received into evidence, the following exhibits:

<b>EXHIBIT #</b>	<b>TENDERED BY</b>	<b>DESCRIPTION</b>
1	Applicant	Transcript – Placement Hearing
2	Applicant	Affidavits (3) Re: Voir Dire Statements
3	Applicant	Incident Report
4	Applicant	Dr. Landry CV / Report
5	Applicant	Book Pleadings Minister
6	Respondent A.D.	Plan of Care – Respondent A.D.
7	Respondent C.M.	Plan of Care and Pictures – Respondent

8	Respondent C.M.	Pictures – Children and Respondent C.M.
9	Respondent C.M.	Pictures
10	Respondent C.M.	Audio Recordings

[5] The Minister’s concerns are outlined in the Plan of Care filed November 20, 2018 (**Exhibit 5 / Tab 6 / Page 3**).

1. Respondent A.D. is asked to address the concerns as follows:
  - a. Domestic Violence
  - b. Inadequate Parenting Skills
2. Respondent, C.M. is asked to address the concerns as follows:
  - a. Inadequate Parenting Skills

[6] The Minister also notes at (**Exhibit 5 / Tab 6 / Page 4-5 (5a)**) that:

The Respondent, A.D., is struggling in the area of implementing the parenting skills she has learned and has been supported by Families’ Plus and the social worker.

This had been an area of difficulty for the department to address given the children are in Port Hawkesbury, where there are limited resources,. However, a Family Support Worker has recently been put in place offering hand over hand instruction. A.D. access with her children remains supervised and no change is proposed in that regard. It is hoped that the psychological assessment may assist the department in this regards.

The Respondent, C.M. has been struggling with accepting responsibility and he does not acknowledge any of the struggles within family functioning. There has been a history of domestic violence including when the couple lived in Alberta.. he is completing services that have been requested of him. His access with the children remains supervised and is no longer able to be in the community, and he must attend on his own, he again had to be reminded not have inappropriate conversations in front of the children nor with the workers given recent concerns. Any issues must be presented to the social worker. It is hoped that psychological assessment may assist the department in this regard.

[7] The Minister also notes at (**Exhibit 5 / Tab 6 / Page 5 (5b)**) that:

The Respondent, A.D. is participating in services requested by the department. She is following through and showing insight into the agency's concerns. She appears to be taking away supports and recommendations from the programs.

The Respondent C.M. has reluctantly participated in services. Initially it was thought Cornerstone would not accept him into the program as he did not believe there had been any domestic violence in the relationship and maintains this position. However, he is currently undertaking the program which started on Oct 8, 2015. He has participated in family services and parenting assessment will be undertaken.

[8] At **Exhibit 5 / Tab 6 / Page 8 (g)**, the Minister states that:

The Plan of Care will be reviewed in three months to assess if the Respondents have participated in services and if any progress has been made. If no participating in services have been made the department will have to consider permanency planning.

[9] The Minister updated its Plan on December 17, 2019 (**Exhibit 5 / Tab 15**).

At Page 1 they noted that:

The Applicant is seeking an Order pursuant to Section 42(1)(f) of the Children and Family Services Act, that the child, D.C. born on [ ] and R.C. born on [ ] be placed in the permanent care and custody of the Applicant, the Minister of Community Services.

[10] The concerns of the Minister related to the Respondent, A.D., were determined to be:

1. Inadequate Parenting
2. Domestic Violence
3. Parent Cognitive Functioning

[11] The concerns for the Respondent, C.M., remained as:

1. Inadequate Parenting
2. Domestic Violence

[12] At **Exhibit 5 / Tab 15 / No. 3**, the Minister noted that:

We have been involved with this family since November 21, 2011 when A.D. contacted the department to report she was in a domestic violent relationship with her then partner C.M. the case closed in May 2012 when A.D. and her family moved to Alberta. The case reopened again in June 2018 due to a referral by C.M. stating physical abuse perpetrated by A.D. The children had come



into care of the Department due to parents Domestic Violence and breaching of an order.

On July 29<sup>th</sup> D.C. was return to his mother's A.D. care with intensive support in place. However, even with the intensive services in place A.D. was unable to provide adequate parenting.

It was decided in a Risk Management Meeting on November 25, 2019 that we would pursue a court application for removal of a child due to inadequate parenting. During court appearance on November 27, 2019 it had been agreed the children would remain in the care of the department until dates are set for trial.

Throughout our involvement, A.D. has continued to struggle in managing the children's behaviour and very little had been achieved since our involvement had begun. Although the department does acknowledge some progress has been made.

A risk management meeting took place on November 25, 2019 where it had been agreed based on A.D. and C.M.'s progress with the case plan and history with our agency that at this time the plan had not progressed with little responsibility taken by the parents. Through various services A.D. has not been able to sustain adequate parenting supervision of the children. The Department appreciates that some effort has been made.

[13] This has been an extremely lengthy proceeding, particularly so due to Covid-19 restrictions and the ability of the Court to hear this matter in a more reasonable time frame.

[14] I understand the pressure placed on parents whose children are taken into care, especially so when the children are fostered in homes away from the Cape Breton area, which makes access and parent time difficult to structure for all concerned.

[15] A difficult relationship with the Minister should not necessarily be taken as an indication that the parent(s) will be unable to parent appropriately.

[16] That said, decisions made under the CFSA must not be made based on parent beliefs or feelings of sympathy for parents whose circumstances may be extremely challenging. Rather, the prominent consideration upon which decisions are made, are the best interests of the children (s. 2(2)).

[17] A.D. and C.M. have or had nothing less than a dysfunctional relationship.

[18] It is apparent to the Court that the parties were willing to do most anything, to remain together as a couple, including persistent and ongoing breaches of a No Contact Order, and lying to the social workers about their history of physical and verbal abuse during their relationship.

[19] A.D. reported that she was pressured by C.M. and his family to vary the No Contact Order. She specifically identified G.C. (paternal grandfather), as the sources of that pressure.

[20] It should have been obvious to both parents that their behaviour, regardless of blame, was impacting the physical and emotional well-being of the their children.

[21] The issue before this Court is to determine whether or not A.D. or C.M. have sufficiently rehabilitated their respective bad parenting behaviour to ensure the safe return of their children to one or the other's care with no risk of harm as defined by the CFSA.

[22] The Court is satisfied that the Respondents are no longer in a relationship and have no intention of reuniting. This is a positive development in the Court's view.

[23] The history of this family being involved with the Minister goes back to 2011.

[24] Substantial efforts were made by the Minister to transition the care of the children back to A.D. There is no question that A.D. made good progress and had impressed the Minister to the point that in July 2019 D.C. was placed back in her supervised care, with R.C. having extended access visits with A.D. and D.C. The Minister also approved the children having extended access at the home of C.M.

[25] Unfortunately, this family reunion resulted in a number of incidents of violence between the boys and towards A.D.

[26] A.D. struggled to manage the children's behaviour. A.D. started a new relationship and started new employment in September 2019.

[27] This resulted in additional change for the child, D.C., and also resulted in the cancellation of some transition visits with R.C.

[28] The transition was in some jeopardy. The children were struggling with the transition from the Minster's perspective.

[29] The children then began to have unsupervised access with C.M. C.M. also had difficulties with R.C.'s behaviour on two access visits

[30] It progressed to the point that A.D. and the child, D.C., had to leave their residence due to non payment of rent and move into the home of C.M.'s sister during the transition.

[31] Then, in the final weeks of transition, A.D.'s brother came to stay with his children, sending D.C. back to his father's family.

[32] During this chaotic time, it is reported that D.C. was unable to get to school on time and was receiving his required medication inconsistently.

[33] The Minster questioned the parents' respective Plans of Care in terms of their lack of insight, ability, motivation and conviction to establish their plans as workable.

[34] As a result, the transition of the children was terminated. A Plan for Permanent Care was filed with the court by the Minister.

[35] Time had expired and the Minister now stated it has no confidence that the children's physical, emotional, and academic needs would be met by the parents. Also, the Minister takes the position that the prospect for medical neglect of the children's physical and mental well being is high.

[36] The Minister submits a review of the statements made by the children to the foster parents and Case Aides support the Minister's concerns (**Exhibit 2**). There were reports of domestic violence being witnessed by R.C. also, R.C. was threatening to harm/kill himself. The boys behaviour was a major concern to the Minister.

[37] C.M. continued to blame A.D. for the problems and continued to maintain there was no reason why the children were not returned to his care. C.M. continued to allege the children were being abused in the Minister's care.

#### **DR. LANDRY'S ASSESSMENT**

[38] A psychological assessment of parental capacity for A.D. was filed by Dr. Landry on June 18, 2019.

[39] Dr. Landry, in his evidence, concluded that it would be a struggle for A.D. to parent high needs children, given her executive function was lacking.

[40] A.D. struggled to be dependant in spite of the plan to return the children to her care. Her executive function failed her. He noted that A.D. struggled with R.C.'s eye patch and glasses. She also struggles with the responsibilities of school. Her balance of responsibility is a struggle.

[41] In evidence, Dr. Landry qualified his initial report by stating that “the earlier recommendation was based upon evidence at the time”.

[42] A psychological assessment of parental capacity for C.M. was filed by Dr. Landry on September 19, 2019.

[43] Dr. Landry, in his evidence, noted the conflict C.M. had with child welfare worker, Lisa Robison. C.M. did not think he was being heard (ie – people were not listening to him).

[44] C.M. identified himself as “the enemy” in terms of his relationship with the Minister.

[45] Dr. Landry concluded that C.M. “lacked insight” in terms of his own behaviour.

[46] C.M. was defensive and he had difficulty admitting to psychological issues.

[47] C.M. sees himself as the perfect parent. Dr. Landry testified that C.M. would challenge anyone who did not think that he was the perfect parent; thus his disparaging comments about female lawyers and workers.

[48] Dr. Landry concluded that C.M. would feel “under the thumb” of the system. This would be uncomfortable for him.

[49] C.M. does not see himself as being aggressive. Although he does not like confrontation, he will stand his ground.

[50] Dr. Landry is of the opinion C.M. is defensive so he can make a good impression or maintain his self esteem.

[51] Dr. Landry noted C.M. denied any history of domestic violence.

[52] C.M. has “emotional contempt” for being involved in the Court proceeding. His lack of insight will determine the level of contempt in this regard.

**A.D.**

[53] Counsel for A.D. submitted as follows:

1. The Respondents were living together at the time of the Minister's involvement and presented as a couple, giving rise to incidents of domestic violence in the home.
2. The parties have since separated and have moved on with their independent lives. As such, domestic violence is no longer an issue.
3. Evidence presented at trial that A.D. engaged in all the services and sought out more services and programs on her own initiative.
4. Dr. Landry reported that A.D. participated in the assessment and was very motivated to complete the assessment.
5. Dr. Landry also noted that A.D. accepted responsibility and understood the concerns that have been reported by the Minister, and engaged in services.
6. Dr. Landry noted on page 16 of this report that there were no concerns raised in the past about C.D. and C.M.'s ability to meet the children's basic needs.
7. Dr. Landry noted that A.D. was generally positive and responsible to the children during visits, provided positive reinforcement and positive comments about their performance.



8. The above evidence was confirmed by Graham Cassidy, Case Aide.
9. Other Case Aide workers also noted an improvement on the part of A.D. in maintaining consistency.
10. Dr. Landry reported that D.C. is very anxious to return to the care of his parents and reported very nurturing care giving from his mother, A.D. This was also corroborated by Graham Cassidy.
11. Dr. Landry further noted that during the access visits observed, the children appeared to enjoy the interaction with their mother, and sought out her attention and proximity indicating some attachment.
12. Dr. Landry reported that the behavioural challenges of both children will likely put some stress on A.D.'s parenting ability, given the extreme attention they will require and the specialized skills needed to manage such behaviours.
13. Dr. Landry conclusively stated that A.D. has the parental capacity to continue to encourage the development of the attachment with the two children and reiterated the need for hands on assistance with the children's behaviour difficulties as they transition back into her care.

14. D.C.'s return into A.D.'s care in July 2019, met with some challenges, which required hands on support to ensure a smooth transition as recommended by Dr. Landry.
15. A.D. reached out for these support systems, but unfortunately time was running out and little did they know that the medication D.C. was on may not have been strong enough to deal with the challenges he faced at the time.
16. D.C. returned back to care and his behavioural challenges persisted until his medication was changed recently.
17. Since the changes in D.C.'s medication, all parties confirmed that there has been a marked improvement in his behaviour.
18. R.C. would benefit from further assessment and intervention to deal with his challenges.
19. It would be in the children's best interest to promote and maintain family integrity by placing them in their family unit.
20. A.D. has continued to seek out services that will help her on her parenting journey.
21. A.D. relies upon her Plan of Care dated October 8, 2020 (**Exhibit 6**).

22. In the alternative, A.D. supports C.M. to have the children returned to his care.

**C.M.**

[54] Counsel for C.M. submits as follows:

1. Ms. Robinson stated the agency's concerns around C.M.'s inadequate parenting were primarily based around him not getting the children to school on time, not taking them to the necessary third party professionals, and not dealing with the third party professionals in an effective manner.
2. C.M. submits that he has demonstrated that he has the resources and ability to get the children to school on time; deal with third party professionals, and ensure the children get to all necessary appointments. C.M. has a great support network, and a partner who have all stated that they are willing to assist him in anyway necessary to help with the children if they are returned to his care.
3. C.M. was not given a real opportunity to demonstrate that he had the ability to get the children to school and various activities on time.
4. The agency is making a mountain out of a molehill.

5. The evidence and reasons put forth by the agency do not support the conclusions that C.M. has inadequate parenting skills.
6. Ms. Robinson stated in evidence, she may have told C.M. not to attend the Families Plus Program, with the decision to seek permanent care.
7. C.M. admitted to the domestic violence alleged against him and gave detailed explanations about what he learned through programs.
8. C.M. has learned and benefited from the programs he took and has a real understanding of what he went through.
9. There is no evidence of domestic violence in C.M.'s new relationship.
10. C.M. has shown that any domestic violence was isolated between him and A.D.; his evidence has shown him to be a competent parent with an adequate plan of care, and adequate parenting skills.
11. C.M. has put forth a detailed Plan of Care which is in the children's best interests (**Exhibit 7**).
12. C.M. has shown that he has adequate, clean housing that is centrally located in a residential neighbourhood, and close to schools that the children would and may attend in the future.

13. C.M. has a rich support system of friends and family which was evidenced by his witnesses and most of those witnesses already have relationships with the children and are known to the children.
14. C.M. has been involved with many extra curricular activities which with the children and plans on continuing to do so.
15. C.M. has stated he understands the importance of continuing services for himself and the children; and has stated he is committed to doing that and acknowledges the children have been through a tough time, and need further services to assist in healing and move forward in life.
16. C.M. further stated and showed that he has the ability and discipline to get the children to school and other appointments on time.
17. Graham Cassidy has been C.M.'s case aide the last 8-9 months and has seen C.M. interact with the children on a weekly basis for 90 minute sessions.
18. Graham Cassidy stated C.M. has very positive interactions with the children and a strong bond with his two sons.
19. It is well documented that C.M. had a defensive demeanor when initially dealing with agency workers. He was largely self-represented and not educated to specifically deal with this matter.

20. It was this defensive demeanor that has put C.M. in the position he is in; it created a broken chain of communication between himself and the agency and put him back in terms of making progress.
21. C.M. stated that he has learned through programming, how to better communicate without being defensive, which had largely been focused around hearing what other people had to say, and seeing things from their side.
22. C.M. feels it was this dynamic that prohibited him from making progress with the agency.
23. C.M. submits that the children are no longer in need of protective services. He relies on his Plan of Care in this regard.
24. If the children are returned to C.M., they will be placed into a positive environment with lots of family support.

## **DECISION**

[55] I have reviewed and considered the evidence, together with the respective Plans of Care of the Minister, A.D., and C.M.

[56] I have considered the respective written submissions of counsel and have considered the applicable law and legislative provisions of the **Children and Family Services Act**.

[57] Although I may not have specifically commented on all of the evidence in this decision, I have nonetheless considered the totality of the evidence in reaching this decision.

[58] I have applied the burden of proof to the Minister. There is only one standard of proof and this proof is on a balance of probabilities, a burden which must be met by the Minister.

[59] According to the legislation I must follow, the court has only two stark options at this time:

1. Order permanent care; or
2. Dismiss the proceeding and return the children to either A.D. or C.M.

[60] There is no middle ground. As noted by the **Nova Scotia Court of Appeal in G.S. v. Nova Scotia (Minister of Community Services [2006] N.S.J. No. 52 (C.A.)** at paragraph 20:

If the children are still in need of protective services, the matter cannot be dismissed.

[61] The law is also clear that should a trial judge conclude that the circumstances are unlikely to change, that the judge has no option but to order permanent care (**Nova Scotia (Minister of Community Services) v. L.L.P.** [2003] N.S.J. No. 1 (C.A.)).

[62] It is not the court's function to retry the original protective finding, but rather the court must determine whether or not the children, D.C. and R.C., continue to be in need of protective services at the present time.

**A.D.**

[63] I have scrutinized the evidence with care. I reject the plan put forth by A.D. This plan does not address the short term and long term needs of the children.. Some progress was made, but during the transition of the children back to A.D., she became overwhelmed and was unable to provide proper parenting to the children.

[64] Dr. Landry stated in evidence, that parenting would be a struggle for A.D., given the high needs of the children. It should be noted Dr. Landry was not aware of the reported transition events which occurred after July 2019. His initial report



was filed on June 18, 2019. Thus, his initial reported findings were qualified during his direct evidence on October 6, 2020.

[65] The evidence established to the satisfaction of the court, that A.D. has no meaningful insight into the child protection concerns alleged by the Minister. It is not safe to put A.D. in a child caring role at this time. In her evidence, A.D. acknowledged she would reach out to continue services as she believes she still “needs a little bit of help”. She is not ready to assume the demanding role of parenting two children with behavioural challenges at this time.

[66] The evidence is clear, convincing and cogent that A.D. cannot be entrusted with the care of the children. Such a placement would put the children at risk of harm. Her plan is not sound, sensible or workable at this time.

**C.M.**

[67] I have scrutinized the evidence with care. In particular, C.M. testified to the following:

1. C.M. is in a new 2 year relationship with K.D., age 29.
  - a. She is a good to him and they get along excellent.
  - b. She knows my situation and she is very supportive.

- c. She has an extended family.
  - d. She is a very positive person in his life.
  - e. She is a personal care assistant and can administer medications.
2. C.M. has the support of neighbors and friends and family, some of whom work with challenged children.
  3. His relationship with A.D. is over.
  4. C.M. believes with A.D. out of his life he can assume the role of parenting his children.
  5. He will get the children to school on time.
  6. Everyday will be dedicated to the children.
  7. He will keep the children active at the park with the dog; go fishing; hiking and camping.
  8. Acknowledges speaking with professionals is important.
  9. Acknowledges the communication issue he had with the Minister's workers (ie – Lisa Robinson).
  10. Leaned a lot since this started.

11. Being assertive is not a good thing.
12. Acknowledges he was offensive and aggressive towards the Minister's workers.
13. He has learned a lot about himself through the programming and services.
14. Acknowledged he got frustrated with Lisa Robinson; acknowledged his behaviour did not allow is plan to move forward.
15. Acknowledged mistakes and is sorry for the things he said.
16. Takes full responsibility for the things he said.
17. It is different now.
18. He is not against medication for D.C.
19. Initially was concerned about D.C.'s weight loss.
20. D.C. is now on proper medication and is doing great and there is a "drastic change".
21. Will ensure children take their prescribed medications.
22. Will attend all medical appointments and they are very important.

23. Acknowledges the children require services and will support them in this regard.
24. Would give children “unconditional love”.
25. Children will be part of a large family.
26. Lots of other children in the family for the boys to play with. Suggests this is a “real positive situation for the kids”.
27. Will reunite the children with people they knew before the Minister became involved.
28. Willing to do anything recommended by Dr. Landry - “He is a great man”.
29. Now has a better understanding of domestic violence.
30. Acknowledges the relationships with A.D. was more verbal abuse than physical abuse – “I have never beat her up”.
31. He knows what he did was wrong.
32. Cornerstone Program has shown him how to deal with his anger.
33. Cornerstone Program had a big impact on him.
34. Understands the effect of domestic violence on children.

35. Domestic violence is a selfish act.
36. I know when to walk away and to get out of the violence bubble.
37. Had practiced techniques to control his anger.
38. Understands his opinion is not always right.
39. Acknowledges Dr. Landry's assessment that he can be defensive.
40. Acknowledges he did not react properly when alleging the children were being abused.
41. Had great visits with the children with Case Aid, Graham Cassidy (once a week).
42. Cannot recall any bad visits.
43. D.C. and R.C. get along much better due to the medication adjustment.
44. D.C. listens more and is more patient.
45. Sees a big positive difference in D.C.'s behaviour.
46. Acknowledges his breach of undertakings.
47. Says it was a "stupid move" and "should have respected the court more".

48. Acknowledges “stupid mistakes” while in a relationship with A.D.
49. Acknowledged he was frustrated by not having a chance to have the children placed with him.
50. Relies on his Plan of Care dated October 10, 2020 (**Exhibit 7**).

[68] The Court understands the concerns of the Minister, however, it would appear that C.M. has seen the light and now acknowledges the problems he was presenting to Minister as a parent.

[69] The fact that A.D. and C.M. are no longer a couple is significant.

[70] C.M.’s support network is impressive; his Plan is impressive. C.M. can provide a wonderful life to R.C. and D.C. if given the opportunity.

[71] C.M. made it very difficult for the Minister. The Minister’s initial concerns were legitimate. I do not agree however, that those concerns still exist at the present time to warrant a permanent care finding.

[72] I accept C.M.’s plan is in the children’s best interest. It is sensible,, sound and workable. He has a beautiful home and surrounding to the boys benefit. He has family and friends to support him in his parenting challenges.

[73] The Minister has not discharged its burden.

[74] I am satisfied that the evidence of the Minister is not sufficiently clear, convincing and cogent to satisfy the balance of probabilities (**H. v. McDougall**, 2008 SCC 53).

[75] I am not convinced that C.M. poses a substantial risk of harm or real chance of danger to his children. This has not been proven on a balance of probabilities.

[76] I reject the Plan put forth by the Minister. Section 42(2) of the **Children and Family Services Act** provides:

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

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

[77] Given the solid and promising plan, with supports and the opportunity C.M. presents for his children, I cannot place D.C. and R.C. in the permanent care of the Minister. I am not satisfied that less intrusive measures to promote the integrity of the family have been attempted and failed.

[78] This is an opportunity for the family unit to remain together and C.M.'s plan, although not attempted, is adequate to protect the children. D.C. and R.C. are no longer in need of protective services and shall be returned to the care of their father in accordance with the Minister's protocol.

[79] That said, I expect C.M. to "walk the walk", not just "talk the talk". I accept his evidence as being contrite, forthright and honest, despite his historical pattern of inappropriate behaviour, lying and manipulation. Circumstances have changed in C.M.'s life, primarily due to he and A.D. moving on from their life of dysfunction.

[80] C.M.'s concern for his two sons caused him to react with frustration toward the Minister. This conduct is not condoned. He nonetheless accepted responsibility for his actions. He has learned from his mistakes.

[81] Given C.M.'s reformation, I find he can be a good father to the children.

C.M. assumes a great responsibility in this regard.

[82] S. 42(4) states:

42(4) The court shall not make an order for permanent care and custody pursuant to clause (f) of subsection (1), unless the court is satisfied that the circumstances justifying the order are unlikely to change within a reasonably foreseeable time not exceeding the maximum time limits, based upon the age of the child, set out in



subsection (1) of Section 45, so that the child can be returned to the parent or guardian.

[83] I find C.M. has the ability, commitment and necessary supports to manage the children's behavioural issues. C.M. understands the challenges before him in raising his two young sons. The Court is satisfied it is in the best interests of D.C. and R.C. to give him the opportunity to do so.

[84] I therefore decline to award permanent care to the Minister.

[85] Application dismissed.

Haley, J.