<u>**SUPREME COURT OF NOVA SCOTIA**</u>
<u>**(FAMILY DIVISION)**</u>

Citation: *Nova Scotia (Community Services) v. MA, AC and MZ*, 2021 NSSC 249

Date: 2021-08-03
Docket: 116320
Registry: Sydney

Between:

Minister of Community Services

Applicant

v.

MA, AC AND MZ

Respondents

LIBRARY HEADING

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: March 26, 29, 30, 31, April 9, 13, 14, and June 15, 2021, in Sydney, Nova Scotia

Final Submissions: June 28, 2021

Written Decision: August 3, 2021

Subject: Determination Children in Need of Protective Services

Summary: Are the children, M, V, and I, children in need of protective services, pursuant to s. 22(2)(b) and (g) of the **Children and Family Services Act.**.

Issues: (1) Are the children in need of protective services pursuant to ss. 22(2)(2)(b) and (g) and (2) Three PSA applications have been filed and the court must decide where the children will be placed.

Result: The Court found:

1. That the Minister's application in relation to all three children is hereby dismissed with the consent of the Minister.

2. The child, M, shall be placed in the custody and primary care of her biological father, with reasonable and liberal access for other parties.

3. The children, I and V, will remain in the care of their biological father.

4. The biological mother of all three children will have supervised access only.

THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION. QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.

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Between:

MINISTER OF COMMUNITY SERVICES

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v.

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Respondents

WRITTEN DECISION

Judge:	The Honourable Justice Kenneth C. Haley
Hearing Dates:	March 26, 29, 30, 31, April 9, 13, 14 and June 15 and 28, 2021
Decision Date:	August 3, 2021
Counsel:	Adam Neal – for Minister of Community Services Alan Stanwick – for MA AC – Self-Represented Shannon Mason – for MZ

By the Court:

Background

[1] This is the application by the Minister of Community Services (hereinafter referred to as "Minister"), dated October 28, 2019, seeking a determination that the children, M (November 25, 2013); I (April 12, 2019:, and V (February 24, 2018),

are children in need of protective services pursuant to s. 22(2)(b) and (g) of the **Children and Family Services Act**.

[2] There are also competing applications under the **Parenting and Support Act**, for the child, M, by the father, MZ:, the stepfather, AC; and the grandmother, DM.

[3] The mother, MA, has not filed a custody application, but supports DM's (her mother), application.

[4] AC's application was agreed by the parties to be accepted pursuant to his affidavit dated November 12, 2020 (**Exhibit #12 (Exhibit #13)**). Therefore, there is no formal application under the PSA in the file. AC's primary position is in support of DM. He puts his plan forward as an alternative.

[5] The Minister has placed the children, I and V, with the father, AC, and the Minister is satisfied there are no further protection concerns in relation to these two children. Risk of harm has been successfully reduced and/or eliminated to safely place the children with AC. An Order will so issue with the consent and support of the Minister.

[6] The matter before the court deals solely with the child, M. The Minister is satisfied that there are no protection concerns as defined by the CFSA. The

Minister agrees to have M placed with anyone of the three prospective PSA applicants, although the Minister formally supports the application of the father, MZ.

[7] It is apparent that circumstances have changed since the commencement of the protection application, and **this court does have family placement options** other than permanent care (**NS (Min of CS) v. LLP [2003] NSJ No. 1 (CA)**).

[8] Section 42(3) of the CFSA states as follows:

> (3) Where the court determines that it is necessary to remove the child from the care of a parent or guardian, **the court shall**, before making an order for temporary or permanent care and custody pursuant to clause (d), (e) or (f) of subsection (1), consider whether
>
> > (a) it is possible to place the child with a relative, neighbour or other member of the child's community or extended family with whom the child at the time of being taken into care had a meaningful relationship pursuant to clause (c) of subsection (1), with the consent of the relative or other person; [emphasis added]

[9] Section 42(4) states as follows:

> (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. [emphasis added]

[10] The above provisions provide the court authority to dismiss the permanent care application in relation to the children, I and V, so that they be placed in the care and custody of their father, AC.

[11] Similarly, the above provisions provide the court the authority to dismiss the permanent care application in relation to the child, M. The issue of custody is yet to be determined given that the court has 3 family placements to consider, in the best interests of M, under the PSA.

[12] The court will give primary consideration to the plans of DM and MZ since AC offers his plan as an alternative only, and supports DM's application.

[13] The Minister's position in relation to it's application conforms with the intention and purpose of the CFSA.

[14] S. 2(1) and (2) of the CFSA states as follows:

> 2 (1) The purpose of this Act is to protect children from harm, promote the integrity of the family and assure the best interests of children.
>
> (2) In all proceedings and matters pursuant to this Act, the paramount consideration is the best interests of the child.

[15] The Minister is to be commended for meeting its mandate in these circumstances.

[16] The remaining outstanding issue for the court is to assess and evaluate the competing PSA applications of DM and MZ, for custody of M.

[17] This court heard evidence on March 26, 29, 30, 31, April 9, 13, 14, and June 15, and submissions on June 28, 2021.

[18] A placement (interim) hearing was held December 1 and 2, 2020, before Associate Chief Justice O'Neil. All parties have agreed that the evidence given at the placement hearing would form part of the evidence at this final hearing.

[19] The child at the center of these proceedings, is M, who is 8 years old (born November 25, 2012). MA is the mother, and MZ is the father. DM is the maternal grandmother, and AC, is the stepfather.

[20] M was born in Calgary where her parents were residing at the time.

[21] From May 8th, 2013, to January 30th, 2015, ten court orders issued from the Provincial Court of Alberta (Calgary) in relation to parenting arrangements for M. These orders consistently increased MZ's parenting time with M.

[22] On September 20th, 2013, costs are awarded against MA in the amount of $500.00 for frustrating MZ's access with his daughter.

[23] Costs are awarded against MA again on May 29th, 2014, in the amount of $1,000.00, as a result of her decision to leave Calgary for Cape Breton in March of 2014, again, frustrating MZ's access with his daughter.

[24] An Order from June 17th, 2014, orders that both MA and MZ are guardians of M.

[25] MA was permitted to relocate with M to Nova Scotia on September 25th, 2014. MZ was awarded significant block access.

[26] MZ had specific court ordered access dated September 25, 2014 (**Exhibit 4**).

[27] MZ had little or no contact with his daughter in 2014 and 2015, and then he relocated to London, England for study purposes.

[28] In November 2015, the Minister made its first contact with the this family in Cape Breton. There had been a physical altercation between MA and her sister, BA. MA was in possession of a knife during this altercation. This incident occurred at the home of DM.

[29] In January 2016, MA moved back to Calgary to reunite with her then boyfriend, Michael, making no attempt to contact MZ.

[30] On August 9th, 2017, AC assaulted MA by shoving her, pushing her, and grabbing her by the throat. MA reported to the Minister that M was present during this assault, and that she was pregnant at the time. MA subsequently testified that M was in Cape Breton with her mother (DM) during this incident. AC took responsibility for this assault and completed services. MA and AC reconciled. Before the Minister closed its file, a new referral was received from Victim Services reporting that MA alleged further physical assaults by AC in Halifax. MA

reported that her relationship with AC was over and she had relocated to Cape Breton with the children.

[31] In November 2018, the Minister received a referral from Tantallon RCMP in relation to allegations by MA that AC had physically assaulted her again. MA subsequently testified that AC did not physically assault her, and that she had lied to both police and the Minister about these assaults.

[32] After MA returned to Cape Breton, she stayed with DM for a period of time, and then obtained housing in Sydney Mines. Workers went to this residence on November 16th, 2018, and found MA and AC present with the children, in contravention of a No-Contact Order. AC initially lied about his identity and gave a fictitious name to police and the workers. MA also lied to the police about AC's identity. It was also determined that AC had driven from Halifax to Cape Breton without a valid driver's licence (**Exhibit 7, Cape Breton Regional Police Records, Report of Cst. D. Campbell dated November 16th, 2018).**

[33] On or about November 21st, 2018, DM made inquiries as to why the Minister would not support contact between MA and AC, provided that they were able to get the No-Contact Order varied. She indicated that she wanted the Minister to support contact between the parties.

[34] In May 2019, MA advised the Minister that she had moved in with DM, and that she and AC were no longer in a relationship.

[35] On October 1st, 2019, a referral was received reporting concerns of drug use on the part of MA, along with physical violence between MA and her mother. MA was residing at her mother's home at this time. DM acknowledged being assaulted by MA. She said that MA pushed her, describing it as "no big deal." **(Exhibit 7, Book of Pleadings, Tab 1, page 13)**. DM reported that the children were in the home but in bed during this argument. DM also acknowledged that MA had broken her rib approximately four years prior. After disclosing this information, she asked the worker to "keep this between us" **(Exhibit 7, Book of Pleadings, Tab 1, page 14)**. DM also confirmed that MA has "violent episodes" **(Exhibit 7, Book of Pleadings, Tab 1, page 14)**.

[36] The Minister devised a plan for DM to care for the children while MA resided elsewhere. It was also decided that MA's access would be supervised. The Minister advised DM that MA could not reside with her and the children. DM replied, "Friday was only a little tussle" **(Exhibit 7, Book of Pleadings, page 15)**.

[37] On October 3rd, 2019, the Minister learned that AC had been charged on June 12th, 2019, with failure to comply with an undertaking and possession of a

substance (cocaine). At this time, MA also admitted to abusing Dilaudid, which she obtained from her sister, BA.

[38] On October 4th, 2019, MA met with worker Renee Wilson and supervisor, Melanie Martell. MA was asked to voluntarily participate in the Minister's Case Plan that would leave the children in the care of DM. MA was to have supervised access and was not permitted to return to DM's home until clean drug tests were provided and services were addressed. MA was advised that if she returned to her mother's home against the Minister's direction, that the Minister may have to become more intrusive to protect the children. On this same date, DM advised Ms. Martell that she felt that the Agency was being heavy handed. She indicated that she felt that things had been going well with her daughter for the past 8 months. The decision was also made by the Minister to not support AC living in the home with the children as a result of his outstanding criminal charges, the fact that he had falsified his name to police and the Minister, as well as the allegations of domestic violence.

[39] On October 9th, 2019, workers attended DM's home. Present at the home were DM, MA, AC, and a family friend. The parties admitted that they had spent the previous night at DM's home, with the children present, contrary to the

Minister's direction. The parties acknowledged that they had gone against the Minister's direction.

[40] The Minister started this court Application on October 28th, 2019.

[41] MZ became aware that the Minister was involved with M in the Fall of 2019. He was added as a party to the court proceedings in December 2019.

[42] In January 2020, the Minister agreed to allow AC and MA to move back into DM's home.

[43] On March 12th, 2020, AC found drug paraphernalia in DM's home. He and DM told MA to leave the home.

[44] AC relocated to Halifax with V and I a few days after.

[45] On March 18th, 2020, DM advised Amy Donovan that MA was in detox. DM requested that MA be permitted to return to her home. The Minister decided to allow this. Her access was required to be supervised by her mother.

[46] Throughout the summer of 2020, MZ kept in regular contact with workers to attempt to arrange access with M.

[47] On August 6th, 2020, a Home Study was completed by Alberta Child Protection in relation to MZ's home. The home was determined to be appropriate and there were no concerns noted.

[48] On August 25th, 2020, DM once again kicked MA out of her home as she had found drug paraphernalia in the home. DM was encouraged by the worker to contact police if MA returned, and was told that MA could not be in the home.

[49] On August 26th, 2020, MA returned to the home. The violent details of what transpired on this date are outlined at **Exhibit 7, Book of Pleadings, Tab 4, pages 16-24**.

[50] M was taken into care on August 26th, 2020, and placed in a foster home.

[51] On August 31st, 2020, DM advised worker, Alyssha Ferguson that both she and a family friend, Ella Myers, had been victims of assault by MA on August 26th, 2020. The details of this incident are outlined at **Exhibit 7, Book of Pleadings, Tab 5, pages 2-5,** and at **Exhibit 7, RCMP Records, Report of Cst. Naime dated August 26th, 2020**. MA was charged with two counts of assault with a weapon, mischief, theft of a motor vehicle, and possession of a weapon for a dangerous purpose. She was placed on conditions, one of which was to have no contact with her mother.

[52] In September 2020, DM attended at the hospital to visit MA. She testified that MA was asleep during the visit **(Exhibit 1, page 157, lines 1-4)**.

[53] On October 3rd, 2020, MA was found in a vehicle with Leonard Groves. When the vehicle was searched by police, a shotgun, machete, and baseball bat were located in the trunk. **(Exhibit 7, Cape Breton Regional Police Records, General Report of Cst. M. MacDonald).**

[54] On October 16th, 2020, DM contacted police for a well-being check on MA. She reported that MA had texted her, threatening to kill herself and asking her for money. **(Exhibit 7, Cape Breton Regional Police Records, general report of Constable Ogley**). Constable Ogley contacted MA, who denied telling her mother that she wanted to kill herself and referred to her mother as a "controlling drunk." DM did not report this contact as a breach to police.

[55] On December 1st, 2020, MA was charged with robbery. Pending charges against MA are itemized in **Exhibit 8**.

[56] A Placement Hearing was held in December 2020. Associate Chief Justice O'Neil ordered that M be returned to the supervised care of DM.

[57] MZ arrived in Nova Scotia on March 11, 2021. After self-isolating for 2 weeks, he began to have access with his daughter.

[58] Weekend access visits started in April 2021.

[59] On May 1st, 2021, M began staying with her father 5 days per week.

MZ PLAN

[60] MZ testified as per his affidavit (**Exhibit 6)**, that:

- He became aware that child welfare was involved with M in the Fall of 2019.
- That between October 8 and November 8, 2019, he attempted to try to reach MA, but without success.
- That on November 16, 2019, he was able to reach DM to enquire as to what was happening with M.
- That MA finally responded on November 17, 2019, advising that child welfare had received unfounded reports and that the case would be closed soon.
- That he was advised that a family member had gotten drunk and assaulted DM. MA advised him the police were called and a referral was made to child welfare.

- That the children M, I, and V, were all in the home when the incident occurred.
- That he was able to have Facetime with M throughout November 2019, which also included his sister in Calgary.
- That he kept regular contact with child welfare workers.
- That MA refused to provide details about M's school work and progress.
- That MA admitted to child welfare workers that she altered M's report card to make it look like she was doing better than she actually was.
- That MZ was granted standing in the CFSA matter December 17, 2019.
- That MA kept providing excuses why M could not speak to him (ie – iPad broke, sick, phone lost, watching movie).
- That in his opinion, MA was trying to limit his contact with his daughter.
- That although M was in DM's supervised care, that MA insisted MZ deal with MA only.

- That he did not have access with M until the Summer of 2020 with the assistance of DM.
- That M was placed in foster care on August 26, 2020.
- That although he did not have in person contact with his daughter since relocation to Nova Scotia, he had done his best to keep in contact with her, when he had reliable contact information for her. He noted this was a difficult task. Evidence was given at the placement hearing that MA had moved at least 8 times from 2015 to 2018. Had he known the extent of the child welfare's involvement with MA and DM, over the past 5 years, he would have increased his efforts.
- That he lives with his sister, NZ, and her husband in Calgary, along with his 12 year old niece and 9 year old nephew.
- That his home has been assessed by Alberta Child Protection and determined to be appropriate for M.
- That M is familiar with the home, having spent her time there when living in Calgary. She would have her own room and ample space to play.

- That he has stayed in contact with M's school principal to discuss schooling.
- That he will assist M with her schooling.
- That he has arranged potential elementary school registration for M in Calgary.
- That M would attend the same school with her cousins.
- That he will transport the children to and from school.
- That since M has been in foster care, he has had significant contact with his daughter via Facetime and texting.
- That he spoke to M on the phone daily, chatting and playing games.
- That all of his family participates in calls with M.
- That MA has reported that he lost interest in M shorty after she was born. That nothing could be further from the truth. A review of the many court orders from Alberta and his subsequent attempts to make contact with MA after they moved to Nova Scotia, show that he did not give up trying to foster a relationship with his daughter. He noted that she is and always has been his priority.

- That if M is placed in his care, M would have exposure to her Muslim heritage and he would also respect Christian traditions.
- That he would facilitate supervised access for MA .
- That he will facilitate contact between M and her siters, I and V. Arrangements have been discussed with AC.
- That he will facilitate ongoing contact between M and her grandmother, DM.
- He acknowledges DM has played a big role in M's life.
- That he believes that it is in the best interest of M to have as many family members as possible in her life to support and love her.
- That he would facilitate in-person access for MA and DM and M's siblings if they would able to come to Calgary. He would also be open to travelling to Cape Breton with M to facilitate access from time to time. Virtual access would occur regularly.
- That he is concerned about MA and her recent criminal charges, including robbery.
- That MA also has pending assault charges against DM.

- That MA has not completed child welfare services and her access remains fully supervised.
- That DM was permitting MA to communicate with M. via text messaging, contrary to the court order as recently as January 2021.
- That there is a concern that MA has indicated her wish to reunite with AC and her family in Halifax. This includes M and DM.
- That there is concern with regard to DM's plan to move to Halifax.
- That he also is concerned that DM will not continue to facilitate access once the Minister is no longer involved with M, if M is left in DM's care.
- That DM testified at the placement hearing that she felt M was better off in foster care than with her father.
- That Associate Chief Justice O'Neil stated in his decision that AC has not put forth a specific plan to have M placed with him, but has offered to care for M if necessary.
- That he sincerely believes that it is in M's best interests that she be placed in his primary care at the conclusion of the child welfare

proceedings. He is M's father and he is the only party in the proceeding for whom there have been no child welfare concerns.

- That he can provide M with a home that has structure, stability, and love. That his family is very tight knit and they support each other. Although they have disagreements from time to time, there is no violence whatsoever in their home.
- That it is his hope that all the parties can work cooperatively in this regard to ensure all family ties remains in tact, in M's best interest.

DM PLAN

[61] DM testified as per her affidavits marked **Exhibits 19 and 20:**

- That M was returned to her supervised care by order of Associate Chief Justice O'Neil effective December 18, 2020.
- That she assured the Minister that she would cooperate and follow any rules that the court imposed.
- That the Minister continued to have issues/concerns with her despite the justice's ruling and that restrictive conditions would continue.

- That MA enjoyed unlimited Facetime with M upon her return to her (DM) care.
- That over the course of the holiday season, which they spent alone, it became apparent to her that the best interest of M and her immediate family would be best secured by relocation to the Halifax area, as M missed her sister, her stepfather, and her mother. In addition, she worried about the impact of M's mothers public issues would reflect on M in a small school within a small community. Further, the Winter was upon them and she had no family members available because of restrictions in place, that could assist her with snow removal and retrieval of wood from the shed for the stove.
- That she decided to search for rental accommodations in the Halifax area. She was fortunate to be offered a rental duplex mere blocks from AC and M's sisters and a 5 minute walk to school. She was able to arrange for a move that would occur prior to the start of school.
- That the Minister would not approve her relocation plan. That she questioned the Minister's decision and did not agree with same.

- That during a home visit on January 6, 2021, she reiterated she would remain in strict adherence to the Minister's directions, even though she disagreed with them.
- That she believes M does not know MZ as "her dad".
- That upon information being provided by the Minister, the police are required to check her house for the presence of MA due to the history of violence reported.
- That she questions the Minister's concerns in that regard and stated their reasons for requesting police intervention "did not appear reasonable to me".
- That she (paragraph 39 of the March 22/21 affidavit), highlighted that her (Worker Ferguson) actions were unacceptable and could have been easily resolved in other less intrusive ways.
- That in referencing issues which arose in scheduling, visits to Halifax, she stated that (paragraph 48) that she believed all their issues could have been avoided had they been able to relocate to the Halifax area. It would have provided M an opportunity to repair the separation of the family and that she does not have to undertake such a grueling travel schedule to spend time with the family.

- That since M’s return to her care, M has been limited in her immediate and extended family contact.
- That (paragraph 58 of the March 22/21 affidavit) in her view, an unnecessary amount of pressure is being placed on M with respect to the Minister’s arrangements.
- That she questions the times the Minister has scheduled MZ’s visits.
- That (paragraph 61 of the March 22/21 affidavit), the Minster proposes much more visitation, but she believes that this process should occur slower than what the Minister and MZ want.
- That she expressed a view about MZ’s Muslim religion (paragraph 65 of the March 22/21 affidavit) in that their visit with their family over the Easter Christian holiday was cancelled/refused because MZ does not celebrate this holiday. M would not be able to spend the Easter Bunny celebrations with her immediate family. They are a Christian family.
- That she believes that M’s best interests would be to remain in Nova Scotia with her family.

- That (paragraph 70 of March 22/21 affidavit) M’s best interest would not be served to be relocated with a man she has only recently come to know as her biological father.
- That she emphasizes the fact MZ has had no contact with M for “four solid years”.
- That she emphasized that MZ has had limited finances and does not own his own home.
- That MZ’s future years of employment will be grueling and take up most of his time.
- That (paragraph 72 of her March 22/21 affidavit) M would presumably be placed with MZ’s sister with no direct contact with her immediate family in Nova Scotia.
- That MZ can visit with M in Nova Scotia anytime and once M is older, the relationship can become more established.
- That this is not the right time to move M, but it is good M has reconnected with her Calgary family.

AC PLAN

[62] AC, although he has offered to care for M, his main plan is in support of DM. Absent DM being granted custody, AC is prepared to act as an alternative to MZ's plan.

[63] AC lives and works in Halifax with his 2 daughters, I and V. AC's mother is the primary caregiver while he is at work.

[64] As stated by Associate Chief Justice O'Neil at page 374 of the transcript of his decision on December 16, 2020:

> AC's plan really is an offer to take care of the child of the child, if the child needs to be taken care of, I … and no .. and sort of there isn't another plan, he didn't aggressively assert that he should take care of M. He just … he knows for the child to have access to his daughters is a very positive thing in his mind, for his, jos … the children and, and for M.

[65] AC presents the same position as described by Associate Chief Justice O'Neil to this court. Although present throughout the proceeding, he did not question any of the witnesses, and simply made himself available as an alternative to DM, not having put forth a formal plan.

LAW

[66] Section 18 of the Parenting and Support Act states:

> 18 (1) On application by a parent or guardian or, with leave of the court, on application by a grandparent or other person, the court may make an order respecting

(a) custody;

(b) parenting time;

(c) a parenting arrangement dealing with any of the areas set out in subsection 17A(3); (d) a parenting plan made under Section 17A; and (e) any other matter the court considers appropriate.

[67] Section 18(2) of the Act states that:

(2) On application by a parent, guardian or grandparent or, with leave of the court, on application by another person, the court may make an order respecting

(a) contact time;

(b) interaction; and

(c) any other matter the court considers appropriate.

[68] Section 18(5) states that:

In any proceeding under this Act concerning custody, parenting arrangements, parenting time, contact time or interaction in relation to a child, the court shall give paramount consideration to the best interests of the child.

[69] The court is guided by S. 18(6) of the Act in determining the best interests of the child as follows:

(6) In determining the best interests of the child, the court shall consider all relevant circumstances, including

(a) the child's physical, emotional, social and educational needs, including the child's need for stability and safety, taking into account the child's age and stage of development;

(b) each parent's or guardian's willingness to support the development and maintenance of the child's relationship with the other parent or guardian;

(c) the history of care for the child, having regard to the child's physical, emotional, social and educational needs;

> (d) the plans proposed for the child's care and upbringing, having regard to the child's physical, emotional, social and educational needs;
>
> (e) the child's cultural, linguistic, religious and spiritual upbringing and heritage; (f) the child's views and preferences, if the court considers it necessary and appropriate to ascertain them given the child's age and stage of development and if the views and preferences can reasonably be ascertained;
>
> (g) the nature, strength and stability of the relationship between the child and each parent or guardian;
>
> (h) the nature, strength and stability of the relationship between the child and each sibling, grandparent and other significant person in the child's life;
>
> (i) the ability of each parent, guardian or other person in respect of whom the order would apply to communicate and cooperate on issues affecting the child; and parenting and support.
>
> (j) the impact of any family violence, abuse or intimidation, regardless of whether the child has been directly exposed, including any impact on
>
>> (i) the ability of the person causing the family violence, abuse or intimidation to care for and meet the needs of the child, and
>>
>> (ii) the appropriateness of an arrangement that would require co-operation on issues affecting the child, including whether requiring such co-operation would threaten the safety or security of the child or of any other person.

[70] Section 18(7) of the PSA is also a relevant consideration for the court when determining the impact of any family violence, abuse or intimidation.

[71] Section 18(8) directs the court to give effect to the principle that a child should have as much contact with each parent as is consistent with the best interest of the child, which includes a consideration of the impact of any family violence, abuse or intimidation in clause (6)(j).

SUBMISSIONS – MINISTER (COUNSEL ADAM NEAL)

[72] The Minister agrees with and supports the submissions of MZ in relation to the child, M.

[73] The Minister submits that the best placement for M is with her biological father, MZ.

[74] The Minister submits this is no longer a permanent care case.

[75] The Minister expressed concerns about MA's drug use and criminal activity.

[76] The Minister's concerns about MA are not in the context of custody, given that MA has not made an application, but the potential and continued influence MA may have over DM which would be adverse to M's best interests.

[77] The Minister bases this concern on its long standing history with MA and AC.

[78] The Minister submits that DM lacks insight into MA's drug use and other issues.

[79] The Minister submits that the events of August 26, 2020, demonstrate family violence and an inability of DM to protect M, resulting in M being placed in foster care.

[80] The Minister submits MA did not complete services and the court must consider the risk MA presents in consideration of DM's plan.

[81] The Minister submits MA 's aggressive questioning of the Minister's workers minimized the benefits and trustworthiness of DM's plan.

[82] The Minister submits MA has deflected any responsibility for her conduct and actions which calls into question her support of DM's plan.

[83] The Minister submits DM's relationship with M, was traumatic involving police, violence and involvement of the Minister placing M into foster care.

[84] The Minister submits DM continues to support her daughter, MA, which raises the issues of DM's insight into what is best for M.

[85] The Minister submits DM's plan to relocate to Halifax, again calls into question DM's insight into what is best for M.

[86] The Minister submits MA's access is fully supervised and a move to Halifax would be a concern.

[87] The Minister submits DM's relationship with her youngest daughter, BA, who has drug and substance abuse issues and also involved with the Minister, should be a concern with DM's plan.

[88] The Minister submits M has been subjected to much risk and turmoil while with DM.

[89] The Minister submits DM's environment has created a "web of despair" for M.

[90] The Minister submits MZ's application for custody is the clear choice for the court.

[91] The Minister submits that MZ is the biological father, who unfortunately lost contact with M until 2019.

[92] The Minister submits MZ has since built a strong bond with M and it is appropriate and safe to transition M to the custody of MZ.

[93] The Minister submits any concerns in this regard raised by Associate Chief Justice O'Neil in his December 16, 2020 decision have been addressed.

[94] The Minister submits MZ has no child protection concerns and he has the means, future employment and family to address the custody consideration in **R. v. Foley**.

[95] The Minister submits MZ will facilitate access.

[96] The Minister submits MZ has remained in Cape Breton since March 2021, and has built a strong relationship with M (ie – M is in Calgary, Alberta, with her father visiting family for the month of July 2021).

[97] The Minister submits MZ will continue a relationship with all the parties in M's best interests.

[98] The Minister submits AC continues to work with the Minister. The Minister has no concerns in relation to the children I and V.

[99] The Minister supports and consents to I and V being placed in the care and custody of AC.

SUBMISSIONS – MA (COUNSEL - ALAN STANWICK)

[100] The Mother, MA, has not put a formal plan before the court. She recognizes she is not able, at this time, to properly care for M due to her current circumstances. That said, MA supports DM and AC as an alternate placement to MZ.

[101] MA submits the following:

- That the issue of placement of M was already addressed by Associate Chief Justice O'Neil in his decision of December 16, 2020.

- That at page 376 of his decision, Associate Chief Justice O'Neil, stated he was satisfied DM did not leave M at risk that day.
- That DM's issues with MA do not cause risk for M.
- That to suggest DM will take pro-active role for her daughter(s) is speculative.
- That there have been no further issues with M's placement with DM.
- That it is clear MA is not in a position to care for her children.
- That there is a presumption of innocence regarding the criminal charges.
- That MA is a loving and caring mother.
- That the court should give weight to MA's opinion about DM's ability to care for M.
- That the strength of AC's position is that he stood "in loco parentis" to M.
- That the court should assess the conduct of the Minister.
- That the Minister was wrong to place M in foster care.

- That there is not clear, cogent, and convincing evidence to suggest M would suffer harm if placed with DM.
- That at page 376 of Associate Chief Justice O'Neil's decision that he stated DM can provide needs for M.
- That MZ's career is in a state of flux.
- That MZ will be relying upon his sister for support.
- That DM has been a constant in M's life since birth.
- That M essentially grew upon in Cape Breton.
- That MZ has been absent from M's life for 6 years.
- That there is no evidence DM has not met M's needs.
- That there is no evidence DM would not support access for MZ.
- That DM and MZ are now cooperating.
- That a structured specific order without involvement of the Minister would improve the relationship between DM and MZ.
- That history of child care is important, and DM has been the one constant in M's child care.

- That MZ lost “meaningful contact” with M while in England from 2017 to 2020.
- That MZ was not proactive.
- That MZ took no meaningful steps to have contact with M.
- That MZ’s absence has consequences.
- That culture and religion are issues.
- That MZ did not use block access awarded by the Alberta courts.
- That M’s relationship with her stepsisters, I and V, would strengthen if placed with DM.
- That a move to Calgary amounts to removal from home, family and community.
- That a move to Calgary would have a negative impact on M.
- That DM will work with MZ and will put aside differences.
- That DM accepts the court’s jurisdiction to order where she must maintain residence with M.
- That DM’s plan of care for M is superior to that of MZ.

- That DM acknowledges this court is not bound by the “interim” decision of Associate Chief Justice O’Neil placing M in the “supervised care” of DM.

SUBMISISIONS - MZ (COUNSEL SHANNON MASON)

[102] It is submitted re: 18(6)(a) that:

- There is ample evidence to indicate that MZ is able to meet the needs for M.
- MZ lives with his sister, brother-in-law, niece and nephew in a spacious home, where M would have her own bedroom.
- MZ has significant income earning potential. Meeting M’s physical needs will not be a problem.
- MZ can meet his daughter’s emotional needs. He is loving and affectionate with M.
- MZ is prepared to address any challenges posed by a transition to Calgary. He is prepared to work very hard to minimize these challenges while re-establishing himself in M’s life and strengthening their bond.

- MZ can meet M's educational needs. School has been arranged and M will attend the same school as her cousins. MZ will be able to transport the children to and from school, which is a 5 minute drive from their home.

[103] It is submitted re: s. 18(6))(b) that:

- It is very important to MZ that M maintain contact with her Mother and Grandmother and siblings.
- MZ sees DM, in particular, as the continued link between M and her family in Cape Breton.
- MZ can work cooperatively with AC to arrange, in particular, sibling access.
- In general, MZ proposes liberal block access during Summer and holidays, either in Cape Breton or Calgary.
- Virtual access would also be a regular occurrence.
- MZ's actions since relocating to Cape Breton, show a clear commitment to maintaining contact between M and her family members.

[104] It is submitted re: s. 18(6))(c) that:

- To date, MZ has been unable to establish a history of care for M.
- Ten Alberta court orders awarding MZ increased access and costs, disprove the assertion by MA that MZ has made little to no effort to maintain contact with M.
- MA moved at least 8 times between 2015 and 2018, making it extremely difficult for MZ to locate M.
- If and when contact was made, MA would simply ignore MZ's messages.

[105] It is submitted re: s. 18(6))(d) that:

- MZ will be M's primary care giver, albeit he will have a potentially very busy work schedule.
- MZ has very strong family support to assist him in this regard.

[106] It is submitted re: s. 18(6))(e) that:

- MA and MZ observe different cultures and religions.

- It is MZ’s evidence that it is in M’s best interest to learn about both cultures and religions.

[107] It is submitted re: s. 18(6))(f) that:

- Not applicable.

[108] It is submitted re: s. 18(6))(g) that:

- It is not disputed that M has a close relationship with her Mother, MA.
- M also has a close relationship with her Father.

[109] It is submitted re: s. 18(6))(h) that:

- M has a good relationship with I and V. MZ is committed to maintaining this sibling communication if M is placed in his care.
- It is not disputed DM and M have a close relationship. MZ has acknowledged that DM has played a big role in M’s life.

[110] It is submitted re: s. 18(6))(i) that:

- It is important to MZ that M maintain consistent contact with all her family members.

- A clearly defined court order specifying access arrangements and communications methods should minimize problems and assist the parties.
- MZ has assured the court he will follow a court order as it relates to M. MZ has no history of breaching court orders.

[111] It is submitted re: s. 18(6))(j) that:

- MZ has no history of violence. He has no criminal record.
- MA has been charged with crimes involving violence.
- DM, while not violent herself, has demonstrated an inability to control MA.
- DM ties to minimize MA's prior assaults on her.
- DM allowed MA to return to the home in October 2019, contrary to the Minister's direction.
- In March 2020, MA was requested to leave the home by DM after finding drug paraphernalia. Six days later, DM requested the Minister allow MA to return to her home.

- DM removed MA out of her home again on August 25, 2020, upon finding drug paraphernalia, however, MA returned the following day.
- DM then fled the home leaving M alone with MA.
- MA attacked DM and a family friend on August 26, 2020, and less than a month later, DM attempted to visit MA in the hospital.
- In October 2020, MA contacted DM via text, contrary to court order. DM did not contact police to report same.

[112] MZ further submits:

- That DM is either unwilling or unable to shield M from the ongoing risk posed by her Mother, MA. DM's planned move to Halifax is a prime example.
- That a move to Halifax under the guise of a "fresh start" or to "reunify our family" is very troubling.
- That DM's poor judgement and lack of insight would place M at substantive risk or physical harm if returned to DM's care (**MCS v. CML** 2017, NSSC 204).
- That DM agreed a no contact order means nothing to MA (**Exhibit #1 / Page 179**).

- That as recently as October 16, 2020, DM is still accessible to MA. MA texted her Mother (DM) asking for money and threatening suicide. DM contacted police for a well being check, not to report that MA breached the court order.
- That MA will continue to attempt to take advantage of DM.
- That DM's inability to protect M is heightened by MA's lack of respect for court orders.
- That MA has assured this court that she would comply with an order for supervised access.
- That MA is not a credible witness and cannot be believed. She has lied to police; she has lied to the Minister; and she has lied to MZ.
- That DM and MA have shown distain and disregard for MZ as follows:
    - MA refers to MZ in very derogatory terms in a text message sent to him on May 15th, 2014, and attached at Exhibit E to MZ's October 15th Affidavit (Exhibit 7). She threatens that MZ will never see his daughter again.

- MA tells the child during an access visit on August 31st that she can refuse to talk to her father.
- MA falsified M's report card before sending it to MZ in an effort to keep the truth about her school performance from him.
- MA did not want MZ contacting DM to arrange access, even though M was in DM's supervised care.
- DM testified in December that M was better off in foster care at that time, than with her father.
- DM reported that M was too "scared" to visit with her father. She frequently reported that M was refusing to go with her father. However, the evidence indicates that M was comfortable in her father's care, was affectionate with him, and did not express any feelings of fear or reservation in seeing her father.
- MA and DM advised M that she would be getting her nails done and her nose pierced over the Easter weekend, notwithstanding the fact that they were both aware that MZ intended to take M to Halifax for the Easter holiday.

- On March 30th, 2021, DM became emotional during the Hearing, and advised MZ that the access visit that had been scheduled for the following day was no longer going to take place. She initially claimed to have other plans, and then claimed that M did not want to go. When a case aide came to pick M up, DM claimed that M was gone with BA.
- DM has accused MZ of attempting to "thwart" M's phone access with her mother (Exhibit 21). There is no evidence to support this assertion.
- DM has stated that "it's all about power for MZ." Again, there is no evidence to support this assertion.
- DM has accused MZ of emotionally abusing his daughter, notwithstanding there is no evidence to indicate same.
- DM describes MZ and his attempts to strengthen his relationship with his child as "disingenuous".
- DM testified that the reason why MZ took M to Halifax over the Easter weekend was because "he wanted to see the city." She would not accept that his actions were motivated by a desire to do what was best for M.

- DM claimed that the only reason why MZ had been facilitating M's supervised calls with her mother and siblings was because it had been court ordered. She was unable, or unwilling, to accept that MZ has his daughter's best interests at heart.
- MA maintains that even though MZ is M's biological father, her deceased boyfriend, Michael, is M's dad. In an email to Alyssha Ferguson dated March 9th,2021, she states "MZ is MZ. Michael is dad" **(Exhibit 2, page 120)**.   Evidence given by Ms. Ferguson confirmed that at no time over the course of the Minister's involvement did M once mention anyone named Michael.   M has consistently identified MZ as her dad.

- That it is difficult to reconcile these comments and actions with DM's testimony whereby she claims to "embrace" the fact that MZ is now part of M's life.
- That MZ feels a very strong sense of responsibility towards his daughter.
- That MZ's level of insight and admitted mistakes he has made in the past, can give this court assurance that those mistakes will not be repeated.

- That MZ's plan is sound, sensible, workable, and well conceived; and has a basis in fact (**CAS v. SMR and B** 2001 NSCA 99).

DECISION

[113] This is an application under the **Parenting and Support Act** by MZ and DM for custody of the child, M. MZ is the biological father. DM is the maternal grandmother.

[114] DM requests leave of the court to pursue her application and the court finds it is in the best interest of M for leave to be granted.

[115] Since M's birth, MA the biological mother of M, has made continued efforts to evade MZ and make it difficult for him to locate his daughter and for him to receive information about her general well being and welfare.

[116] MZ did not take proactive actions to see his daughter, and pursued his personal ambitions to become a lawyer from 2017 to 2020.

[117] Both parents are at fault in effecting the result which is currently before the court; that is a child who has primarily been raised by her grandmother, DM in the absence of the Father, MZ, and due to MA's substance abuse issues.

[118] MZ became heavily invested in this matter once he became aware of the child protection proceedings commenced in October 2019. Many of his efforts to contact his daughter were hindered by MA; DM was more of an assistance to MZ in this regard, however, it is clear to the court DM questioned whether or not MZ should be permitted to re-involve himself in M's life, given MZ's long standing absence.

[119] DM submits MZ's conduct should have consequences (ie – the consequence of being excluded from M's life). This is an extreme position given the purpose and intent of the PSA to maximize contact between parent and child.

[120] MZ testified he assumed M was safe in the care of MA, not being aware or informed of the gravity of the child welfare concerns. MZ has testified he wishes that he had handled things differently and readily takes responsibility for his mistakes, including not making more of an effort to locate MA and provide child support for M.

[121] MZ has testified he has a "moral obligation" to his daughter, and he did not foresee that child welfare would be a consistent part of M's life since MA relocated to Nova Scotia.

[122] Although MZ seeks primary care of M, he was clear that he is open to liberal access for DM, MA, AC and her siblings, I and V.

[123] The Minister supports MZ's position.

[124] DM has been involved with M since birth, and has been caring for M primarily during the time MA has been under the scrutiny of the Minister. She strongly urges the court that her past history with M puts her in a preferred position for custody, and points out to the court that MZ, other than being M's biological father, has no meaningful relationship or bond with M.

[125] MA and AC support DM's position.

[126] DM submits MZ's bid for custody should be rejected by the court. That said, MZ has been building a relationship with M since October 2019 and he relocated to Cape Breton in March 2020, so he could spend "in person" time with M. the Minister has expanded MZ's role in M's life to the point father and daughter are currently vacationing in Alberta for the month of July 2021.

[127] The following cases have been provided to the court by Ms. Mason, counsel for MZ, for the court's consideration:

- **MS v. SM**, 2016 NSFC 27:

- A 9 year old child was the center of a custody dispute between grandparents in Nova Scotia and a biological mother in Alberta.
- The biological father, who resided in Nova Scotia, supported his parents application for custody.
- The child was with the grandparents full time from January 2015 to August 2016.
- An order was issued granting the grandparents primary care with supervised phone access for the mother who was struggling with mental health and drug issues.
- The mother's struggles necessitates child welfare intervention in relation to the mother's other two children, both of whom were placed in foster care for a period of time.
- The evidence indicated the mother had made great strides in addressing her mental health and drug issues.
- Judge Daley found that the child had experienced trauma in the home of his mother and that the child was thriving in the care of the grandparents.

- Judge Daley ordered that the child be placed with the mother in Alberta, with continued access for the grandparenting during holidays and Summer.
- Judge Daley found that the efforts made by the mother to repair good mental meant that there was a low risk of the problems arising again in future.
- In this case, Judge Daley placed reliance on the case of **Starratt v Starratt**, 2013 NSFC 23, which involved a custody dispute between grandparents and biological parents in relation to a 3 year old child. The child lived with her grandparents after birth and the grandparents provided a loving and secure home for the child. In awarding primary care to the mother with liberal access to the grandparents, Judge Daley noted paragraph 19 of **Starratt v Starratt**:

> [19] Courts must have compelling and cogent reason to separate a child from biological parents, and judicial justification for doing so must be in the overall best interests of the child. Even though, at times grandparents, as is the case here, may not believe a child's best interests are served with a child remaining with biological parents, this alone will not prima facie be sufficient unless their concerns rise to a level where the welfare of the child is seriously compromised. Recognition of this legal principle, the best interests of the child, permeates the law at many levels: internationally, jurisprudentially, and statutorily. While it cannot be said that a child will never be separated from biological parents, the court acknowledges the different parenting styles offered by

> grandparents as …. Instead, the court must discern whether the parents are able to provide "good enough parenting" consistent with the best interests of the child.

[128] MZ is the biological father, but that is but one of many relevant factors for the court to consider. It is not a "trump card". The focus of this court must remain on the best interests of the child, M.

[129] In December 2020, Associate Chief Justice O'Neil ordered the return of M to the supervised care of DM. With respect to MZ, Associate Chief Justice O"Neil stated at page 374 of the transcript of his decision (**Exhibit #1**):

> … as the biological father his status is very significant in, in, in this proceeding, but ultimately this decision rests on the assessment of the child's best interests …

[130] At page 378, of the transcript of his decision (**Exhibit #1**) Associate Chief Justice O'Neil notes:

> … also I believe it's important that there be more thought to, before the child be transferred to MZ's care, that ultimately that continues to be the position of the Minister, more though to how that can be accomplished …
>
> … The child should have an opportunity, if the plan continues to be transitioned though a period of time, to the father ….

[131] Associate Chief Justice O'Neil expressed concern about MZ's plan, to the extent any transition should take place slowly in the child's best interest. Associate Chief Justice O'Neil was not opposed to the placing of M in MZ's care, just the timing of the same. December 2020, was not the time in his view.

[132] Associate Chief Justice O'Neil's decision was in the context of an interim placement hearing, under the CFSA, 7 months ago when Covid 19 restrictions were at their peak in both Nova Scotia and Alberta.

[133] Counsel agrees this court is not bound by Associate Chief Justice O'Neil's decision, but this court nonetheless finds his comments of value and instructive.

[134] In deciding the best interests of M, pursuant to the **Parenting and Support Act**, it is noted that Associate Chief Justice O'Neil's decision was rendered some 7 months ago, under the restrictions of Covid 19. Circumstances have changed in this Province and Country regarding the restrictions imposed by Covid 19. Citizens are now travelling relatively freely between Provinces without restrictions.

[135] Also, MZ has since moved slowly with his re-introduction to M. I find any concerns Associate Chief Justice O'Neil may have had with regard to MZ's plan put forth in December 2020 have been successfully addressed.

[136] MZ's plan is thus, not encumbered by the circumstances that existed in December 2020.

[137] I have scrutinized the evidence with care. I have relied upon only clear, convincing and cogent evidence to satisfy the balance of probabilities test (**FH v. McDougall** 2008 SCC 58).

[138] I have considered and reviewed all of the evidence, exhibits, transcripts and briefs, respective plans, submissions and applicable law in reaching this decision.

[139] In particular, I have considered the relevant provisions of the **Parenting and Support Act** in determining what is in the best interests of the children, M, I and V.

[140] I have concerns about the prospect of placing M in the primary care of DM. The concerns are more in relation to MA than DM herself, but DM's relationship with MA remains the main concern for the court.

[141] MA loves her children, and admits she is not capable of caring for them. Her particular conduct with drugs and criminal charges demonstrates she is out of control with little or no respect for the judicial process.

[142] In spite of her circumstances, MA wants to maintain control over her children, even while conceding she does not have the ability to put forth a workable plan to care for them.

[143] DM has little or no insight into her daughter's issues and controlling nature. It appears to be an issue of "wishful blindness" on her part. I recognize DM wants to be supportive of her daughter, but in my view, the current circumstances faced by MA, make it impossible to do so in M's best interest.

[144] The evidence before this court is clear, convincing and cogent that MA cannot be trusted. Her motives regarding MZ must be questioned.

[145] I find that DM has not come to this realization, thus placing M with DM is not in M's best interest. There is risk of harm given the lack of trustworthiness of MA and her influence over DM.

[146] I need only refer to MA's egregious conduct on August 26, 2020, along with the battery of criminal charges she now faces (**Exhibit #8**) to support this finding.

[147] This is not a criminal court, and MA is entitled to be presumed innocent until proven guilty. That said, this court is nonetheless entitled to assess MA's alleged misconduct in light of what is in the best interest of the children.

[148] MA is not a person DM should associate with. Nonetheless, DM is anxious to relocate to Halifax so as to "reunite the family", including MA. It is in M's best interest to be removed from the reach of MA, or as the Minister submits, "the web of despair".

[149] I reject the notion that DM can protect M from MA, given the evidence of her poor judgement and lack of insight into MA's issues.

[150] MZ's plan is sound, sensible, workable, well conceived, and has a basis in fact (**CAS v. SMR and B** 2001 NSCA 99).

[151] MA does not believe MZ should be in M's life. She testified otherwise, but I find MA is not credible and not to be believed in this regard. Her mandate is clear .. to exclude MZ from M's life.

[152] MA wishes to continue to punish MZ for not playing a role in M's early years. As unfortunate as this may be, MA must accept she was complicit and played a major role in MZ's absence.

[153] The nature and tone of DM"s evidence also suggests a distrust of MZ and that he should not be in M's life after all she has contributed to the care of M. DM blames MZ for his absence and believes his conduct has the consequence of exclusion.

[154] I reject the notion that DM would facilitate access for MZ if M was placed in her care. DM's negative perception of MZ is similar to that of MA. MA has manipulated her mother in the past, and will continue to do so. This is the flaw of DM's plan.

[155] Placing M in DM's primary care is not in M's best interest.

[156] I am satisfied it is in the best interest of M to be placed with her biological father in Calgary, and with her aunt , uncle and cousins. Case law earlier cited, provides precedent for this decision.

[157] Going forward, this is the best situation for M. M will not be further traumatized by issues of violence, drugs and child welfare concerns.

[158] This is what is in M's best interest; it is not a "trump card". MZ has had 7 months to meaningfully participate in M's life as her "father'.

[159] Covid 19 restrictions are under control. The transition to Calgary is in M's best interest and it can now be done safely without putting M at risk.

CONCLUSION

[160] The Minster's application in relation to the children M, V and I, is hereby dismissed with consent of the Minister.

[161] The child, M, shall be placed in the custody and primary care of MZ.

[162] DM and AC will have liberal and generous access, in person and virtual, with M, and this will include block access during the Summer and holidays.

[163] MZ has committed to make access happen with M, DM and AC. Travel costs will not be an excuse to abandon this commitment.

[164] The court accepts MZ's evidence that he respects the importance of M's family on the East Coast, and will maintain the connection.

[165] MA will have strictly supervised access with M at the discretion MZ until such time MA has demonstrated she has addressed her substance abuse and criminal issues. Any variation in this regard must be supported by the Minister.

[166] The children, I and V will be placed in the custody and primary care of AC.

[167] DM will have liberal and generous access. MA will have supervised access.

[168] MZ and AC will ensure M, I and V, spend meaningful in person and virtual time together.

[169] This will be achieved through block Summer and holiday access to be arranged by the parties. A clear structure is necessary in this regard to ensure meaningful access will occur.

[170] MA will have strictly supervised access with I and V in the discretion of AC until such time MA has demonstrated she has addressed her substance abuse and

criminal issues. Again, any variation in this regard must be supported by the Minister.

[171] I recommend the parties cooperate in the drafting of an access schedule for the children, and the parties hereto.

[172] As stated by Justice Mitchell in **JD v. DCP** 2020 PECA 14, at paragraph 117:

> [117] There is no doubt that W's relationship with his grandmother and mother are important. At the moment however, W is a child in need of protection from his mother. **It seems to me that the problem seen by the trial judge has an easy fix; the court can fashion an access order to ensure that W maintains contact with his family in Prince Edward Island. [emphasis added]**

[173] The court is available to the parties if they require assistance in this regard, however, it is best the parties work out these arrangements between themselves, as they have already done for the months of July and August, 2021.

[174] Finally, the order will include a clause ensuring no variation of this order will occur without providing written notice of same to the Minister.

[175] The parties agreed to Summer block access for July and August 2021.

[176] M will be returning from Calgary at the end of July 2021, to commence block Summer access with DM, AC and her sisters for the month of August, 2021.

[177] M shall thus be returned to the care of MZ no later than 12 noon on August 31, 2021, so arrangements may be made for MZ to travel back to Calgary with M to make preparations for the school year and settle into her new home.

Order Accordingly,

Haley, J.