

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Nova Scotia v. C.M.*, 2024 NSSC 76

Date: 20240318

Docket: CFSA-125221

Registry: Sydney

Between:

Nova Scotia (Community Services)

Applicant

v.

C.M., E.G., R.W.

Respondents

Judge: The Honourable Justice Lorne J. MacDowell

Heard: November 14, 2023, and December 19, 2023, in Sydney,
Nova Scotia

Counsel: Tara MacSween for the Applicant
Linda Tippet-Leary for C.M.
Alan Stanwick for E.G.
Coline Morrow for R.W.
Brianna Renou for Litigation Guardian

Section 94(1) Children and Family Services Act, S.N.S. 1990, c.5, s.94 provides:

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

By the Court:

INTRODUCTION

[1] This child protection decision is about 3 young children: L.G. (age 7), M.M. (age 4), and L.R.M. (age 3), (the children). The children's mother is the Respondent, C.M. (the mother). The children's father is the Respondent, E.G. (the father). The children are the half siblings of 2 other children, L.M. (age 14), and the mother's older child B.M., who is not subject to this proceeding. L.M. is the biological child of the mother and the Respondent, R.W..

[2] The child protection proceeding regarding L.M. has been concluded. On December 19, 2023, the parties consented to termination of the proceeding regarding L.M., on the basis of a Memorandum of Understanding (MOU) being entered into between the mother and the Minister of Community Services (the Minister). R.W. and the *Guardian ad Litem* for the child, L.M, took no further part in the proceeding.

[3] The Minister of Community Services (the Minister) seeks permanent care and custody of the children. The mother and the father oppose permanent care and custody; the mother seeks return of the children and the father supports the mother's position.

BACKGROUND

[4] The children were taken into care on March 15, 2022. A protection application was commenced on March 18, 2022. Interim proceedings were completed by April 13, 2022.

[5] The protection finding was made on June 15, 2022. The children were found to be in need of protective services pursuant to section 22 (2) (b) of the *Children and Family Services Act* of Nova Scotia (the *Act*).

[6] The Initial Disposition was held on September 13, 2022. This was an order for temporary care and custody of the children. Disposition Reviews occurred on multiple occasions thereafter. In each instance, the children were found to remain in need of protective services. From the initial disposition forward the children have remained in the temporary care and custody of the Minister. The deadline for final disposition on all orders in this matter was September 13, 2023.

[7] By way of Case Conference before the Honourable Associate Justice Lawrence O'Neil on September 6, 2023, the parties agreed to a so-called "*pro forma*" start. The Hearing was commenced on September 6, 2023, by the filing of Exhibit 1, the Minister's Book of Pleadings. The parties agreed to proceed by

tendering Affidavits and documentary evidence, waiving cross-examination and the making of oral Submissions.

[8] The timeline was extended in the best interests of the children to provide full examination of affidavit and documentary evidence, argument and time for consideration and decision. The hearing proceeded on November 14, 2023, and December 19, 2023.

[9] After hearing argument on the matter, I reserved decision. I provided opportunity for additional submissions. The Minister filed additional submissions on January 9, 2024. No further submissions have been received on behalf of the mother and father.

[10] At the appearance on December 19, 2023, the parties agreed to terminate the proceeding as it related to L.M. on the basis of a Memorandum of Understanding (MOU) being entered into between the Minister and C.M. The terms included:

- (a) The child L.M. will return to the care and custody of C.M. who will cooperate and comply with all reasonable requests, inquiries, directions and recommendations of any representative of the Minister.

- (b) Any representative of the Minister will have the right to enter the residence of the child, L.M. to provide guidance and assistance and to ascertain the child is being properly cared for.
- (c) C.M. will maintain regular contact with the assigned case worker, including ensuring that she is available for home visits.
- (d) C.M. can arrange parenting time between R.W. and L.M. directly with R.W. but C.M. will ensure that any parenting time for R.W. takes place in an appropriate location.
- (e) C.M. will not allow E.G. to have contact with the child, L.M..
- (f) C.M. will ensure that the child, L.M., attends school and all necessary medical appointments.
- (g) C.M. will comply with the requirements of her opiate recovery program.
- (h) C.M. will abstain from the use of alcohol and non medically prescribed drugs, and she will take prescription drugs only in the manner and dose prescribed to her.
- (i) C.M. will sign any release of information to allow the Minister to obtain information from third party service providers.

- (j) The agreement would expire 3 months from the date of signing.

History and Prior Proceedings

[11] The mother has a long-standing history of abusing opiates and prescription drugs, primarily Ritalin. She has been diagnosed with opiate dependence. She has been involved with opiate replacement therapy program for many years.

Prescription drug abuse, primarily Ritalin, has been a challenge for the mother.

[12] The mother has historically dealt with mental health difficulties, including anxiety, stress and depression, and has struggled to obtain clarity around her own ADHD diagnosis. The mother has child welfare involvement dating back to 2013.

[13] The father has been involved in significant drug related activity. He has been incarcerated, paroled, has had parole revoked, and now faces further criminal charges.

[14] Prior to the Minister commencing a child welfare proceeding in 2019, the mother had a history of drug abuse marked by street drug use and being convicted for trafficking (clonazepam). She admitted providing drugs to others. On May 18, 2017, a yellow hummer, registered to the mother was stopped with the mother and father in the vehicle together with the child, LG. He was 2 months old. Prescription drugs were found in the vehicle. Both the mother and father were placed under

arrest. An individual was contacted to take care of the child. A subsequent search warrant located prescription drugs in the home. The mother provided a statement to the police saying she had nothing to do with the father selling drugs, that there was traffic always coming to the house to buy from him and she did not know where the main stash was. She confirmed he had sold pills that morning to people, but alleged she had nothing to do with it. She recognized that pills were found in her purse and in the vehicle registered to her. The residence of the father and mother was searched, and a large quantity of opioids were found. In a related search fentanyl was found. When questioned by the worker on June 12, 2017, as to the danger of the childrens' proximity to fentanyl the mother disputed the amount found indicating "it was 30 pills".

[15] A further search warrant was executed at the home of the mother and father on July 12, 2017. The police found a large quantity of prescription pills in the mother's bedroom, including hydromorphone and Ritalin. At that time, the children B.M., L.M., and L.G. were present at the home with the maternal grandmother who was visiting. The children were in the maternal grandmother's care at that point in time.

[16] On March 14, 2019, a search warrant was executed at the mother and father's residence. Ritalin and hydromorphone were again located as well as

Naloxone. The child B.M. and L.G. were present. The mother was pregnant at the time. Unfortunately, the grandmother, who had been caring for the children, had passed away in a house fire a few weeks prior to the search. A safety plan was put in place and Agency involvement continued with B.M. and L.G. in the mother's care.

[17] The mother subsequently tested positive for Ritalin as reported by the ORP program. B.M., L.G. and L.M. were taken into care on May 14, 2019, and a child welfare proceeding was commenced. M.M. was subsequently taken into care at birth. B.M., L.M., L.G. and M.M. were found to be children in need of protective services pursuant to section 22 (2) (b) of the Act. B.M. and L.M. were, during the course of the proceeding, placed in the care of R.W. L.G. and M.M. remained in Agency care but were transitioned back to the care of the mother and father.

[18] The Minister terminated its involvement shortly after the birth of L.R.M. The family had engaged in services. The mother and father intended to co-parent but not to reside together. The Minister determined the risk had been reduced so that formal involvement was no longer necessary.

March 15, 2022 Events

[19] On March 15, 2022, the police stopped a vehicle containing the father, the mother and the children. The police advised the father he was being arrested. The father resisted and refused to open the vehicle door. The police smashed the window, and two officers dragged the father out of the vehicle to the ground. The father was tasered. Drugs were found in the car. The children were taken into care, and they have remained in care since that date.

Issues

1. Do the children remain in need of protective services?
2. If so, what order is in the children's best interest?

Law

[20] This permanent care hearing is the last of the disposition reviews. The statutory time limits are exhausted, and we are now in excess of five (5) months over the timeline. In conducting this disposition review, I must assume that the orders previously made were correct.

[21] I must determine whether the circumstances, which resulted in the original order, still exist or whether there are positive or negative changes, or whether new factual circumstances have arisen, such that the children are no longer in need of protective services. I have considered section 46 of the *Act* and relevant case law,

including *Catholic Children's Aid Society of Metropolitan Toronto v. CM*, [1994] 2 SCR 165, and *Nova Scotia (Community Services) v. RMN*, 2017 NSSC 270 Forgeron, J.

[22] When conducting a Disposition review the Court assumes that the Orders previously made were correct based upon the circumstances existing at the time. It is not my function to retry the original finding but rather I must determine whether the circumstances which resulted in the original Order still exist or whether there have been changes or factual circumstances such that the children are no longer in need of protective services. (*Nova Scotia (Community Services) v. RMN*, supra para 17).

[23] The Minister bears the burden of proof. It is the civil burden of proof based on the balance of probabilities. The Minister must present evidence that is sufficiently clear, convincing, and cogent: *F.H. v. McDougall*, [2008] 3 SCR 41. The phrase “clear, convincing, and cogent” does not create an additional or heightened level of proof. Rather, the Minister must prove why it is in the child’s best interests to be placed in the Minister’s permanent care and custody according to the legislative mandate.

[24] In making my decision, I am mindful of the threefold legislative purpose set out in section 2(1) of the *Act* to promote the integrity of the family, to protect

children from harm, and to ensure the best interests of children. The paramount consideration, however, is the best interest principle as stated in section 2(2) of the *Act*. (*Nova Scotia (Community Services) v. RMN*, supra para 19.)

[25] The *Act* must be interpreted according to a child-centered approach, in keeping with the best interests principle as defined in section 3 (2). This definition is multifaceted and non exhaustive. It directs the court to consider various factors unique to each child, including those associated with the child's emotional, physical, cultural, and social developmental needs, and those associated with risk of harm. (*Nova Scotia (Community Services) v. RMN*, Forgeron, J. supra para 20.

[26] The Minister is seeking to permanently remove the children from the parent's care, section 42(2) of the *Act* is applicable. The court must not remove a child from parental care, unless less intrusive alternatives were attempted and failed, or were refused by the parent, or would be inadequate to protect the child.

[27] I remind myself that in relation to the parents, the standard is not perfection. Rather, the question to be asked is whether adequate parenting can be achieved within the statutory timeframe.

[28] The Minister is relying on past history. Past parenting history was reviewed by Forgeron, J. in *Nova Scotia (Community Services) v. LD and DD*, 2021 NSSC 99, wherein she states at paragraph 38:

[38] Sixth, the Minister also appropriately relies on past parenting history. Although “[t]here is no legal principle that history is destiny”, past parenting is relevant as it may signal “the expectation of risk”: *D.(S.A.) v. Nova Scotia (Community Services)* 2014 NSCA 77, para. 82. The court is concerned with probabilities, not possibilities. Therefore, where past parenting history aids in the determination of future probabilities, it is admissible, germane, and relevant: *Nova Scotia (Community Services) v. L.M.* 2016 NSSC 80.

[29] In making my decision I have considered the burden of proof and all applicable provisions of the *Act*. I have also considered and applied case law relating to credibility (*Baker-Warren v. Denault*, 2009 NSSC 59) and drawing inferences (*Jacques Home Town Dry Cleaners v. Nova Scotia (Attorney General)*, 2013 NSCA 4). I have reviewed and analysed the evidence, I have considered applicable law and reflected upon the submissions of counsel.

Position of the Parties

[30] The Minister argues the children remain in need of protective services and that the best interests of the children, considering the factors in section 3(2), support the Order sought. The Minister claims services have been attempted and failed, and that the mother’s and father’s past parenting is a germane, admissible and relevant consideration.

[31] The Minister distinguishes the decision to terminate on the older child, L.M. and argues his support and consent to terminating the proceeding is based upon L.M.'s age and ability to self protect, but seeks permanent care and custody of the younger children.

[32] The Minister points to the father's history of drug trafficking and his recent conviction and future sentencing. He references the mother's prior conviction for trafficking and her ongoing involvement with the father, other charges for trafficking and the exposure of the children to drug subculture. The Minister argues that the mother knowingly or with wilful blindness, maintains contact with the father despite no contact Orders and the risk he presents, and that there is a pattern of remaining in an unhealthy relationship despite the mother's indication she would not do so. The Minister argues this relationship is likely to continue and is therefore a risk to the children.

[33] The father argues he has accepted responsibility for his trafficking. He has pled guilty to 2 counts of possession for purpose of trafficking and argues that he will be incarcerated, "out of the picture" and therefore is not a risk to the children. He supports the mother's plan.

[34] The father further argues that prior to the children coming into care on March 15, 2022, the Minister had no concern regarding the parties' ability to

parent. He argues the mother had no knowledge of drugs that were in the vehicle on March 15, 2022, and that charges against her have since been dismissed. The father disagrees that he lacks insight, but even if he does, he argues, his shortcomings cannot be held against the mother. He argues it is speculative for the Minister to suggest the parents will get back together, if and when he is released, and argues that any risk he proposes to the children will be eliminated upon his sentencing.

[35] The father argues the return of L.M. to the mother pursuant to the MOU, demonstrates that there is no substantial risk of harm to the children and the Minister cannot make a risk distinction based upon L.M.'s age and ability to self protect. In short, he argues that if the Minister accepts the mother can provide a safe, stable, secure home for L.M. on the terms of the MOU, then similar provisions imposed by me at final disposition will mitigate any risk to the children. He reiterates that risk must be assessed now, and risk to the children will be eliminated or mitigated given his anticipated incarceration and conditions placed in any Order.

[36] The mother argues she is a dedicated mother. She admits to her past mistakes and points to the steps she has taken to address Minister concerns. She notes she has supported L.M., albeit contrary to an existing court Order. She says

she took action to ensure L.M.'s needs were met. The mother argues she has a history of seeking medical treatment for ADHD and other difficulties and argues that in many respects she was not properly supported by the health system. She argues she has taken the initiative and remains in the ORP program, taking methadone and doing well. She gets her dailies, and she argues she is not monitored all the time. She acknowledges she is not blameless and has made a lot of mistakes, including maintaining a relationship with the father. She argues the day the father was arrested on March 15, 2022, was "horrifying" for the children and she was not aware of his drug dealings at the time. She faces no criminal proceedings and has engaged in and cooperated with services. She has ended her relationship with the father and is considering relocating to a location unknown to the father.

[37] In short, the mother argues that she has done the necessary work to reduce the risk and strongly urges the Court that it would not be in the best interests of the children to separate them from their half siblings, mother and family. She says she now has stability, has separated from the father and has responded with care as an involved parent. She points to her actions with respect to L.M. and submits that those actions demonstrate her concern and capacity to properly parent. It is her

position that the Minister has acknowledged her ability to care for L.M. She argues her children are no longer in need of protective services.

[38] The mother submits that while she has not always made the right choices, that she is aware of that; she is prepared to relocate but needs support in doing so and leave the father for good.

Issues

1. Do the children remain in need of protective services?
2. If so, what order is in the children's best interest?

The Children

[39] I find that these children are vulnerable given their age and needs. Two of the children have been in care in prior proceedings, returned to the parents only to return to agency care as a result of the events occurring on March 15, 2022.

[40] The child, LG. age 7, has had food sensitivities and involvement with specialist at the IWK. He has in the past worked with a behavioural interventionist and has been prescribed ADHD medication. Over the course of the Minister's involvement, he has also been involved with an occupational therapist.

[41] The child, M.M., age 4, had some difficulties with his vision although recently scheduled for surgery, this has been delayed; he wears glasses and an eye patch but otherwise appears to have done very well in care.

[42] The child, L.R.M., age 3, is in a different foster home than her brothers but has had contact with them. She is meeting developmental milestones and doing well in care. She also has vision issues, wears glasses and needs corrective procedures. She is lactose intolerant with a sensitivity to sugar.

Analysis and Decision

[43] The Minister relies upon section 22(2)(b) of the *Act* in support of this position that the children remain in need of protective services. With respect to section 22(2)(b), the Minister argues that there is a substantial risk that the children will suffer physical harm caused by the mother's and father's failure to adequately supervise and protect the children.

[44] Substantial risk as defined in section 22(1) of the *Act* as a real chance of danger that is apparent on the evidence. In ***M.J.B. v. Family and Children's Services of Kings County***, 2008 NSCA 64, paragraph 77, The Court of Appeal confirms that in relying on "substantial risk", the Minister need only prove that

there is a real chance that the future abuse will occur, and not that future abuse will actually occur.

[45] The evidence supports a finding under section 22 (2) (b) of the *Act* and I find that the children, L.G., M.M. and L.R.M. remain children in need of protective services.

[46] The Applicant has proven that there is a real chance of danger apparent on the evidence that physical harm will occur if the children were returned to the care of the mother.

[47] After considering the evidence I find the protection concerns remain. Here are my reasons:

1. I find that the mother lacks insight as the effect of her actions and the actions of the father which I find place her children at substantial risk of harm. I further find that no weight can be placed on her assertion that she will not return to the father. The mother's past comments and actions do not support that assertion. I note:

- i. The mother has on a number of occasions indicated that she would get away from the father. She has not done so. In June of 2017, she indicated she did not plan to reunite with the

father and that she knew that he could not be around her or the children. She acknowledged that she had learned 3 months prior that he was selling drugs but thought he was “only selling Ritalin”. She alleged it did not take place in the home or around her children. She subsequently reunited with the father. On March 15, 2019, the mother indicated again that she wanted to leave the father. She alleged he was violent and had been on edge since he was out of jail in June of 2018. She alleged that he had become violent and threatened to slice her throat if she left with the children.

- ii. Despite her stated intentions and concerns regarding the father, the mother has variously stated that the father would never hurt her or the children and that he is an amazing father and provider. She has acknowledged that the mother and father had argued but noted they have different parenting styles, and she is more passive. She has stated that she believes the police had it out for the father and he’d been in trouble with the law, but this did make him a bad partner or father. She has described him as “very caring” and that he will “go above and beyond for his family”. She alleged she was

coaxed and cornered by police to make her believe he was manipulating her. She indicated she had made her own decisions in the past as she does now.

- iii. On April 24, 2023, in an email to Minister worker Rod Snow, the mother indicated that the children were not subjected to any harm or neglect while in her care, other than when they were taken to care by the Minister and subjected to harm while in foster care. She indicated she was not a bad parent and never caused harm or neglect to her children. She indicated that she had been involved with the father, but she could not control other people and she could only control her own actions.
- iv. Both the mother and the father have participated in services including counselling, family support and domestic violence education.
- v. The mother has, over the course of the past and present child welfare involvement indicated her intention to remove herself from the relationship with the father. Despite her stated intention and services, she has failed to do so.

- vi. On March 9, 2022, 6 days prior to the events of March 15, 2022, the mother indicated during a mental health and addictions meeting with Shaleen Flemming that she was struggling with her partner. She indicated that he was up to his old habits and stated that he was on social assistance and had constant cash flow. The mother was reminded to limit her time around him if he was not abiding by his conditions. She alleged he threatened to harm her if she left, and she felt stuck. She noted she had lost her mother and felt she had no one to support her.
- vii. By March 15, 2022, the mother and father were found together in a car and the troubling events in the presence of the children occurred.
- viii. On August 31, 2023, in the face of the looming review hearing scheduled for September 2023, with the knowledge that the Minister was seeking permanent care of the children, social workers Bell and Simmons made an unscheduled home visit to the father. The mother was present and when questioned whether she and the father were in a relationship, she

indicated they had been in a relationship for almost 10 years. She explained that the no contact Order was very difficult because they could not be around each other and they did not have the children in their care. The evidence indicates that the mother had not varied her conditions regarding contact with the father, although the father had varied his. Regardless of the existence of any no-contact order, the mother and father were together.

- ix. The mother has long standing substance use, mental health issues and has an opioid use disorder. To her credit, she has been engaged in an opioid recovery program for many years. She is attending services as noted in her affidavit. The mother has, however, been unable to extricate herself from the relationship with the father. I find she has been unable or unwilling to conclude the relationship. She and the children have been brought into the vortex of his criminality. The children have been proximate to drug trafficking and stashes of drugs. Two of the children have been in care before with respect to the same issues.

2. The father has been sentenced to custodial sentences, including Federal incarceration. He has been subject to periods of probation and parole. He is facing further sentencing. The father has little insight to the risk he has exposed his children to. He has taken the position that he sells drugs because of financial need. He provided evidence that his risk to the children has been eliminated by services. It is clear from my involvement in this matter that the father dearly loves his children. Unfortunately, because of his drug trafficking and criminality and what that brings to the table, placing his children in proximity to drugs and trafficking, that this creates a substantial risk of harm to them.
3. I am urged to accept the father and mother's assertion that the father's contact with the children can be controlled by the mother or alternatively that I can impose conditions preventing the father from seeing his children or controlling his contact. I find that I cannot accept either the father or the mother's arguments in this respect because:
 - i. The mother has become reinvolved numerous times with the father despite her assertions otherwise.

- ii. The mother knew or ought to have known of the father's involvement with drug trafficking prior to the events of March 15, 2022, and failed to protect the children from the events of that day.
- iii. Even if I accept the mother's assertion that the father was threatening her and for that reason, she permitted him back into she and the children's lives, despite her access to and knowledge of resources and services through the Minister's involvement, she has continued to expose the children to the relationship.
- iv. Neither the father nor the mother has demonstrated an ability to follow Court Orders and undertakings.
- v. The mother willfully and clearly breached the Court Order as it pertained to the child L.M. and did not inform the Minister of what was occurring. The fact that this child was returned to the care of the mother does not change the fact that the mother admittedly was aware that she was breaching the Court's Order. Instead of bringing the matter back to Court or alerting the Minister, she and R.W. proceeded to deal with

LM's issues in a manner which was contrary to the direction of the Court.

vi. If I was to consider conditions that would prevent the father from having access to his children or controlling that contact, neither that father nor the mother put before the Court a mechanism to impose such conditions. There is no application pursuant to the *Parenting and Support Act* before the Court. Even if such a process was before me, I find such conditions would not be effective or followed; they would not be adequate to protect the children.

4. I have no evidence as to the actual incarceration of the father, only that he may be incarcerated. I find even if he is incarcerated for a period, when released, the same substantial risk will exist for these children. The mother and the father are a toxic mix. The evidence proves that the children will on the balance of probabilities be exposed to this relationship again and all it entails, whether the father is incarcerated for a period or not.
5. The events of March 15, 2022, are well documented. These include deployment of a taser to the father while the children were in the car,

the breaking of the window of the truck, forceable removal and restraint of the father in the children's presence. Given the events of March 13, 2017, this was not the first time that a child has been present for an arrest while the parents and drugs were in a vehicle. The children witnessed the events of March 15, 2022. By continuing the relationship with the father, the mother placed these children in that circumstance. I find on the evidence she will do so again.

[48] The Applicant has proven the protection concerns resulting in the protection Order continues and still exists. The mother and father's accessing of services did not and does not sufficiently reduce the substantial risk of harm.

The Argument Regarding L.M.

[49] The mother and father strenuously argue that as Minister has seen fit to support the return of the child L.M. to care of the mother under an MOU and that it is 'inconsistent and not logical for the Minister to seek permanent care having determined L.M. is not at substantial risk. The Minister has argued that LM's circumstances can be differentiated from that of the other children. L.M. is not the biological child of the father. She is 14 years of age and has ability to self protect to some measure. The children who are the subject of this proceeding have no such ability.

[50] I find that the return of L.M. to the care of the mother pursuant to the terms of the MOU does not prevent a protection finding in relation to the children.

[51] I further find that LM's circumstances are different from those of LG, MM and LRM. Each child has a unique circumstance and the risk assessment for each individual child can or may be different (*Nova Scotia (Community Services) v. M.T.*, 2021 NSSC 338 (Marche, J.))

[52] The determination of best interest for each child depends on the evidence and circumstances of each child. The differentiating factors include the age of L.M., who is fourteen; the fact, albeit contrary to Court Order that the mother has been caring for the L.M. and taken appropriate steps with respect to her schooling and services, and that L.M. is not the biological child of the father.

[53] Additionally, the mother has agreed to the MOU and at termination agreed to continued involvement and monitoring by the Minister. These terms and conditions are unique to L.M. and were consented to with further involvement by the Minister determined by agreement. No such agreement exists with regard to L.G., M.M and L.R.M.

[54] A decision regarding L.M.'s care is not before me. My choices are dismissal or permanent care with respect to L.G., M.M. and L.R.M.. There is no option for

me to order continued involvement of the Minister on a limited or long-term basis to “monitor” or supervise these children in the care of the mother.

[55] No proceeding has been placed before me to impose conditions with respect to contact by the father who is not the biological parent of L.M. and whose relationship with the mother is an ongoing risk to the children. For the reasons previously stated, even if such an option was before me, I find it would not be sufficient to reduce or manage the risk to permit the children to be returned to the mother.

Issue 2 - Given my finding the children remain in need of protective services, what order is in the children’s best interest?

[56] At this stage of the proceedings, I have only two available options. I must either dismiss the proceeding or grant a permanent care Order *NJH v. (Nova Scotia) Community Services*, 2006 NSCA 20 (para 20).

[57] The children remain in need of protective services. We are well past the statutory deadline. I find it in the best interest of the children to be placed in permanent care and custody of the Minister. An order for access is no longer legislatively possible.

[58] In making these findings I have applied the three-fold legislative purpose for use of reference while giving effect to the best interest of the children as the paramount consideration.

[59] I have great sympathy for the mother and father. I acknowledge the loss to the children as it pertains to the relationships with their siblings and parents.

[60] In coming to this determination, I have used a child centered approach. I have considered the specific needs of each child and those associated with the risk of harm. All three require stability, safety and an environment which does not expose them to the ongoing risk of drug use, trafficking or the chaotic relationship of the mother and father.

[61] Ms. MacSween will draft the order. The Order of December 19, 2023, is also outstanding.

MacDowell, J.