

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

**Citation:** *Nova Scotia (Community Services) v. L.B. & P.S.*, 2024 NSSC 191

**Date:** 20240716  
**Docket:** 126339  
**Registry:** Halifax

**Between:**

Minister of Community Services

Applicant

v.

L.B. & P.S.

Respondents

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**LIBRARY HEADING**

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**Judge:** The Honourable Justice Samuel Moreau

**Heard:** February 26, 27 and 28, 2024, in Halifax, Nova Scotia

**Written Decision:** July 16, 2024

**Subject:** Permanent care and custody.

**Summary:** The Minister of Community Services apprehended four children from the care of their parents after approximately 14 months of the children being in the parents care subject to the Minister's supervision. The matter proceeded to a 3-day permanent care and custody trial.

**Issues:** (1) Do the children remain in need of protective services?  
and  
(2) Should the children be placed in the permanent care and custody of the Minister?

**Result:** The parents successfully completed the services as requested by the Minister. The circumstances of the parents changed

since the making of the last Disposition Order. On a balance of probabilities, the Minister did not establish that there was a real chance of harm if the children were returned to the parents. The Minister's application for Permanent Care and Custody was dismissed.

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**Counsel:** Angela J. Swantee for the Applicant, Minister of Community Services  
Jennifer Anderson for the Respondent, L.B.  
Linda Tippett-Leary for the Respondent, P.S.  
Kelsey Hudson for the Guardian-Ad-Litem, Beth Archibald

**By the Court:**

**Introduction**

[1] This matter commenced with the Notice of Child Protection Application filed by the Minister of Community Services (herein after referred to as “the Minister” or “the Agency”) on June 23, 2022.

[2] The Application concerns four children: B., age 12, T., age 8, C., age 7 and D., age 5.

[3] The application was made pursuant to Section 22(2), paragraphs (b), (e), (f), (g), (h), (i), (j) and (k) of the *Children and Family Services Act* (herein after referred to as the “the Act”).

[4] During the initial 14 months of this proceeding, the children remained in the care of the parents, subject to the Minister’s supervision. On August 29, 2023, the children were apprehended and placed in the temporary care and custody of the Minister.

[5] The Minister now requests that the four children be placed in her permanent care and custody. The parents, L.B. (“the mother”) and P.S. (“the father”) maintain

that the children should be returned to their care and custody and the Minister's application should be dismissed.

### **Background Information**

[6] The parents have five children in total. The oldest child, J., age 18, is not subject to these proceedings and currently resides with the parents. J. is described as a "serious student" and hopes to commence her post-secondary studies in September, 2024.

[7] The parents, J. and her four younger siblings all resided in a two bedroom apartment prior to their apprehension and taking into care on August 29, 2023. The parents and J. remain in the same residence.

[8] The parents have been in a common law relationship for 21 years. The father is employed, working Monday to Friday, 8 am to 5 pm. He has been with the same employer throughout the life of this proceeding.

[9] The mother is not employed outside of the home. She is deaf in one ear and indicates that her hearing in the other ear has decreased significantly over time. She says her hearing difficulties impact her communication as she finds it hard to judge how loud she speaks. Resultingly, she tends to speak in louder than usual

tones. The mother had a hearing aid device. She used it inconsistently as she found it could create a sense of being “overwhelmed and disoriented”. She has misplaced the device and says the cost of a replacement is prohibitive.

[10] The maternal grandparents and paternal grandfather (the paternal grandmother has passed away) reside in the local area (within the Halifax Regional Municipality or in close proximity to) and were involved in the children’s lives prior to their apprehension.

### **History of Proceedings**

[11] In 2013, 2014 and 2015, the Minister managed referrals relating to this family.

[12] After investigations the 2013 and 2015 referrals were not substantiated. The referral in 2014 was not investigated. In 2016 one of J.’s teachers made a referral. The social worker observed the family home at the time (a one bedroom apartment) to be cluttered but not unsafe. The family was provided with services and the file eventually closed in January, 2017.

[13] The current proceeding was precipitated by a referral from one of B.’s teachers.

[14] On June 21, 2022, following a risk assessment the Agency substantiated the concerns of inadequate parenting skills, excessive discipline, emotional abuse/harm and physical neglect. A chronology of the Court appearances to August, 2023, follows:

- Interim Hearing, June 29, 2022. The Court made the reasonable and probable grounds finding, and granted an Interim Order with the children remaining in the care of the parents subject to the supervision of the minister.
- Completion of the Interim Hearing, July 14, 2022. The reasonable and probable grounds finding was confirmed. Services for the child, B. were ordered. The father consented to participating in parenting education instruction. The mother deferred her position on services requested by the Agency in order to consult her newly retained legal counsel. Both parents consented to the completion of the Interim Hearing and the Order requested.
- Pre-Trial prior to Protection, September 14, 2022. Services for the mother were deferred as she expected to be represented by new legal Counsel. Both parents consented to combining the Pre-trial Prior to Protection and Protection Hearing on this date. The Court made the protection finding pursuant to Section 22(2)(g) of the Act.
- Pre-Trial Prior to Disposition, November 1, 2022. The matter was adjourned to December 5, 2022 for the Disposition Hearing.
- Disposition Hearing, December 5, 2022. The parents consented to the Disposition finding. Three Orders for Production were granted. Both parents indicated their consent to participating in the completion of psychological assessments and also in parenting education instruction. (The father previously indicated his consent to the participating in parenting education during the July 14,

2022, appearance). As well the mother agreed to participate in counselling services and an anger management program.

- First Review Hearing, March 3, 2023. Counsel confirmed the parents participation in services and also the arrangements made for B. to attend counselling. The parents consented to renewal of the supervision order.
- Second Review Hearing, May 24, 2023. The mother completed her requirements for the psychological assessment. The parents deferred taking a position on the appointment of a Guardian-Ad-Litem for the child, B., in order to consult with their respective lawyers. Both parents consented to the renewal of the supervision order.
- Third Review Hearing, June 23, 2023. The parents consented to Ms. Archibald being appointed as Guardian-Ad-Litem for B. A case conference was held prior to this appearance during which it was agreed that the parents would provide a plan of scheduled summer activities for the children by June 27, 2023. A further case conference was scheduled for July 13, 2023. The parents consented to renewal of the Supervision Order. The matter was adjourned to September 8, 2023, for the fourth Review Hearing.

[15] The matter came before the Court on September 6, 2023. The children had been apprehended by the Agency on August 29, 2023, and put into temporary care and custody.

[16] B. and T. were placed in the same foster home, with C. and D. being in separate placements. Counsel for the Minister indicated continued concerns within the home; the mother's lack of emotional regulation, including yelling, the children being exposed to adult topics and being deprived of cognitive stimulation and



social interaction. The condition of the home also remained a concern. Counsel for the parents voiced their opposition to the apprehension, in particular that the children were not facing any imminent threats/risk to their health and safety prior to being apprehended. The Order for Temporary Care and Custody was granted.

[17] During the September 8, 2023, Review Hearing, trial dates were scheduled. A Pre-trial Conference was held on October 31, 2023, during which the Order for Temporary Care and Custody was renewed. On November 29, 2023, a pro-forma start of the Permanent Care and Custody trial was held in order to comply with the legislated time lines. The overall end date (outside date) for completion of the matter was December 5, 2023.

[18] The parties were unable to reach any form of resolution during the Settlement Conference held on December 14, 2023.

[19] A further Pre-trial Conference was held on January 24, 2024. The Trial commenced on February 26, 2024, and was three days in duration. The Court heard viva voce evidence from the following witnesses:

- Faye Halpern, family support worker;
- Jessica Goswell, the family's social worker until November, 2023;
- Danielle Roy, child in care social worker for all the children;

- Nicole Slaunwhite, who took over as the family’s social worker in November, 2023;
- Liza Gabriel, assessor who authored the parents’ psychological assessments and qualified as an expert by consent. Ms. Gabriel also authored a psychoeducational assessment report in relation to the child, B.;
- Beth Archibald, Guardian-Ad-Litem for B.;
- The Parents.

### **Issues**

[20] Do the Children remain in need of protective services; and

[21] Should the Children be placed in the permanent care and custody of the Minister?

### **Legal Framework**

[22] Sections 46 (4), (5) and (6) of the Act reads as follows:

- (4) Before making an order pursuant to subsection (5), the court shall consider
  - (a) whether the circumstances have changed since the previous disposition order was made;

- (b) whether the plan for the child's care that the court applied in its decision is being carried out;
  - (c) what is the least intrusive alternative that is in the child's best interests; and
  - (d) whether the requirements of subsection (6) have been met.
- (5) On the hearing of an application for review, the court may, in the child's best interests,
- (a) vary or terminate the disposition order made pursuant to subsection (1) of Section 42, including any term or condition that is part of that order;
  - (b) order that the disposition order terminate on a specified future date; or
  - (c) make a further or another order pursuant to subsection (1) of Section 42, subject to the time limits specified in Section 45.
- (6) Where the court reviews an order for temporary care and custody, the court may make a further order for temporary care and custody unless the court is satisfied that the circumstances justifying the earlier order for temporary care and custody are unlikely to change within a reasonably foreseeable time not exceeding the remainder of the applicable maximum time period pursuant to subsection (1) of Section 45, so that the child can be returned to the parent or guardian. 1990, c. 5, s. 46; 2015, c. 37, s. 36

[23] In *Nova Scotia (Community Services) v. G.M.*, NSSC 186, Justice Morse considered the Minister's application for a child to be placed in her permanent care and custody. At paragraph 157, Justice Morse quotes the principles articulated by Justice Forgeron in *Mi'kmaw Family and Children Services v. KDo*, 2012 NSSC 379:

- [157] In *Mi'kmaw Family and Children Services v. KDo*, 2012 NSSC 379, Justice Forgeron considered an application for permanent care and custody. Justice Forgeron identified the following principles commencing at paragraph 19:
- [19] In making my decision, I must be mindful of the legislative purpose. The threefold purpose is to promote the integrity of the family, protect children from harm, and ensure the best interests of children. The overriding consideration is, however, the best interests of children as stated in sec. 2(2) of the *Act*.
- [20] The *Act* must be interpreted according to a child centered approach, in keeping with the best interests principle as defined in sec. 3(2). This definition is multifaceted. It directs the court to consider various factors unique to each child, including those associated with the child's emotional, physical, cultural, and social development needs, and those associated with risk of harm.
- [21] In addition, sec. 42(2) of the *Act* states that the court is not to remove children from the care of their parents, unless less intrusive alternatives have been attempted and have failed, or have been refused by the parent, or would be inadequate to protect the children.
- [22] When a court conducts a disposition review, the court assumes that the orders previously made were correct, based upon the circumstances existing at the time. At a review hearing, the court must determine whether the circumstances which resulted in the original order, still exist, or whether there have been changes such that the children are no longer children in need of protective services: sec. 46 of the *Act*; and **Catholic Children's Aid Society of Metropolitan Toronto v. M. (C.)** 1994 CanLII 83 (SCC), [1994] 2 S.C.R. 165.
- [23] Past parenting history is also relevant as it may be used in assessing present circumstances. An examination of past circumstances helps the court determine the probability of the event reoccurring. The court is concerned with probabilities, not possibilities. Therefore, where past history aids in the determination of future probabilities, it is admissible, germane, and relevant: **Nova Scotia (Minister of Community Services) v. Z.S.** 1999 NSCA 155 at para. 13; **Nova Scotia (Minister of Community Services) v. G.R.** 2011 NSSC 88, para. 22, as affirmed at **Nova Scotia (Minister of Community Services) v. G.R.** 2011 NSCA 61.

[24] The burden is on the Minister to prove that the children remain in need of protective services because of a risk of future harm. The Minister must also demonstrate that the parents have not made the required changes and are unable to meet the children's needs. As this is a civil proceeding the proof required is on a balance of probabilities.

### **Services**

[25] At the onset of this proceeding, the Agency identified the following services as required and to be completed by the parents:

- Each participate in a psychological assessment;
- Each participate in parenting education and support;
- The mother participate in counselling; and
- The mother participate in anger management programming.

[26] A review of the services provided to the parents and the children, including reports generated, is examined in the subsequent paragraphs.

**Liza Gabriel**

[27] Ms. Gabriel authored both psychological assessment reports. She diagnosed the mother with having the learning disability, Dyslexia. At page 12 of the mother's report, Ms. Gabriel states:

**Working Memory Recommendations**

- Though she has adequate verbal cognition, L. has working memory challenges. As such, auditory information must be presented in small amounts at a time. Chunking information will be essential to assist her in conceptualizing information.
- Given that L. evidenced significant difficulty with working memory, she would benefit from strategies such as having larger tasks broken down into smaller units and making the subject matter more meaningful to her.
- L. is an individual who should benefit from self-monitoring, developing "to do" lists and working from explicit procedures for routine tasks.

[28] Ms. Gabriel testified to the above, reiterating her prior finding that presenting the mother with a large amount of tasks at one time would be challenging for her.

[29] Ms. Gabriel did not identify any specific diagnoses with respect to the father.

[30] Both parents were fully cooperative in the completion of the assessments.

**Faye Halpern**

[31] The viva voce evidence of Family Support Worker, Faye Halpern, was illuminating. Ms. Halpern's sessions with the parents commenced on October 6,

2022, initially meeting each week and after a period, every other week. Ms.

Halpern reviewed and recommended strategies with the parents concerning the

care of the home and the children's socialization. Ms. Halpern testified as follows:

- The condition of the home is “acceptable”;
- The parents attendance at her sessions were good;
- The parents were co-operative in their attitude, behaved in an appropriate manner during their meetings and were receptive to her recommendations, following through with her suggestions;
- Due to his work schedule the father scheduled meetings with Ms. Halpern over his lunch hour;
- After the children were taken into care both parents continued to work with her;
- The parents acknowledged their shortcomings regarding care of the home;
- The parents were honest with her;
- Progress took a bit longer but was achieved and is ongoing.

[32] I conclude the parents have a positive relationship with Ms. Halpern. It is evident the pedagogical approach she employed was effective in her interactions with the parents.

**Donna McLean**

[33] Ms. McLean was not summoned to provide viva voce evidence. Her report dated November 11 , 2023, was tendered as an exhibit by consent.

[34] Ms. McLean was contracted to provide individual counselling (including an anger management component) to the mother. The report confirms that the mother attended all sessions and did not cancel or change the appointments made. The majority of the sessions took place online as the mother had care of the youngest child, D. Subsequent to the children's apprehension the mother attended two appointments in person.

[35] Ms. McLean introduced the mother to various techniques, useful in the management of emotions and focusing on positive outcomes.

[36] Ms. McLean summarized her report by commenting on the establishment of an "open relationship" with the mother.

[37] I conclude the mother developed a trusting and therapeutic relationship with Ms. McLean within the parameters as set out for this service.

**Dr. David Mulhall, Psychiatrist**



[38] Dr. Mulhall's Psychiatric Assessment Report with respect to the mother, dated September 15, 2023, and tendered by consent concludes with the following diagnosis:

**Diagnosis:**

**Axis I:** 309.28 Adjustment Disorder with anxiety - reactive, some avoidant traits.

**Axis II:** V71.09 some avoidant traits.  
V62.89 specific reading disorder.

**Axis III:** Profound deafness in left ear has "BAHA"- bone hearing aide.

**Axis IV:** Psychosocial Stressors; Involvement with Family and Children Services and children taken into care in past two weeks. Oldest child, J. not a subject of this intervention, continues to live with them.

**Axis V:** Global Assessment of Functioning; Current by self-report, 56, best in past six months.

[39] Dr. Mulhall found no need for psychiatric involvement, mental health services nor a requirement for psychotropic medication.

**Counselling for the Father and the Mother's Hearing Aid Device**

[40] Two other issues raised during the trial require comment.

[41] The Minister intimates that the father chose not to participate in counselling after same was recommended by Ms. Gabriel in her Psychological Assessment Report.

[42] The father contends that the Minister did not follow up on the counselling service and had there been follow up he would have participated.

[43] It is unclear whether the Agency ever followed up with the father and/or any potential service providers on this issue. The totality of the evidence is supportive of the father. He fully participated in all services requested by the Minister even using his lunch hour to ensure participation.

[44] The other issue concerns the mother's hearing aid device. The Agency asserts that the mother has failed to obtain a new device or shown the initiative to pursue available funding sources which would enable her to obtain a new device.

[45] The mother testified that the day she was addressing this issue, was the very day the children were apprehended. The children's apprehension became her foremost concern and since then she has not made inquiries on obtaining a hearing aid. She also testified that a prohibitive factor to obtaining a new device is that she would have to provide the entire cost up front and would be later reimbursed 70% of the cost. She says she cannot afford the entire up front cost.

### **The Children**

**B.**

[46] Ms. Gabriel completed a Psychoeducational Assessment Report on B. in late November, 2022. B. was 11 years old at the time. Ms. Gabriel writes that B. “presents with well-developed thinking and reasoning skills. Their Full-Scale Cognitive score fell solidly within the average range, at the 25<sup>th</sup> percentile though there was variability in performance, depending on the index”.

[47] Ms. Gabriel made no specific diagnoses regarding B. Various recommendations, including participation in ongoing therapy with a qualified professional, engagement in extracurricular activities (within a peer group context) and several comments relating to tutorial support in the subject of mathematics were articulated.

[48] Cynthia Manley was contracted to provide therapeutic support to B. Her report dated May 30, 2023, (entered by consent) indicates the establishment of a good relationship between Ms. Manley and B.

[49] The gist of the report is of positive involvement. B. is described as a “unique, creative and generally happy child”.

[50] Ms. Archibald appears to have developed a good rapport with B. She reports that B. wishes to return to the care and custody of her parents. Ms. Archibald

testified that such sentiments are not uncommon for a child of B.'s age and circumstance.

**T.**

[51] T. suffered from bowel issues for 5 to 6 years. The Agency says the parents ignored recommendations on this issue and within 6 weeks of being in care T.'s bowel issues were resolved.

[52] The father testified that T. was taken to the I.W.K. Hospital on 2 to 3 occasions in relation to the bowel issue. He says it was not a persistent problem. It came and went. He says the I.W. K. recommended the use of Restoralax. The parents chose to use the seeming natural remedy of prune juice.

**C. and D.**

[53] Ms. Goswell's Affidavit sworn October 24, 2023, indicates that C. was taken to an eye appointment and it was discovered that he requires glasses. This realization occurred post apprehension.

[54] The Agency asserts that D. was not toilet trained prior to being apprehended. This is disputed by the mother who says the child was toilet trained but wore pull ups after an "accident" as he felt more comfortable while wearing them. The

mother went on to state that despite wearing pull ups, D. used the bathroom facilities.

### **Substantial Risk**

[55] The Minister maintains there is a substantial risk the children will suffer emotional harm and unfit living conditions if returned to the care of the parents.

Section 22(1) of the Act defines substantial risk as “a real chance of danger that is apparent on the evidence”. In *Nova Scotia (Community Services) v. S.C.*, 2017

NSSC 336, Justice Jollimore writes at paragraphs 35 and 36:

[35] “Substantial risk” is a real chance of danger that is apparent on the evidence: subsection 22(1) of the *Children and Family Services Act*. It is the real chance of physical or emotional harm or neglect that must be proved to the civil standard. That future physical or emotional harm or neglect will actually occur need not be established on a balance of probabilities: *MJB v. Family and Children Services of Kings County*, 2008 NSCA 64 at paragraph 77, adopting *B.S. v. British Columbia (Director of Child, Family and Community Services)*, 1998 CanLII 5958 (BC CA), at paragraphs 26 to 30.

[36] If the Minister establishes that there is a real chance of harm, the question is purely one of D’s best interests, as between permanent care and a return to the parents. If the Minister does not establish this that there is a real chance of harm, then D must be returned to her parents.

### **Analysis**

[56] Of all the interactions and contacts between or involving Agency personnel, third party service providers and the parents, Faye Halpern’s involvement is particularly significant. I consider Ms. Halpern to be the foremost authority on

these parents within the context of this matter. She has known and worked with them since October, 2022.

[57] It is evident Ms. Halpern understood and applied an amenable pedagogical framework when working with these parents. The manner in which they interacted resulted in desired outcomes in response to the Agency's concerns. Her approach also amplified the demonstrated efforts of the parents to accept direction from and work with a perceived authority figure.

[58] Ms. Halpern's approach is reinforced when considering the following portions of Ms. Gabriel's commentary on the parents: At page 9 of the mother's report Mr. Gabriel states:

**Interpersonal Functioning Scales**

L. reports disliking people and being around others, preferring to be alone. She very likely is asocial. She also reports not enjoying social events and avoiding social situations, including parties and other events where crowds are likely to gather. She very likely is socially introverted., has difficulty forming close relationships and is emotionally restricted. In addition, she reports being shy, easily embarrassed, and uncomfortable around others. She is likely to be socially inhibited, anxious and nervous in social situations, and viewed by other as socially awkward.

At page 8 of the father's report:

Based on interpretive report, P. reports having cynical beliefs, distrust of others, and believing others look out only for their own interests. He likely is hostile toward others and feels alienated from them; is distrustful, self-centered, and lacking in empathy; and has negative interpersonal experiences because of his cynical beliefs, self-centeredness, and hostility.

[59] Also, Ms. Gabriel's diagnosis that the mother has working memory challenges and would benefit from larger tasks being broken down into smaller units, must be considered within the overall understanding of the Minister's involvement with this family.

[60] Given the father's work schedule, Agency personnel had more face to face interaction with the mother. The caustic relationship between the mother and some of the Agency's personnel is in stark contrast to her relationship with Ms. Halpern and Ms. McLean.

[61] Given Ms. Gabriel's commentary on the mother's social outlook, friction with perceived authority figures does not come as a surprise.

[62] Individuals are driven to excel by different motivational factors. One of the core ingredients inherent in any successful educational or institutional interaction is the ability to recognize and apply a workable formula or plan consistent with the unique components of a particular circumstance. It is not a simple or easy task.

[63] Perhaps being armed with the knowledge contained in Ms. Gabriel's report (at the beginning of the Agency's involvement) may have resulted in a different outcome as to the relationship between the mother and some of the Agency's personnel. Of course that digression is offered with the benefit of hindsight.

[64] I find that the family's economic circumstances must also be considered. Seven persons residing in a two bedroom apartment would naturally produce a certain level of clutter and disarray. Justice Jollimore's apt observation in *Nova Scotia (Community Services) v. S.C.*, supra at paragraph 74 speaks to the connection which can sometimes occur with persons of lesser economic means and their perceived parenting inabilities:

[74] It's in the context of the parent's accommodations that their poverty is conflated with being poor parents.

*The Minister's past involvement and substantial risk of future harm*

[65] As stated the referrals received by the Minister in 2013 and 2015 were not substantiated. The 2014 referral was not investigated. The 2016 referral resulted in the family being provided with services and the file eventually closed. During that period the family resided in a one bedroom apartment.



[66] In *Nova Scotia (Minister of Community Services) v. W.(W.)*, 2021 NSFC 4, Judge Dewolfe (as she then was) outlined the following factors to consider when examining evidence of past parenting to assess future substantial risk:

Although the Court may and often does consider evidence of past abuse or neglect in a new Application under the Act, there must be some new incident, event or substantial concern that “triggers” a new Application to the Court.

Initially, therefore, a Court must look at three factors:

- (1) Is there evidence to show that there is a substantial risk of harm to the children in their present situation? (“Present” being defined at the situation they were in at the time of the Application before the Court.)
- (2) Is there a substantial risk of harm based on past evidence?
- (3) Based on the foregoing, is there a substantial risk of future harm?

[67] Essentially the Agency argues their past involvement indicates that the same or similar protection concerns remained below the surface and have emerged to an extent that presently show substantial risk of future harm has been established. The Agency also maintains that the parents did not successfully avail themselves of the services offered during the present involvement to the extent or point of negating the substantial risk of future harm.

*Commentary on the Agency’s Position*

[68] With all due respect, I disagree with the Agency’s position for the reasons that follow:

- The Agency's past involvement with this family speaks for itself. One referral was substantiated which resulted in what can be termed, a positive outcome.
- I am not convinced that substantial risk of future harm to the children currently exists if they are returned to the care of the parents. I have reached this conclusion based on a thorough review of the evidence including that of the third party service providers and the results of the Assessments completed by Ms. Gabriel. Initially the less intrusive alternative (engagement utilizing supervision) was pursued by the Minister. In my estimation the more prudent approach would have been complete follow through with this course of action instead of apprehending the children. It can be argued that the mother was late in deciding on engagement with services. I am not overlooking the mother's responsibility to make timely decisions in suggesting that Ms. Gabriel's report offers important insight into the mother's psychological functioning. It is important to acknowledge these unique features (accentuated by Ms. Gabriel) within the context of the parent's involvement with the Agency. As confirmed by Ms. Halpern progress was not immediate but was realized. I am satisfied a change in circumstances was occasioned by their successful completion of the services mandated by the Minister. A further illustration of the achievements sustained is the mother's stated desire to continue with Ms. McLean's counselling services.
- The evidence established that the family's new social worker last visited the home on August 3rd , 2023, approximately three weeks prior to the children's apprehension. During the approximate 3 month period (prior to the trial) in which she had carriage of the file, she had a total of three conversations with the parents. I submit it is reasonable to query whether the Agency had a comprehensive understanding of the progress made by the parents, supported by updated information.
- In my view the father has gone above and beyond in his efforts to address the Agency's concerns, while working full time hours. I accept that the mother has learned how to better navigate the

behaviors of the four children in a child focused manner as evidenced by the way she managed them during the last access visit observed by Ms. Halpern. I am satisfied the parents comprehend the importance of the children being involved in outside activities which provide positive social interactions (Scouts, Girl guides, Cadets, etc.). The mother testified on cross examination that she takes no issue with the children's participation in such activities provided they are interested.

- The grand parents reside within the local area or within driving distance of the local area and are available to provide respite to the parents. On the day the children were apprehended, they were on an outing with the Maternal Grandparents. The children sometimes go sledding at the Paternal Grandfather's residence.
- Because of their economic circumstance the parents are unable to afford the cost of a private Math tutor for B. They have no objection to B. receiving tutoring at school.
- I reiterate Ms. Halpern's evidence that the condition of the home is acceptable.
- I have commented on the nature of the Agency's prior involvement with this family. I am satisfied, I am without sufficient evidence to make a finding that these children may be and/or would be at substantial risk of future emotional harm and unfit living conditions based on the Agency's past involvement.

### **Conclusion**

[69] After carefully considering the Affidavit and viva voce evidence, the parties written and oral arguments and application of the jurisprudence to the unique facts of this case, I find the children, B., T., C., and D., do not remain in need of protective services. I find the evidence substantiates that the circumstances of the parents have changed since the making of the previous Disposition Order. I am

satisfied I am without sufficient evidence to make a finding that these children are/or would be at substantial risk of future harm if returned to the care of the parents. On a balance of probabilities, I find the Minister has not established that there is a real chance of harm.

[70] In *Nova Scotia (Community Services) v. G.P.*, 2016 NSFC 9, Judge Dyer, in his concluding comments in a case involving an Agency request for permanent care and custody, states:

[250] Looking objectively at the evidence, perhaps the parents deserve far more credit than they have been given; and the agency considerably less. I find, with respect, a more nuanced and insightful approach to the parents was warranted.

[71] I adopt Judge Dyer's astute observation.

[72] The Minister's application for placement of the 4 children in her permanent care and custody is dismissed.

[73] Counsel for the Minister shall provide the appropriate form of Order.

Samuel Moreau, J.