SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Minister of Opportunities and Social Development v. B.D.M.*, 2025 NSSC 304

Date: 20250710
Docket: Tru No. SFT CFSA - 138043
Registry: Truro

Between:

Minister of Opportunities and Social Development

Applicant

v.

B.D.M.

Respondent

LIBRARY HEADING

Judge:	The Honourable Justice Terrance G. Sheppard
Heard:	July 10, 2025, in Truro, Nova Scotia
Oral Decision:	July 10, 2025
Written Decision:	September 25, 2025
Subject:	Age limit for Secure-Treatment Orders
Summary:	The Minister of Opportunities and Social Development applied for a Secure-Treatment Order for B.D.M 11 days before his 19th birthday. B.D.M was in the permanent care and custody of the MOSD and had that order extended to his 21st birthday.
Issue:	When a child in care has had the permanent care and custody order extended to their 21st birthday, can they be

placed under a Secure-Treatment Order past their 19th birthday?

Result: Yes, a child in care who has had the permanent care and custody order extended to their 21st birthday can be placed under a Secure-Treatment Order past their 19th birthday.

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Restriction on Publication: s. 94(1) of the *Children and Family Services Act*

Judge:	The Honourable Justice Terrance G. Sheppard
Heard:	July 10, 2025, in Truro, Nova Scotia
Oral Decision:	July 10, 2025
Written Release:	September 25, 2025
Counsel:	Sanaz Gerami for the Applicant Nicholas Stewart for the Respondent

Restriction on publication: Pursuant to s. 94(1) *Children and Family Services Act*, S.N.S. 1990, c. 5.

Publishers of this case please take note that s. 94(1) of the *Children and Family Services Act* applies and may require editing of this judgment or its heading before publication.

SECTION 94(1) PROVIDES: 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.

By the Court:

Overview

[1] B.D.M. was born July 29, 2006. He was placed in the permanent care and custody of the, then, Minister of Community Services, on June 14, 2022, just before his sixteenth birthday. An order extending the order for permanent care and custody was granted on June 26, 2025, shortly before his nineteenth birthday.

[2] The Minister of Opportunities and Social Development filed an Application for Secure-Treatment Order on July 8, 2025. Initially, the MOSD asked for the Secure-Treatment Order to be effective until July 29, 2025, when B.D.M. turned nineteen years old. The MOSD initially interpreted the *Children and Family Services Act*, S.N.S. 1990, c. 5 to provide that B.D.M. could only be under a Secure-Treatment Order until his nineteenth birthday.

[3] I disagreed with the MOSD's interpretation and, after a discussion, there was a brief recess to allow the parties to discuss positions. When the matter returned, the MOSD took the position that B.D.M. could be under a Secure-Treatment Order past his nineteenth birthday and sought a 30-day placement. Although B.D.M. did not agree with the Minister's interpretation of the *CFSA*, he nonetheless agreed to a 30-Day Secure-Treatment Order.

Issues

[4] When a child in care has had the permanent care and custody order extended to their 21st birthday, can they be placed under a Secure-Treatment Order past their 19th birthday?

Analysis

[5] S.3(1)(e) defines child as, “a person under nineteen years of age.” The section goes on to define “child in care” under ss.(f) as a child who is in the care and custody of the MOSD either by agreement, having been taken into care, or pursuant to an order under the *CFSA*.

[6] The *CFSA* provides in s.48(1)(a) that a permanent care and custody order automatically terminates when a child turns nineteen years of age. However, if the child is under a disability, a Court can order that the permanent care and custody be extended until the child reaches twenty-one years of age.

[7] A finding was made on June 26, 2025, that B.D.M. was under a disability and the permanent care and custody order was extended until his twenty-first birthday.

[8] Prior to 2015 an order for permanent care and custody could be extended if the child was under a disability or "pursuing an education program." However, since the amendments in 2015, it can only be extended if the child is under a disability. There is very little caselaw on this provision, and none since the 2015 amendment.

[9] The definition of a child specifically says that it means a person under nineteen years of age; however, the definition of child in care does not specify an age.

[10] A basic principle of statutory interpretation is that the same words in the same statute are to be given the same meaning. See ***R v. Zeolkowski***, [1989] 1 S.C.R. 1378 at paragraph 19. However, the logical extension of that is that different words in the same statute should be given different meaning. See, for example, the decision of Dickson J. in ***R. v. Frank***, [1978] 1 S.C.R. 95 at paragraph 16 where he gave two different meanings to the phrases "Indians of the Province" and "Indians within the boundaries thereof."

[11] Based on these principles, I interpret the *CFSA* to be drawing a distinction between a "child" and a "child in care" and, despite the fact that the child is defined as someone under the age of nineteen, a child in care is not limited to that

age group. This would make sense given that for a very specific subgroup of children in care; that is, children in the permanent care and custody of the MOSD and who are under disability, it is possible to continue to be a child in care until they are twenty-one years of age if the Application is made pursuant to s.48(1)(a). I note that s.48(2) specifically states that this is not withstanding the *Age of Majority Act*, R.S.N.S. 1989, c.4.

[12] This reading of the *CFSA* also accords with the modern principle of interpretation adopted by Supreme Court of Canada in ***Re Rizzo & Rizzo Shoes Ltd.***, [1998] 1 S.C.R. 27. There, Iacobucci J. stated the following at paragraph 21:

> "…Elmer Driedger in *Construction of Statutes* (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p.87 he states:
>
> > "Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.""

[13] Here, the "scheme" and the "object" of the *CFSA* is clear. It is to protect children from harm and promote their best interests. See s.2(1). One of the functions of the MOSD is to provide care for children in its care and/or care and custody. See s.9(g).

[14] When a child is placed in the permanent care and custody of the MOSD, it becomes the legal guardian of the child and as such has all the rights, powers, and responsibilities of a parent or guardian. See s.47(1).

[15] An interpretation of the *CFSA* that denies services and treatment to children under a disability who have had the permanent care and custody extended would be contrary to these clear, stated principles.

[16] Part of the difficulty is that the provisions dealing with secure-treatment mention both "child in care" and "child." However, the operative provisions start by using the terminology of a child in care and then go on to refer to a child. So, s.55 which allows the MOSD to issue a secure-treatment certificate, and s.56 that allows the MOSD to make an application for a secure-treatment order, both state that the Minister may do this in respect of a "child in care." The subparagraphs from there simply refer to a child. However, I do not interpret the *CFSA* to impose the age limit in the definition of "child" to the definition of "child in care" in these sections simply because they use the word "child," instead of "child in care," in the subparagraphs. That result would be artificial, counter intuitive, and contrary to the entire context, scheme, and object of the *CFSA*.

Conclusion

[17] For all the foregoing reasons, I find that where a child in care has had the permanent care and custody order extended to the age of twenty-one pursuant to s.48(1)(a), their secure treatment can also extend past the age of nineteen to a maximum of twenty-one years of age. This would also apply to an application to renew a secure-treatment order pursuant to s.56(4).

[18] Given the consent of the parties, and the materials provided to me by the MOSD, I am satisfied that B.D.M. is suffering from an emotional or behavioural disorder and it is necessary to confine him in order to remedy or alleviate the disorder. Further, I am satisfied that a period of thirty days of secure treatment is the appropriate amount of time in the circumstances.

Sheppard, J.