

FAMILY COURT OF NOVA SCOTIA

Citation: Nova Scotia (Community Services) v. B.B., 2013 NSFC 18

Date: 20130801

Docket: FAMCFSA-079219

FAMMCA-082643

Registry: Amherst

Between:

Minister of Community Services

Applicant

v.

B.B.

Respondent

Betw

Between:

T.B.

Applicant

v.

B.B.

Respondent

Editorial Notice

Identifying information has been removed from this electronic version of the judgment.

Restriction on publication: Pursuant to Section 94(1) of the *Children and Family Services Act*

Judge: The Honourable Judge S. Raymond Morse

Heard: July 29, 30, 31, 2013 at Amherst, Nova Scotia

Oral Decision: August 1, 2013

Written Decision: October 1, 2013

Counsel: Cory Roberts, for the Minister of Community Services
Stephanie Hillson, for B.B.
Robert Moores, for T.B.

TO PUBLISHERS AND OTHER READERS OF THIS CASE:

PLEASE TAKE NOTE THAT SECTION 94(1) OF THE ***CHILDREN AND FAMILY SERVICES ACT*** APPLIES AND MAY REQUIRE EDITING OF THIS JUDGMENT OR ITS HEADINGS 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:

INTRODUCTION

[1] This matter comes before the court as a consolidated proceeding in order to permit determination of all matters at issue between the parties.

[2] The original proceeding was the protection proceeding commenced on behalf of the Minister of Community Services, identified as FAMCFSA-079219.

[3] The other proceeding is an application on behalf of T.B. pursuant to the *Maintenance and Custody Act*, identified as FAMMCA-082643.

[4] The children, K.D.B. (DOB June [...], 2010) and K.B. (DOB September [...], 2011), are the subject of both proceedings.

[5] The children's mother, B.B., is named as respondent in both proceedings.

[6] The Minister makes application to terminate the protection proceeding pursuant to section 46(5) of the *Children and Family Services Act* in favor of an order under section 18 of the *Maintenance and Custody Act*, which would place the children in the custody of their maternal grandfather, T.B. The Minister is therefore supportive of T.B.'s application.

[7] B.B. is opposed to the Minister's application as well as the associated application of T.B. B.B. has submitted a plan or proposal that would see the children placed in the care and custody of her mother, P.B., by way of an appropriate order under the *Maintenance and Custody Act*. It has been agreed by the parties that her plan or proposal can be considered without formal application.

[8] P.B. and her current partner reside in Edmonton, Alberta. The respondent has decided to move from Nova Scotia to Alberta where she will reside at least temporarily, with her mother. Accordingly, if the respondent's parenting proposal were accepted and approved by the court, both she and the two children would reside with P.B. in Edmonton.

[9] Throughout this decision the respondent mother will be referred to as B.B. The maternal grandfather will be referred to as T.B. His common law partner will be referred to as K.F. The maternal grandmother will be referred to as P.B. Her

common law partner will be referred to as L.D. The older child will be referred to as K.D.B. (DOB June [...], 2010) and the younger child as K.B. (DOB September [...], 2011). T.B.'s son will be referred to as R.B.

PROCEEDINGS

[10] The children K.D.B. and K.B. were taken into care by the Minister on January 30, 2012.

[11] The initial five day hearing was completed February 6, 2012 and at that time the court granted the Minister's request for a third-party supervisory order in favor of the children's maternal grandfather, T.B. The initial order was consented to by the respondent, B.B., subject to a reservation of rights.

[12] The interim hearing was subsequently completed on February 29, 2012. The third-party supervisory order in favor of T.B. was extended pending protection hearing.

[13] The protection hearing as per section 40 of the *Children and Family Services Act* was held April 11, 2012. That hearing proceeded on an uncontested basis. The court found that the two children were in need of protective services as per section 22(2), sub-paragraphs (b) and (ja). The court also granted the Minister's request for extension of the existing third-party supervisory order in favour of T.B.

[14] The initial disposition hearing pursuant to section 41 was held June 27, 2012. The Minister's disposition application was again consented to by the respondent, subject to a reservation of rights. The court granted the Minister's request for extension of the existing third-party supervisory order in favor of T.B. under section 42 of the *Children and Family Services Act*.

[15] T.B. filed an application and summons pursuant to section 18 of the *Maintenance and Custody Act* on September 11, 2012.

[16] A review hearing was held September 26, 2012 and at the conclusion of that hearing the third-party supervisory order was once again extended. Counsel for T.B. was also present at time of the September 26 appearance. The court

confirmed that T.B.'s application under the *Maintenance and Custody Act* would be held in abeyance pending the outcome of the protection proceeding.

[17] A further review hearing was held November 28, 2012. The respondent did not oppose the Minister's request for extension of the existing third-party supervisory order in favor of T.B.

[18] A further review hearing was held January 30, 2013. The existing third-party supervisory order was again extended on that date.

[19] A review hearing was held April 17, 2013. At that time the Minister confirmed a request for termination of the protection proceeding in favor of a *Maintenance and Custody Act* order for T.B. Counsel for the respondent confirmed that the respondent was opposed to the Minister's application and that B.B. would be submitting an alternative plan or proposal premised upon placement of both children with her mother P.B. At the conclusion of that hearing the court confirmed that the matter would proceed as a consolidated proceeding so that all matters at issue between the parties could be heard and determined within the context of a consolidated proceeding. The consolidation was consented to by counsel for all parties.

[20] Counsel for the Minister confirmed that the outside limit for the protection proceeding was June 27, 2013. Based on that information, the court scheduled the consolidated final hearing for commencement on June 26 and for continuation on July 29, 30, and 31. The court confirmed that the third-party supervisory order would remain in force and effect pending the determination of the consolidated proceeding.

[21] The final hearing commenced June 26, 2013 with the filing of two exhibits on behalf of the Minister. At the conclusion of the June 26 hearing the court confirmed that the hearing would continue as scheduled on July 29.

[22] At the outset of the hearing on July 29 counsel for the respondent confirmed that the respondent, B.B., conceded that the Minister's protection concerns had not been addressed by the respondent and therefore the children continued to be in need of protective services as of the date of the final hearing.

[23] Following submissions by counsel at the conclusion of trial on July 31 the court advised that the court's decision would be confirmed on August 1 after the

court had had the opportunity to review the evidence and consider the submissions of counsel. The court indicated that detailed written reasons for the court's decision would be provided in due course.

[24] On August 1 the court confirmed its decision to grant the Minister's request for termination of the protection proceeding and to grant an order for joint custody in favor of T.B. and B.B. subject to appropriate terms and conditions.

[25] These are the written reasons for that decision.

SUMMARY OF EVIDENCE

[26] There were a total of 8 documentary exhibits introduced during the course of trial.

[27] While I have carefully considered and reviewed all of the evidence I do not propose to review or summarize the evidence of all the witnesses who testified during the hearing. I will review some of the testimony.

[28] Six witnesses were called on behalf the Minister including Cathy Embree, case aid; Jillian Martin, social worker; Amy McNutt, case aid; Kristen MacDonald, social worker; Holly Martin, case aid; and Mary Pat Hawley, family support worker.

[29] Jillian Martin is a social worker and has been employed by the Department of Community Services for approximately one year. She has prior social work experience in both New Brunswick and Newfoundland. She assumed responsibility for the file relating to B.B. in September 2012. Her predecessor was Kristen MacDonald.

[30] Ms. Martin was referred to Exhibit 3 and identified tabs 10, 12, 18 and 23 as copies of her sworn affidavits dated September 21, 2012, November 21, 2012, April 12, 2013 and May 31, 2013. She identified tab 13 of Exhibit 3 as the Plan of Care dated November 15, 2012 and confirmed she was the author of that document.

[31] Ms. Martin reviewed the agency's protection concerns indicating that there were concerns relating to the cleanliness of the home, mice, and chronic neglect.

There were also concerns about the respondent's interaction with the children and noted that her interaction with the younger child, K.B., was less than that with her older sibling, K.D.B.

[32] Ms. Martin testified that the services which the respondent was asked to participate in included mental health, public health and Maggie's Place. The services were requested based upon concerns regarding neglect and the respondent's parenting skills. She testified that family support services were also requested to help the respondent with basic parenting skills, help the respondent pick up on the children's cues, and to assist her in meeting the children's needs. Mental health services were required to assist in working on the issues between the respondent and her father, T.B. Maggie's Place was to provide basic parenting skills as well as an opportunity for socialization for the children. The public health program would have occurred in the respondent's home.

[33] Ms. Martin testified that there were no child protection concerns identified with respect to T.B.

[34] Ms. Martin also testified that she had no protection concerns regarding the respondent's mother, P.B.

[35] Ms. Martin testified that the Minister's concern with respect to the respondent having unsupervised care of the children was based upon the fact that the respondent failed to engage in services.

[36] Ms. Martin testified that B.B. had advised that she was not seeking services in Alberta and had no intention of seeking services. Again Ms. Martin testified that B.B. did not express an intention to pursue services but that her mother P.B. said she would seek out some services in Edmonton but Ms. Martin was not aware that that had happened.

[37] When asked about T.B.'s involvement she noted that he had sought out a referral for the child K.D.B. at mental health. He had also enrolled K.D.B. in daycare and arranged for early intervention to be involved with K.B.

[38] Ms. Martin testified that she believed that T.B. has a genuine concern for the girls. She acknowledged that he had been a referral source for the agency in the past. She indicated that she felt that he had demonstrated a very vested interest in both girls and noted again that he had sought out services on his own.

[39] Ms. Martin testified that the respondent did not maintain contact with the children when she made her first trip to Alberta in 2012. She indicated that she had suggested to B.B. that she could maintain contact by e-mail, Skype, or letter but that the respondent chose not to.

[40] Similarly Ms. Martin testified that there was an absence of contact between the respondent and the children when she made her second trip to Alberta in 2013.

[41] Ms. Martin testified that the respondent had had some access since returning from Alberta but that she had indicated that she didn't want to have the access supervised at the agency because she didn't like what the access facilitators had put in their notes. Ms. Martin confirmed that T.B. indicated his willingness to have the respondent's access at his home and she noted that there had been two access visits since this arrangement had been approved. She confirmed that B.B. returned from Alberta in July of 2013.

[42] Ms. Martin confirmed that services had been court ordered. She testified that the respondent had attended Maggie's Place once. She indicated that the respondent's reasons for not continuing were that she didn't like groups and found it boring and didn't feel she needed the help. She confirmed that the family support services did occur but that the family support worker was refused access to the home and noted that in-home family support services provide the opportunity to work with parents in their home on issues such as child proofing and discipline.

[43] During cross examination by counsel for T.B., Ms. Martin advised that when the children were taken into care and examined by a physician it was confirmed that they had been bitten by mice and had eczema. The doctor also confirmed that the children were dirty. Other concerns related to the fact the respondent had left the children with people who were inebriated. Another issue was the fact the respondent was consistently more interactive with K.D.B. than K.B. The mental health referral was not completed by the respondent B.B. The referral to public health was refused by B.B. Family support services were never completed. Ms. Martin also confirmed her understanding that it was apparent from the family support worker and access notes that the respondent was not implementing the information received from the family support worker during access visits.

[44] Ms. Martin confirmed her understanding that T.B. was open to his daughter coming to his home to visit with the children and was willing to supervise her access. She acknowledged that B.B. had voiced concerns about her relationship with her father and her ability to get along with her father. Ms. Martin testified that she felt that T.B. was frustrated because he wanted his daughter to get her children back and felt that she wasn't taking advantage of what the agency was requesting.

[45] Ms. Martin testified that when she was with P.B. she seemed to be appropriate however she said she felt that P.B. didn't share as much information as she would like and she delayed in providing information to the agency with respect to her request that the girls be placed in her care.

[46] When asked about P.B.'s proposal, Ms. Martin indicated she felt that there would be a high temptation, given the work schedule of P.B. and her partner, to leave B.B. with the children.

[47] During cross examination by counsel for the respondent, Ms. Martin acknowledged that she was off on her timeline with respect to B.B.'s trips to Alberta.

[48] When questioned by Ms. Hillson about the relationship between the respondent and her father, Ms. Martin testified that the respondent said that she and her father didn't get along because their attitudes clashed.

[49] Ms. Martin acknowledged that there was a prior history of agency involvement with T.B. and that the protection issues or concerns had not been substantiated. She noted that the concerns had come from B.B. or her mother, P.B.

[50] Ms. Martin testified that B.B. had been consistent in maintaining that her relationship with her father could not be repaired.

[51] Ms. Martin confirmed that there were no protection concerns relating to T.B.'s current partner, K.F. She also testified that T.B. had expressed concerns about the best interests of the children if placed with P.B. She acknowledged that it was possible that T.B. had an intense dislike for P.B. but also indicated that he was concerned for the safety and well-being of his grandchildren.

[52] Ms. Martin also testified that she discussed with T.B. the importance of the girls knowing both sides of their family and she said that T.B. was fine with that and open to it and acknowledged the importance of such contact.

[53] Ms. Martin testified that only on one occasion did T.B. call and inquire about respite. She confirmed that he was not happy when his request was refused. She acknowledged that he called approximately two weeks later and advised that if the children were not placed in his care by Christmas he would no longer look after the children. However she indicated that he later called and apologized and said that he was just frustrated. She indicated that during these conversations T.B. was very respectful to her and polite.

[54] Ms. Martin also testified that she had seen T.B. and his daughter, B.B., together. She had observed them outside the courtroom on occasion. She observed T.B. to be calm and respectful and not speaking with a raised voice. Any interaction she observed between the two at the agency appeared to be appropriate.

[55] At one point during cross examination, Ms. Martin confirmed that she would be concerned about B.B. having the children alone for even 15 minutes unsupervised.

[56] Ms. Martin agreed that T.B. and P.B. have very different dispositions and that P.B. is very quiet.

[57] She confirmed the Minister's position as not being one of objecting to P.B. but having a preference for placement with T.B. in Nova Scotia. She explained this preference on the basis that T.B. has had the girls in his care since they were taken into care, has provided an appropriate placement, has initiated services for the girls, has worked cooperatively with the department, and demonstrated a willingness to report issues or concerns as they come up. Accordingly, the Minister had concluded that it would be in the best interests of the two children to remain with T.B., with some contact being allowed for the respondent, B.B. She acknowledged that the Minister would have probably supported P.B.'s proposal, if T.B. had not been part of the equation.

[58] Kristen MacDonald testified on behalf of the Minister. She is currently on educational leave pursuing a Masters degree in social work. She worked with the Amherst District Office from August 2009 to August 2012. She was the social worker involved with B.B.'s case from October 2011 to August 2012. She

identified tab 1 of Exhibit 3 as her affidavit sworn February 3, 2012 and confirmed the contents of the affidavit to be true and accurate. Similarly, she identified tabs 2 and 7 as her affidavits sworn April 4 and June 12, 2012 and again confirmed the contents of the affidavits to be true and accurate.

[59] Ms. McDonald identified the protection concerns as neglect and risk of physical neglect or harm. She confirmed that the agency's case plan involved provision of access for the respondent, family support services, public health and Maggie's Place.

[60] Ms. McDonald confirmed that T.B. came forward as a possible placement. She said that he was very much involved with services like the children's family physician, and sought out early intervention for K.B. and daycare for K.D.B. She said that T.B. was in contact with her a lot.

[61] She confirmed she had discussions with P.B. about the girls being placed in her care. She left contact information with P.B. but she didn't contact Ms. McDonald from June to August 2012.

[62] Ms. McDonald confirmed that there were no concerns regarding T.B.'s care of the children. She indicated the girls appeared clean and healthy and noted that the younger child K.B. had gained weight since being placed with T.B. She testified that she felt that T.B. was creating a stable environment for the children.

[63] During cross examination by counsel for T.B., Ms. MacDonald testified that early on in the process T.B. was seeking custody, specifically joint custody between himself and B.B., but with T.B. having primary care. She testified that T.B. felt that B.B. should be involved and should see the girls and he was open to her having visits at his home.

[64] Ms. McDonald said that T.B.'s tone was fine with her and that he was very interested in getting services. She did recall some frustration on the part of T.B. with his daughter, B.B. She said that this was in terms of B.B. not wanting to have visits at his home or showing up for access visits at the agency. She indicated her belief that T.B. wanted the girls in a stable home environment. She also testified that B.B. had told her that she had no protection concerns regarding her father.

[65] During cross examination by counsel for the respondent, Ms. MacDonald testified that B.B. had told her that she was not interested in mediation with her father and that they had never gotten along.

[66] The Minister was not in a position to call the Minister's final witness on July 29 so Mr. Moores agreed to commence presentation of evidence on behalf of T.B. following completion of Ms. Martin's testimony.

[67] The first witness to testify on behalf of T.B. was his son, R.B. R.B. identified Exhibit 5 as his affidavit and confirmed that the contents were true and correct.

[68] R.B. proceeded to recount an incident that occurred earlier in the day, outside the courtroom in the hallway of the justice centre. He said that he was sitting with his stepmom, K.F. when they were approached by a very tall man. He began speaking in a rambling manner and said that he was the brother of L.D., P.B.'s boyfriend. The individual then left but came back and stated "L.D. is not a criminal but I am" and then he left once again. He also said that the individual asked if he was testifying against his father and also asked if he was testifying against his mother. R.B. indicated that he took the individual's comment about being a criminal as a bit of a threat.

[69] R.B. testified that he was aware of his sister's allegations against his father. He said he disagreed with what she had indicated in her affidavit. He said that discipline utilized by his father was by way of grounding or sending them to their rooms but did not involve hitting or bullying and he did not raise his voice and didn't lash out. He said his father did not call them inappropriate names.

[70] He testified that his nieces had a hard time at first but quickly adjusted and he said that now they are very healthy and very happy.

[71] In cross examination by counsel for the Minister, R.B. confirmed that it is his choice to live with his father. He indicated that he found his father to be the better parent. In explaining this R.B. indicated that when he was at his mother's they could do anything they wanted and he thought it was great because there were no limitations but he said that it was chaotic and there were no rules. He confirmed that his father has no difficulty telling him when something is not allowed. He indicated that his mother wouldn't say no very often if at all.

[72] In response to cross examination questions by counsel for the respondent, R.B. testified that his father did not beat or bully B.B. but acknowledged that he disciplined.

[73] The next witness to testify on behalf of T.B. was his partner, K.F. She confirmed that they been in a common-law relationship for 13 years. She identified Exhibit 6 as her affidavit and confirmed that the contents were true and correct.

[74] K.F. confirmed her understanding that T.B. believes that the children K.D.B. and K.B. should be in their care until their mother B.B. is ready to be a mom.

[75] K.F. testified that there was contact with B.B. on July 1, 2013 and that B.B. sat with them during the July 1 celebration and that there were hugs and kisses when it came time to say goodbye. She also confirmed that B.B. had visited at the house since July 1 and that the visit went well. She also said that B.B. had come down Christmas Eve 2012 and stayed overnight.

[76] K.F. confirmed the incident with L.D.'s brother outside the courtroom. She said she was scared and felt that he had done it to intimidate.

[77] K.F. testified that she has fibromyalgia and bad back pain. However she said that these conditions do not interfere with her ability to take care of the girls. She testified that she and T.B. work as a team and that they do well together. She said that they've asked the girls to call her Grammy and T.B. Grampy and to call B.B. Mom or Mommy. She confirmed that there is a photograph of B.B. in the girls' bedroom. She commented that it was sad that the girls don't see their mother enough and confirmed that they have offered B.B. more time with the girls.

[78] In cross examination by counsel for the Minister, K.F. testified that T.B. is frustrated that B.B. didn't do what social services had asked her to do and that he really wants B.B. to become a mom again.

[79] Cross examination of K.F. by Ms. Hillson was initially deferred until she had the opportunity to discuss some of the direct testimony with her client. Ms. Hillson's cross examination commenced the morning of July 30.

[80] K.F. testified that she didn't sleep well overnight and that they were seeking a peace bond with respect to L.D.'s brother. She confirmed that the brother had not demonstrated any knowledge of any of the affidavit evidence.

[81] Following K.F.'s testimony, counsel for the Minister then proceeded to call the last witness on behalf of the Minister, Mary Pat Hawley.

[82] Ms. Hawley confirmed that she was the family support worker for B.B. starting February 2012 and also supervised some access. She was referred to her affidavit sworn May 31, 2013 as found at tab 22 of Exhibit 3 and, subject to a correction at paragraph 5(b), she confirmed that the affidavit was correct and accurate.

[83] Ms. Hawley testified that the focus of family support work or services was to do with parenting, routine, discipline, safety issues and financial security. She explained that she would observe access to see if the parenting issues being worked on were being used. She noted that B.B. struggled with discipline issues. She referred to the respondent as being resistant early on and not following through. She indicated that she would have to say that the respondent was not fully engaged in the process.

[84] She testified that B.B. talked about not being able to spend time at her father's house because he was always telling her what to do or what not to do. She also said that the respondent said she didn't have to go to mental health and she commented that the respondent's lack of follow-through was consistent.

[85] Under cross examination by Stephanie Hillson she testified that access can go well if there are no big upheavals during the visit. So it would have gone well if the respondent had a nice visit. She however indicated that that doesn't mean that the issues relating to family skills were being worked on, it just meant it was a nice visit.

[86] In response to a supplementary question by counsel for T.B. she testified that if the respondent had been more engaged she would have completed the family support program.

[87] This was the last witness called on behalf the Minister and concluded the Minister's case on direct.

[88] Counsel for T.B. then resumed the case for T.B. T.B. proceeded to testify on his own behalf. T.B. identified his affidavit as Exhibit 7 and confirmed that the information in the affidavit was true and correct. During his direct examination T.B. confirmed that the split up of the marriage between he and P.B. was not happy. He confirmed that he was charged with criminal harassment six months after the breakup and that he pled guilty to it after P.B. said that if he pled guilty she would give him custody of the children. He also indicated that he had obtained a pardon for that offence. He confirmed that after pleading guilty he did receive custody of the children and had B.B. in his care until she was 14.

[89] T.B. denied ever hitting his daughter. Punishment or discipline was by way of sending to their room, grounding, or taking away PlayStation privileges.

[90] T.B. testified that he was extremely disappointed to hear that his daughter was pregnant with K.B. Being a single parent was not the life that he wanted for his daughter and he said that he told her that he was disappointed.

[91] T.B. testified that after K.B.'s birth he went to the hospital and had to provide baby clothes as well as a baby seat in order to bring B.B. and the child home. He said that B.B. never told them that the hospital wanted the baby to stay longer.

[92] T.B. testified that he felt that he was a normal grandfather when it came to his grandchildren. He said that the children didn't come to his home that much but that he would drop in and visit at their home two to three times a week. He again referred to this as a normal grandparent role. He said there were no arguments between himself and B.B.

[93] T.B. confirmed the children had been placed in his care in February 2012 after they had been taken into care by the agency. After he had learned that the children were taken into care he called the agency to confirm that he would like to have the children in his care rather than have them in foster care. He testified at some length about the difficult first night that he had with both children. K.D.B. was extremely upset and he described how stressful the first evening was.

[94] T.B. expressed some concern about unusual behaviour on the part of K.D.B. He testified that she would put pillows over doll faces and then on one occasion when K.B. was crying put a pillow over K.B.'s face. Because of his concerns he decided to contact mental health to try and get some assistance. He said that at

that point in time Children Services had not provided him with details or specifics as to the protection concerns.

[95] T.B. testified that he asked his daughter B.B. to move in with them and she said no. He explained that if B.B. had done services as requested he would be in favor of the children being placed with her but would still want to check up on her from time to time.

[96] He testified that he had wanted B.B. to move in with himself and K.F. and take courses and to be able to take the children once Children Services had given the green light for her to do so.

[97] T.B. also testified that P.B. had indicated to him at one point that she would have no problem leaving the children with B.B.

[98] T.B. testified that he would like his daughter B.B. to have visitation if he was awarded custody and that she could come to the house on a 24/7 basis if she wants. He did however indicate that P.B. would not be welcome at his house.

[99] On cross examination by counsel for the Minister, T.B. testified that K.D.B. needs consistency and structure. He reviewed the children's current routine.

[100] T.B. confirmed that contact with Pam Roberts of Mental Health was due to K.D.B.'s behaviours with the pillows. He said he felt they needed professional help to deal with the issue. Early intervention informed him that it was too early to assess K.B., however he indicated that he was told that K.D.B. was thriving in her home and doing well. He said he and his partner joined a group for grandparents through Maggie's Place. He explained that they only use one babysitter because they feel that it promotes security for K.D.B. by just having one babysitter.

[101] He indicated that his major source of frustration was B.B. not spending enough time with the girls. He testified that he didn't think that the children were ready to be taken out of his home overnight. He said at this point in time they are K.B.'s mom and dad. He acknowledged that the children like B.B. and that she is generally appropriate with the children. He explained that he was frustrated with his daughter for not accessing services and has expressed that frustration to his daughter. He said that her response was to indicate that she'll just do what she wants and that she doesn't have to do it.

[102] When asked about the children's needs he indicated that they need love and caring and felt that they had been affected by being dropped off with strangers constantly. He spoke of his experience where on one occasion he had found K.D.B. to be in the care of a man who was drunk while the actual babysitter was looking for B.B. He decided to take K.D.B. for the night. He said this was the only incident that he knew of but queried how many others had occurred that he did not know of.

[103] With respect to K.B. he said that K.B. needs love and referred to her as a beautiful child. He said that she is very intelligent. He said that she and K.D.B. play together, they love each other, hold hands a lot, and said that it's a nice situation.

[104] Again he referred to a conversation with P.B. approximately a year ago where she had indicated that B.B. was not going to hurt the children and she didn't care what Children Services were saying. She had expressed disbelief that the children were harmed by what was going on before the taking into care.

[105] At one point T.B. acknowledged that P.B.'s idea of caring for a child is nowhere near his.

[106] At one point he testified that he does not swear and holler at B.B. on the phone but acknowledged that he was very disappointed with B.B. He acknowledged that he has issues with his daughter but that the safety of his grandchildren is paramount.

[107] T.B. testified that he didn't have a problem with P.B. talking to the girls at any time. He would allow contact with P.B.'s extended family if approved by Children Services.

[108] When asked about access for P.B. he said that he would let the judge be the gatekeeper but that he would suggest weekend visits. He also said he would not have any problem with the children going to Alberta when they were older if Children Services approved and they had a return ticket and it was clear that the children were to be returned.

[109] As far as access for B.B. was concerned he indicated she could have as much she would like to have and whatever the court determined would be safe and reasonable.

[110] T.B. went on to testify that he does feel that B.B.'s access needs to be supervised as of right now but not permanently. He also indicated that to start with the supervision should mean that the supervisor should have B.B. within eyesight but it would be possible over time to progress the supervision such that it would be lessened, providing that B.B. improved.

[111] T.B. was the last witness to testify on his behalf.

[112] L.D. was the initial witness to testify on behalf of the respondent, B.B. L.D. confirmed that he is forty-four years old and has resided in Edmonton, Alberta for the past two years. He is the lead hand on a road construction crew. He is P.B.'s partner.

[113] He confirmed he was aware of the incident that had occurred in the hallway of the justice centre on July 29. He testified that he was not aware that his brother had come to the courthouse. He indicated that his brother has a lot of problems but doesn't want to deal with them. He testified that he did not encourage his brother to come to court. He said had he known of his intention to come to court he would've told him not to because it was none of his business.

[114] During cross examination by counsel for the Minister, L.D. indicated that he and P.B. had discussed the issues relating to the taking into care but that he was not clear as to the reasons why the children had been taken into care. He confirmed that he had never reviewed any documentation. His understanding of the protection issues was based upon what B.B. and P.B. have told them.

[115] L.D. testified that B.B. would not be left alone with the children unless certain criteria have been met. Again he indicated he didn't believe she should be alone with the children at this time.

[116] L.D. described the relationship between B.B. and P.B. as very close.

[117] L.D. testified that he doesn't know the girls' schedule. He indicated that his role in relation to the children if placed with P.B. would be that of parent, care provider and mentor.

[118] During cross examination, L.D. said that as soon as he found out what his brother had done he called him. He told his brother that he didn't need to get involved. He confirmed that his brother is 6 foot nine and described him as a big guy and very intimidating. L.D. also testified that he told his brother that he would have taken what his brother said to R.B. as a threat himself. He confirmed that his brother has been convicted for break and enters, theft and assault. He spent four or five years in jail for multiple charges.

[119] L.D. acknowledged that he knew that B.B. had refused classes or courses and testified that he told her she probably should've done it anyway because it couldn't hurt. He testified that they thought she was doing it but found out that she didn't. He said that he assumed that she would do the courses or programs. He'd acknowledged that he had not looked into any services for B.B. in Alberta. He hasn't spoken with day care in Edmonton. He and P.B. have not discussed the hours of day care. He didn't think that it would be likely that B.B. would take courses in Alberta. However he said that this would be a stipulation that he would want. He didn't know what he would do if B.B. didn't take the courses. He assumed that if they had care of the children and she didn't take the courses the children would stay with he and P.B. till they reached age of majority. He confirmed that B.B. would not be left alone with the children.

[120] L.D. acknowledged that there were lots of things they didn't know about K.D.B. and K.B. He agreed that for the most part he is a complete stranger to the girls.

[121] P.B. was the second witness to testify on behalf of B.B. P.B. is forty-eight years old and has resided in Edmonton for the last two years. She works full-time at Tim Hortons. She and L.D. have a three-bedroom apartment which they moved into in July this year.

[122] P.B. testified that she moved to Edmonton in May 2011 and at that point K.D.B. was almost one year old. Prior to the move she had seen K.D.B. every day and had been living just down the road from B.B. and K.D.B. She testified that B.B. and K.D.B. had been living with her and then she moved to a different apartment.

[123] P.B. testified that she separated from T.B. March 2000 and she referred to this as a hostile separation.

[124] P.B. was referred to Exhibit 4 and identified the exhibit as her affidavit. She confirmed the information in the affidavit was true and accurate.

[125] She indicated that when she would call T.B. he would talk about things such as money in an angry tone and always raise his voice. She indicated he was physically violent with her on two occasions before separation.

[126] She testified that after B.B. decided to live with her, T.B. wasn't happy and was angry. She also testified that T.B. blamed her for B.B.'s pregnancy.

[127] In referring to her son R.B.'s testimony she indicated that she didn't agree that her home was chaotic and that there was no discipline.

[128] P.B. confirmed that if the children were placed in her care she and her partner L.D. would be the primary caregivers.

[129] P.B. confirmed her understanding that B.B. would stay with she and L.D. until she eventually was able to get her own place.

[130] She indicated she understood that B.B.'s access with the children would have to be supervised and agreed that she would not be left alone with them.

[131] She confirmed that she had been in touch with the agency in Edmonton. She said there had been a discussion about courses for B.B. but she did not provide any further details. She again understood that Children's Services in Edmonton would be involved if she had care of the girls but again didn't provide specifics or details.

[132] When asked why she wanted the girls P.B. testified that she wants to be close to them, take care of them and make sure that they are happy and that they have what they need.

[133] P.B. acknowledged that T.B. could also take care of them but indicated that his attitude and anger was a concern. She indicated that T.B.'s raising of his voice had scared their children. She also expressed concern that T.B. would not allow contact with her side of the family. She said that if the children were in her care she wouldn't stop T.B. from having contact. She commented that the children should know all their family.

[134] During cross examination by counsel for the Minister, P.B. testified that her daughter B.B. had told her that she had refused supervised access at the agency. She indicated that B.B. had mentioned that she would like to see the children at her father's. She agreed that B.B. should have seen the children more than twice since returning from Edmonton. She said she told B.B. that she should see the children as much she can and she agreed that if B.B. had seen the children more often it might make a possible transition to Edmonton easier.

[135] B.B. testified that she didn't believe that her daughter B.B. would leave the girls with someone intoxicated.

[136] She testified that B.B. led her to understand that it was okay for her to leave the hospital with K.B. after K.B. had been born.

[137] She testified that B.B. had told her before the taking into care that she was having a hard time at times as a young mother responsible for two children and she had mentioned going to the food bank. She indicated that she offered assistance and sent money to help out.

[138] She suggested that T.B. didn't want she and L.D. to have the girls and that she believes the only reason that he is asking for custody is that he wants to control her and B.B. She testified that T.B. has always tried to control situations. She did acknowledge that T.B. believes that it is in the girls' best interest to stay with him and when it was suggested that this was a motivation other than wanting to control, her response was "somewhat". She indicated that she believes that T.B. cares for the girls and wants what is best for them. She was then asked whether her earlier answer that "it was only to control" was not a fair statement and there was a lengthy pause before she eventually indicated that possibly it's not fair to say that.

[139] P.B. also testified that she did not believe that B.B. would have left her child soaking in urine for long periods of time. She also indicated however that she couldn't see a babysitter doing that either.

[140] She acknowledged that B.B. had talked to her about the taking into care and had said that the information provided by the agency wasn't true. She said that she trusts her daughter and that she does not believe that she would lie to her. However she then went on to indicate that she believes that B.B. believes that the

allegations aren't true and that she herself doesn't know if they are true or not. She testified that she doesn't believe that B.B. would seriously harm the children but she wouldn't leave the children alone with B.B. if told not to by the agency.

[141] During cross examination she testified that B.B. probably shouldn't be alone with the children until she engages in services. She then indicated that she thinks that B.B. would seek out services. When asked what changes she has seen in B.B., P.B. testified that again she felt that B.B. will do what she has to and that she believes that B.B. realizes what she has to do. She indicated that B.B. realizes that if she doesn't do what she has to do she won't get her kids back. She was then asked that if B.B. had changed wouldn't she expect her to see the children more than twice since coming back from Edmonton and she answered in the affirmative and acknowledged that B.B. had not done so.

[142] P.B. acknowledged that T.B.'s concern about any possible move to Alberta for the children and the fact that they would have to adjust to another new parent was a valid concern. She agreed that his concern was a valid reason to oppose her plan. She agreed that T.B. and his partner K.F. are attached to the girls at this point in time and that it was possible that the girls were attached to them. She acknowledged that she was asking the girls to move in with someone who was unfamiliar to them. She agreed that T.B. had done a good job with R.B.

[143] P.B. acknowledged that she's only seen K.B. a few times and has not seen her enough to know her. She then indicated that she believed that the children don't really know her, not closely.

[144] P.B. confirmed that she had a meeting at the agency after the initial five day hearing and was aware that the children were in T.B.'s care. She confirmed that at that point she had concerns about his aggressive behavior. She acknowledged that she did not submit a plan or proposal to the agency for another eight months. She indicated that she had to talk to her partner L.D. and work out what would happen.

[145] At one point she agreed it would not be wise for B.B. to go west if the children were with T.B. She said she discussed that with B.B. but she had not changed her mind. She admitted she does not know if she can change B.B.'s mind on anything.

[146] B.B. testified on her own behalf. She confirmed that she completed grade 12 and indicated that she has a job lined up at Tim Hortons in Edmonton. She was

referred to her affidavit Exhibit 8 and confirmed that the contents were true and accurate.

[147] She testified that she agreed that the children K.D.B. and K.B. should not be returned to her care.

[148] She acknowledged that the issue to be resolved was which plan or proposal was most appropriate, namely whether the children would remain with her father T.B. or be placed with her mother P.B. She indicated she felt that the proposal based upon placement with P.B. would be best.

[149] She testified that as far as she could recall life with her parents prior to separation was fine.

[150] She indicated that initially when she was in her mother's care she would see her father on weekends and she said that went fine. She confirmed that eventually she went to live with her father and was with him from age 10 to 14. She said she thought it was okay until she turned 13 and then they started arguing about everything. She said she would see her mother every second weekend and also talk to her on the phone. She confirmed that she went to live with her mother when she was 14.

[151] When asked about what was stressful and unhappy about living with her father she said it was all the arguing about her not doing well in school. She said that her father would yell at her all the time. She also said she had no friends in Springhill and other than that she couldn't really remember.

[152] She testified that her father hit her on a regular basis a few times every week. She couldn't remember why this would happen. She then indicated that it would just be a slap mostly on her face. She also said her father hit R.B. when R.B. was younger and that R.B. would've been about five when this happened. She said that R.B. didn't get hit as much as she did.

[153] Again she explained the decision to live with her mother at age 14 because she never had any issues with her mother and she wasn't doing well in school and had no friends in Springhill.

[154] She confirmed she became pregnant with K.D.B. when she was 18 after she graduated from high school. She said she lived with her mother during her

pregnancy. When asked about the reaction to her pregnancy she said her father wasn't happy about it and her mother was more shocked than anything else. She said that her father blamed her mother for her pregnancy.

[155] When asked how things went after K.D.B. was born she said it was a little difficult at first after she got home from the hospital but that her mother helped her. She indicated that she wasn't happy when her mother moved out and that for the first while after this happened night times were difficult because her mother wasn't right there to help her. She was on welfare at that point. She indicated that when her mother moved to Alberta, K.D.B. was 11 months old.

[156] She confirmed she found it difficult to look after two children. She testified that she always changed the children's diapers when they needed to be changed. She denied the allegation about a urine soaked diaper as reported to the Agency. She agreed she was having problems managing both girls. She testified that both girls have problems with eczema. The usual treatment is a cortisone cream.

[157] She testified that after the children were taken into care she wasn't worried about the children being placed with T.B. and preferred that to foster care.

[158] She then testified that she would rather the children be with her mother because she has a close relationship with her mother and because she and her father don't get along.

[159] She testified that her relationship with her father was okay after K.B. was born. She said that after the taking into care things changed.

[160] She testified that T.B. had mentioned to her a few times that his and K.F.'s health is not good enough and that they are too old to look after the children.

[161] She was asked about her plan if the children were placed with her mother. She said that she would work and then get her own place. Initially she would live with her mother. She said she would have no problem with restrictions relating to her contact with the girls.

[162] She was asked if she recognized that she didn't do the programming as requested by the agency and she answered in the affirmative.

[163] She testified that she did go to mental health to fix her relationship with her dad but that she knew it probably wouldn't work. She also said she participated in two programs at Maggie's Place but that a lot of the programming related to older children. One of the programs was a cooking program and she went to the two final days of the cooking course. She agreed "a little bit" that the programming would help her. She agreed that it would be good to take programming now. She testified that she's looked online at parenting programs but she could not remember the details of the courses. She said that when she goes back to Alberta she plans on going to find out if she can get into the programs.

[164] She confirmed that the first time she went to Edmonton was August 24 to September 26, 2012 and stated that she just wanted to go for a visit. The second trip was May 1 to June 18, 2013 and again she just wanted to go for a visit.

[165] It was while she was in Edmonton that she went online to look up information about programs and on her second visit she went to a job interview for the job at Tim Hortons.

[166] She acknowledged that after her first trip to Edmonton after returning to Amherst she was charged with assault. She pled not guilty but was found guilty at the conclusion of trial and received nine-months probation by way of a conditional discharge.

[167] She confirmed that when she was out in Alberta she went with her mother to the daycare. She indicated that it was two minutes from her mother's residence. She also confirmed that there was a Catholic elementary school close by but she didn't know if the girls would be able to attend.

[168] She testified that if the children were in her father's care she would not have as much of a relationship with the girls.

[169] When asked to describe K.D.B. she said K.D.B. is a very happy kid and enjoys colouring and puzzles and Dora the Explorer and reading. She referred to K.D.B. as being very energetic. When asked about K.B. she said that K.B. is almost the same as K.D.B. and is starting to know animals and her alphabet. She seems like a happy child. She indicated her belief that her father has done a pretty good job taking care of the girls.

[170] She did not remember that she had been offered extra visits before she left for Alberta in 2012. She was pretty sure she had one visit before she left. When asked the reason for her trip she said she wanted to get away from Amherst for a while. She suggested that she did call the children while she was away. She agreed it was important to have regular contact with the children but commented that she was extremely stressed out.

[171] It was suggested to her that if she had decided to stay with her father she could have a close relationship with the children and her response was to indicate that she and her father did not get along well enough.

[172] She acknowledged that she was asked a few times if she wished longer visits and she said no because she wasn't comfortable with the visits happening in the small access room.

[173] She confirmed that following her return from Edmonton in 2013 she was asked to resume access at the agency and that she had indicated she would prefer to see the children at her father's but since making that decision had only seen the children twice. She acknowledged that her decision not to have access at the agency was because she didn't like what the access facilitators had written in their notes.

[174] She found the access visits in the agency room suffocating. But she acknowledged that she was aware that they didn't have to stay in the access room for the visit if the weather was nice and that they could go to other places. She then indicated that she had become uncomfortable with the access facilitators.

[175] In reference to her affidavit she indicated that she and her mother talked about daycare but could not remember what else they discussed.

[176] At one point during her cross examination B.B. agreed that the possible transition to Alberta would be easier on K.D.B. if she had seen her more often.

[177] When asked about her father's frustration with her and to acknowledge that the majority of his frustration was about the fact that she wasn't spending enough time with the girls her response was "I guess so".

[178] She was asked if the other source of her father's frustration was her not doing enough with services and she agreed with that suggestion.

[179] She was then asked if her father's frustration was unreasonable and she said that it was and that he didn't need to get angry.

[180] At one point during cross examination by counsel for the Minister, she testified that she believes her father wants to control her the way he did her mother. When asked to explain how her father was controlling her she indicated that it was with him being angry and frustrated all the time. Again she expressed her belief that T.B. wants the girls to be with him in order to control her and that he doesn't like her mother.

[181] She agreed that T.B. is attached to the children and when asked if that would also be reason why he wants to have care of the children her response was "I suppose so".

[182] At one point B.B. acknowledged that K.B. does not know her mother P.B. and that K.D.B. may not understand that P.B. is her grandmother.

[183] When asked about the lack of contact between herself and the children during her second visit to Alberta she indicated that she had e-mailed her brother to assist in arranging for contact by Skype. She said her brother never got back to her and therefore the lack of contact was "kind of" R.B.'s fault.

[184] When asked about the urine soaked diaper incident B.B. testified that she never did that. She then suggested that the babysitter did it to make her look bad. When asked why the babysitter would want to do that she did not have an answer.

[185] B.B. denied the accuracy of the worker's note that during an initial visit she had left K.B. in a car seat facing the wall. She stated that the access worker's note and evidence was false. She suggested that the child could see her.

[186] During cross examination by counsel for T.B. she said that before her parents separated the relationship she had with her father was fine.

[187] She agreed that after separation when she moved in with her father the relationship was fine.

[188] She agreed the relationship changed when she became a teenager. She agreed that their arguments were mostly about school. She agreed that her father's job as a parent was to make sure she did the things she was supposed to do.

[189] She was asked why her father hit her and she said she didn't remember why he had hit her. While she agreed this would've been very traumatic she could not explain why she could not remember why her father had hit her.

[190] She agreed that R.B. was not five when this happened and that he would've been eight or nine. She then said that it didn't happen to R.B. and that he wouldn't notice what was happening if he wasn't around. At another point during her cross examination she indicated that she couldn't remember a lot from her childhood.

[191] She was asked if her mother ever did anything because her father told her to and her response was "no". She indicated that she knew her father did not like one of her mother's boyfriends but agreed that that didn't stop her mother from dating that individual.

[192] She agreed that her father called her and told her that she should go back to school to get her education and agreed that that was for her benefit.

[193] She again indicated that her father wasn't happy when she became pregnant with K.D.B. but she could not recall the worst thing he said to her. She said he told her he was disappointed in that she was too young. Initially she said her father did not call her names but then indicated that he called her a bitch while pregnant with K.D.B. She confirmed that her father came to the hospital after K.D.B. was born and seemed happy and seemed to love K.D.B. Her father never said anything inappropriate.

[194] She was referred to an incident that happened in October 2010 and confirmed that she called her father for assistance and that he called 911. She called her father because she didn't know where her mother was. She agreed that what happened was that her father came to rescue her and K.D.B. and that his actions were exactly appropriate.

[195] At one point during her cross examination she testified that she believes she needs to learn parenting skills. When asked what parenting skills she indicated she wasn't sure.

[196] When it was suggested to her that she didn't like being told what to do, her response was "not really".

[197] She agreed that she told mental health there was no point in trying to fix the relationship with her father.

[198] She acknowledged that the hospital said that they wanted to keep an eye on K.B. for another day after K.B.'s birth but that she decided to go home in order to get back to K.D.B.

[199] She acknowledged that her dad had picked her up on December 23, 2012 and that she stayed with her father at his home on the 24th and the 25th until the presents were opened. She could not recall being asked to stay for Christmas dinner. She had Christmas dinner with her grandmother.

[200] She indicated that she does believe that she needs parenting skills. However she again indicated she doesn't know exactly what skills. She suggests that she's fine working in programming one-on-one. She testified that when she goes to Edmonton she will tell them that she needs to work one-on-one.

[201] She agreed that her father stepped up when needed. She indicated that she wouldn't be prepared to move back in with her father because he expected her to behave in a certain manner. She agreed however that it was a parent's job to get their children to behave in an appropriate manner. She agreed that if a parent doesn't do that it could be bad for the children.

[202] B.B. testified that she believes her mother would be more likely to permit extended family contact rather than her father.

[203] At one point she testified that her mother might move back to Cumberland County but was asked if her mother would move back because her father told her to and she said that her mother would not. She was then asked if she would move back to Cumberland County if her father asked her to and she said no. She said she wasn't going to change when it comes to guys or the way she dresses. She indicated she would change the things she did regarding the care of the girls. When asked why the court should believe her, her response was to indicate that she plans on doing the programs.

POSITION OF THE PARTIES

[204] During closing argument counsel for the respondent pointed out that the Minister had confirmed that if it were not for T.B.'s involvement they would be supportive of P.B.'s proposal. Counsel then suggested that if it was all right for B.B. to live with T.B. then why would it not be all right for B.B. to live with P.B., subject to the condition that she not be left alone with the children. It was noted that both P.B. and L.D. have an understanding of the need for supervision of B.B.'s contact with the children. Counsel for B.B. acknowledged that there was no dispute that T.B. had provided a good home for the children while they have been in his care. Counsel acknowledged that it was the best interests of the children that needs to be assessed.

[205] Counsel for the respondent suggested there was a marked difference between T.B.'s demeanor on direct and cross examination and that the demeanor of T.B. should be concerning to the court. With respect to bonding it was acknowledged that there is a bond between T.B. and K.F. and the children. It was suggested that the children would develop a strong bond with P.B. and L.D. if placed in their care.

[206] With respect to B.B.'s testimony her counsel acknowledged that she demonstrated some insight into her parenting deficiencies but not as much she should. It was conceded that she needs help as a parent and it was noted that B.B. believes placement with her mother is the best plan for the children.

[207] Counsel for B.B. also confirmed that B.B. recognizes that her access will have to be supervised and that both B.B. and P.B. had indicated that they will abide by any court order. B.B. believes she will have a better relationship with the girls if they are with her mother, P.B.

[208] Counsel for the Minister confirmed the Minister's request for dismissal of the protection proceeding and again indicated that the Minister supports the plan premised upon placement with T.B.

[209] It was acknowledged that the Minister has no protection concerns respecting P.B. but significant concerns about the part of the plan that would have B.B. living with P.B.

[210] Counsel for the Minister noted that B.B. was not disputing the Minister's protection concerns despite the denials of some of the allegations during her evidence. Counsel for the Minister indicated that the need for supervision is clear in order to alleviate substantial risk.

[211] Counsel for the Minister submitted that B.B. has put her needs ahead of the children and has demonstrated inability to prioritize the children's needs. B.B. has done little to make the plan with P.B. more viable.

[212] Mr. Roberts argued that there were credibility issues to be assessed and that P.B.'s plan or proposal is not credible. Counsel submitted that P.B. showed a lack of insight with respect to the Minister's protection concerns and was not able to accept what had happened. Counsel suggested that P.B. needs to believe that leaving the children with B.B. is a risk and suggested that P.B. simply doesn't "get it". It was argued that T.B. "gets" the protection concerns.

[213] Mr. Roberts conceded that T.B. had become frustrated and argumentative during cross examination . He suggested that T.B. was blunt on the stand. But he also suggested that T.B. was credible as far as his obvious concern for the welfare of the children is concerned. He submitted that T.B.'s plan was more credible and more developed than B.B.'s.

[214] Counsel for the Minister also argued that B.B.'s evidence was not credible.

[215] Counsel for T.B. raised a number of issues or concerns. He queried the extent to which the Alberta agency would be involved in future if the children were placed with P.B. He expressed concern about the Nova Scotia Court's ability to retain jurisdiction if the children were placed with P.B. in Alberta. He submitted that the real concern with P.B.'s proposal would be the potential for premature return of the children to B.B.

[216] Mr. Moores maintained that B.B. simply wasn't credible in not remembering why her father hit her. He suggested that if she couldn't explain why she would be beat twice a week it must be a lie.

[217] Counsel for T.B. maintained that T.B. had stepped up to the plate right from the get-go. He has demonstrated an ability to place the girls' needs ahead of his own.

[218] Mr. Moores suggested that there was an obvious inconsistency between the respondent's emphasis on the negative relationship with her father and the history of her father's support and involvement with the respondent and her children.

[219] Counsel for T.B. emphasized the importance of R.B.'s testimony. It was argued that R.B. did not have any motive or self-interest to lie and that he clearly recalled the discipline used by his father for himself and his sister. R.B. testified he was never hit. Mr. Moores argued that R.B. was an extremely credible witness and it was important to note that he'd given his testimony after being approached by a very large man in an intimidating manner.

[220] Counsel for T.B. emphasized that T.B. has always said that his daughter B.B. can come to his house any time. The visit at Christmas went well and the visits in July 2013 went well. Mr. Moores suggested that this evidence demonstrates that T.B. can put any negative feelings aside.

[221] Counsel for T.B. emphasized that T.B. never denied access contact for members of P.B.'s extended family but that the extended family had never bothered to contact the agency for agency approval.

[222] Mr. Moores agreed that T.B. is blunt and passionate about the children and perhaps even gruff. He said that T.B. is an individual who does not sugarcoat things but tells you exactly what he thinks.

[223] Counsel for T.B. emphasized that the respondent has done nothing to address her problems. It was submitted that T.B.'s plan is consistent with the best interests of the children.

LAW

Review of Applicable Legislation

[224] This matter comes before the court for determination as a consolidated proceeding. As such the court has to consider the relevant provisions of both the *Children and Family Services Act* as well as the *Maintenance and Custody Act*.

Re: *Children and Family Services Act.*

[225] I have taken note of the following provisions of the *Children and Family Services Act*:

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.

3(2) Where a person is directed pursuant to this Act, except in respect of a proposed adoption, to make an order or determination in the best interests of a child, the person shall consider those of the following circumstances that are relevant:

- (a) the importance for the child's development of a positive relationship with a parent or guardian and a secure place as a member of a family;
- (b) the child's relationships with relatives;
- (c) the importance of continuity in the child's care and the possible effect on the child of the disruption of that continuity;
- (d) the bonding that exists between the child and the child's parent or guardian;
- (e) the child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs;
- (f) the child's physical, mental and emotional level of development;
- (g) the child's cultural, racial and linguistic heritage;
- (h) the religious faith, if any, in which the child is being raised;
- (i) the merits of a plan for the child's care proposed by an agency, including a proposal that the child be placed for adoption, compared with the merits of the child remaining with or returning to a parent or guardian;
- (j) the child's views and wishes, if they can be reasonably ascertained;
- (k) the effect on the child of delay in the disposition of the case;

(l) the risk that the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent or guardian;

(m) the degree of risk, if any, that justified the finding that the child is in need of protective services;

(n) any other relevant circumstances.

22(1) In this Section, "substantial risk" means a real chance of danger that is apparent on the evidence.

(2) A child is in need of protective services where

(a) the child has suffered physical harm, inflicted by a parent or guardian of the child or caused by the failure of a parent or guardian to supervise and protect the child adequately;

(b) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (a);

...

(j) the child has suffered physical harm caused by chronic and serious neglect by a parent or guardian of the child, and the parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;

(ja) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (j);

46(1) A party may at any time apply for review of a supervision order or an order for temporary care and custody, but in any event the agency shall apply to the court for review prior to the expiry of the order or where the child is taken into care while under a supervision order.

...

(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 43 for supervision orders and in Section 45 for orders for temporary care and custody.

Re: Maintenance and Custody Act

[226] The jurisdiction of the Family Court to grant an order respecting custody and/or access is found in section 18(2) which reads as follows:

18 (2) The court may, on the application of a parent or guardian or, with leave of the court, a grandparent, other member of the child's family or another person make an order

(a) that a child shall be in or under the care and custody of the parent or guardian or authorized person; or

(b) respecting access and visiting privileges of a parent or guardian or authorized person.

[227] The *Maintenance and Custody Act* has recently been amended. The amending legislation was proclaimed February 19, 2013. The amendments confirm that the former section 18(5) has been repealed and the following substituted:

18(5) In any proceeding under this Act concerning care and custody or access and visiting privileges in relation to a child, the court shall give paramount consideration to the best interests of the child.

[228] The 2012 amendments also include sections 18(6), (7) and (8) which read as follows:

18 (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, have 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 co-operate on issues affecting the child; and

(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.

(7) When determining the impact of any family violence, abuse or intimidation, the court shall consider

(a) the nature of the family violence, abuse or intimidation;

(b) how recently the family violence, abuse or intimidation occurred;

(c) the frequency of the family violence, abuse or intimidation;

(d) the harm caused to the child by the family violence, abuse or intimidation;

(e) any steps the person causing the family violence, abuse or intimidation has taken to prevent further family violence, abuse or intimidation from occurring; and

(f) all other matters the court considers relevant.

(8) In making an order concerning care and custody or access and visiting privileges in relation to a child, the court shall give effect to the principle that a child should have as much contact with each parent as is consistent with the best interests of the child, the determination of which, for greater certainty, includes a consideration of the impact of any family violence, abuse or intimidation as set out in clause (6) (j).

Case Authorities Re: *Children and Family Services Act*

[229] In *Nova Scotia (Community Services) v. J.S.*, 2012 NSSC 396, Justice Jollimore determined the Minister's application for permanent care and custody, which application was unopposed. In the analysis portion of her decision Justice Jollimore indicated as follows commencing at paragraph 42:

[42] The purposes of the *Children and Family Services Act* are to protect children from harm, to promote the family's integrity and to assure children's best interests.

These purposes are expressed in the *Act*'s preamble and are repeated in the definition of "best interests" in subsection 3(2).

[43] In proceedings under the *Children and Family Services Act*, the child's best interests are paramount. At different points in a child protection application, the *Act* directs me to consider "the best interests of a child" when making an order or a determination. When that happens, I am to refer to the definition of best interests contained in subsection 3(2).

...

[58] My decision is to be based on J's best interests. "Best interests" are defined in subsection 3(2) of the *Act*. Some aspects of the definition aren't pertinent here: for example, J is far too young to have any views or wishes. Other aspects are relevant and critical to my decision: J's physical, mental and emotional needs and development and the care or treatment needed to meet those needs. J's development is delayed, but he is progressing as a result of attending a developmental day care. He has been hospitalized as result of serious health concerns which have not yet been diagnosed. J continues under the watchful eye of pediatric specialists. J must be cared for by someone who is mindful of his health, attentive to the detailed and changing instructions relating to his medications and willing to dedicate time to his different medical appointments. J is a likable toddler, but his care isn't easy or convenient.

[230] In *Mi'Kmaw Family and Childrens Services v. KDo*, 2012 NSSC 379 , Justice Forgeron wrote as follows commencing at paragraph 18:

[18] In this case, the agency is assigned the burden of proof. It is the civil burden of the proof. The agency must prove its case on a balance of probabilities by providing the court with "clear, convincing, and cogent evidence": **C.(R.) v. McDougall** 2008 SCC 53. The agency must prove why it is in the best interests of the children to be placed in the permanent care and custody of the agency, according to the legislative requirements, at this time.

[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.

...

[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] 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.

[231] With respect to the burden of proof I would refer to the following excerpts from the judgment of the court in *F.H. v.McDougall*, 2008 SCC 53, as delivered by Rothstein J. At paragraphs 40 and 46 His Lordship states as follows:

[40] Like the House of Lords, I think it is time to say, once and for all in Canada, that there is only one civil standard of proof at common law and that is proof on a balance of probabilities. Of course, context is all important and a judge should not be unmindful, where appropriate, of inherent probabilities or improbabilities or the seriousness of the allegations or consequences. However, these considerations do not change the standard of proof. I am of the respectful opinion that the alternatives I have listed above should be rejected for the reasons that follow.

...

[46] Similarly, evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency. In serious cases, like the present, judges may be faced with evidence of events that are alleged to have occurred many years before, where there is little other evidence than that of the plaintiff and the defendant. As difficult as the task may be, the judge must make a decision. If a responsible judge finds for the plaintiff, it must be accepted that the evidence was sufficiently

clear, convincing and cogent to that judge that the plaintiff satisfied the balance of probabilities test.

Case authorities Re: *Maintenance and Custody Act*

[232] In *Yonis v. Garado*, 2011 NSSC 454, Justice Beaton considered the meaning of "best interests" indicating as follows:

[30] What does it mean to refer to a child's "best interests"? The concept of best interests was discussed at length by the Supreme Court of Canada in *Young v. Young*, 1993 4 SCR 31. I am mindful of the discussion of the best interests test therein and also of a caution provided therein as reiterated by Justice Dellapinna, J. in *Tamlyn v. Wilcox* (*supra*) at paragraph 37:

[37] In *Young v. Young*, 1993 CanLII 34 (SCC), [1993] 4 S.C.R. 3, the Supreme Court elaborated on the "best interests" test. At paragraph 17 the Court stated:

"... the test is broad. Parliament has recognized that the variety of circumstances which may arise in disputes over custody and access is so diverse that predetermined rules, designed to resolve certain types of disputes in advance, may not be useful.... Like all legal tests, [the "best interests" test] is to be applied according to the evidence in the case, viewed objectively. There is no room for the judge's personal predilections and prejudices. The judge's duty is to apply the law. He or she must not do what he or she wants to do but what he or she ought to do."

[31] In *Burgoyne v. Kenny* 2009 N.S.C.A. 34, Bateman, J. considered *Gordon v. Goertz* (*supra*), and the often cited case in this province in *Foley v. Foley*, 124 NSR (2d) 198. At paragraph 25 of *Burgoyne v. Kenny* (*supra*), Justice Bateman said this about the list of 17 factors enumerated in *Foley* (*supra*):

[25] The list does not purport to be exhaustive nor will all factors be relevant in every case. Each case must be decided on the evidence presented. Nor is determining a child's best interests simply a matter of scoring each parent on a generic list of factors. As Abella J.A., as she then was, astutely observed in *MacGyver v. Richards* (1995), 11 R.F.L. (4th) 432 (Ont. C.A.):

27 Clearly, there is an inherent indeterminacy and elasticity to the "best interests" tests which makes it more useful as legal aspiration than as legal analysis. It can be no more than an informed opinion made at a moment in the life of a child about what seems likely to prove to be in that child's best interests. Deciding what is in a child's best interests means deciding what, objectively appears most likely in the circumstances to be conducive to the kind of environment in which a particular child has the best opportunity for receiving the needed care and attention. Because there are stages to childhood, what is in a child's best interests may vary from child to child, from year to year, and possibly from month to month. This unavoidable fluidity makes it important to attempt to minimize the prospects for stress and instability.

28 ... the only time courts scrutinize whether parental conduct is conducive to a child's best interests is when the parents are involved in the kind of fractious situation that is probably, in the inevitability of its stress and pain and ambiguity, least conducive to the child's or anyone else's best interests.

29 Deciding what is best for a child is uniquely delicate. The judge in a custody case is called upon to prognosticate about a child's future, and to speculate about which parenting proposal will turn out to be best for a child. Judges are left to do their best with the evidence, on the understanding that deciding what is best for a child is a judgment the accuracy of which may be unknowable until later events prove – or disprove – its wisdom.

[233] The often cited and referred to decision of Justice Goodfellow in *Foley v. Foley* (1993) 124 NSR (2d) 198 is seen as one of the leading Nova Scotian case authorities providing considerable guidance as to the factors to be considered in determining a custody dispute based upon consideration of the child's best interests. I think it is fair to suggest that the amended legislation has incorporated a number of the "Foley Factors" within the *Maintenance and Custody Act*.

[234] In *Boutilier-Robar v. Robar*, 2012 NSSC 279, Justice Forgeron determined competing custody claims between a mother and the paternal grandparents. Justice Forgeron commented as follows at paragraph 36:

[36] The best interests' principle has been described as one with an inherent indeterminacy and elasticity: **MacGyver v. Richards** (1995), 22 O.R. (3d) 481(Ont. C.A.), paras. 27-29. The test is a fluid concept that encompasses all aspects of a child, including the child's physical, emotional, intellectual, and social

well-being. **The court must review the plans of rival claimants and choose the course which will best provide for the healthy development of the child.** In **Foley v. Foley** (1993) 124 N.S.R. (2d) 198 (N.S.S.C.), Goodfellow, J. provided a series of factors for courts to consider and balance in determining the child's best interests. Courts typically examine such factors when assessing competing parenting plans. (My emphasis.)

[235] In *Mo v. Ma*, 2012 NSSC 159, Justice Forgeron indicated as follows commencing at paragraph 23:

[23] In making my decision, I must review the burden of proof and credibility principles. In **C. (R) v. McDougall** 2008 SCC 53, Rothstein J. confirmed that there is only one standard of proof in civil cases – that is, proof on a balance of probabilities. In every civil case, the court must scrutinize the evidence when deciding whether it is more likely than not that an alleged event occurred. The evidence must not be considered in isolation, but must be based upon its totality. The evidence must always be clear, convincing, and cogent to satisfy the balance of probabilities' test.

[24] Credibility impacts upon burden of proof. In **Baker-Warren v. Denault**, 2009 NSSC 59, this court reviewed the factors to be considered when making credibility determinations at paras. 18 to 20, and as approved in **Hurst and Gill**, 2011 NSCA 100 at para. 16. I have applied this law.

LEGAL ANALYSIS

[236] Clearly the best interests of the children are paramount to the determination of both the Minister's application under the *Children and Family Services Act* as well as T.B.'s application under the *Maintenance and Custody Act*.

[237] Similarly the burden of proof that falls upon the Minister and T.B. is the same, i.e. proof on balance of probabilities. To the extent that the respondent B.B. is asking the court to approve her parenting plan she also has to satisfy the court on balance of probabilities that her plan would be consistent with the best interests of the children.

[238] The determination of the matter requires that the court adopt a child centered approach in order to arrive at a conclusion that is consistent with the welfare of both children.

[239] In reaching my decision I've given careful consideration to all of the evidence as presented on behalf of the parties, the applicable statutory provisions and in reviewing the evidence I have assessed credibility. I have also considered the submissions of counsel.

[240] In relation to the child protection proceeding I find that the children remain in need of protective services vis-à-vis the respondent B.B. The evidence supports and justifies the conclusion that B.B. has not addressed or adequately resolved the Minister's protection concerns despite the time and opportunity afforded to her. Indeed it is important to note that the respondent herself conceded that she has not addressed the protection issues, such that the children remain in need of protective services under section 22(2), paragraphs (b) and (ja) at this point in time.

[241] The respondent did not demonstrate either an adequate or sustained commitment to participation in services during the period of time that the children were the subject of the protection proceeding. The court is left with the impression based upon consideration of the evidence that addressing the Minister's concerns was not a priority for B.B.

[242] While acknowledging that the children remain in need of protection the respondent nevertheless disputed some of the information and evidence upon which the protection concerns were based. Based upon my review of the evidence and my assessment of the respondent's credibility I have concluded that where the evidence of the respondent differs from that of the Minister as to the basis for the protection concerns, the evidence of the Minister is more reliable. I will offer additional comments with respect to the respondent's credibility later in this decision.

[243] For purposes of a final review pursuant to section 46 of the *Children and Family Services Act*, I find that there has been no change in circumstance insofar as the children remain in need of protection vis-a-vis the respondent. There has however been a significant change in circumstance given that the respondent herself is no longer requesting that the children be returned to her care and is now proposing that they be placed with her mother, P.B. The plan of care premised upon providing the respondent with the opportunity to address the protection concerns has not been carried out. The Minister opposes B.B.'s proposal in favour of placement with T.B. I find that the Minister's request for termination constitutes the least intrusive alternative consistent with the best interests of the children.

[244] The fact that the outside time limit has been reached means that the court has only limited options available under the *Children and Family Services Act*. However, in the circumstances of this particular case, the restrictions or limits that would normally apply in a case where the children have been found to be still in need of protective services at the end of the applicable statutory timeline, are alleviated by the fact that the Minister is not requesting permanent care and custody but is supportive of T.B.'s application for a custody order under the *Maintenance and Custody Act*. The Minister's request is for termination of the protection proceeding in favor of an appropriate custody order for T.B. This position is obviously based on the Minister's conclusion that placement of both children with T.B. would be consistent with the best interest of both children at this point in time.

[245] In light of the Minister's position, the case therefore involves consideration of the competing parenting proposals on behalf of the maternal grandfather, T.B., and the children's mother, B.B. Again the court's decision must be premised upon the court's conclusion as to which plan or proposal is most consistent with the best interests of the children.

[246] In reaching my decision I've considered the best interest factors as referred to in both the *Children and Family Services Act* and the *Maintenance and Custody Act*.

[247] With respect to the *Children and Family Services Act*, I would confirm the following findings with respect to factors as listed in section 3(2):

[248] (a) The evidence justifies the conclusion that the children have developed a positive relationship with T.B. and K.F. since being placed in their care in February 2012. All parties agreed that the children are at present healthy and happy with T.B. and K.F. The girls have developed a sense of security and stability with T.B. and K.F. Providing for the continuation of this placement will afford both children the opportunity to develop and maintain a positive relationship with both T.B. and K.F. and also afford them the opportunity of a continued secure place as a member of their family. The proposed placement with P.B. and her partner L.D. would represent a significant change for the children and the disruption of an existing positive placement. T.B. and K.F. have a proven track record with the children, P.B. and L.D. do not. While B.B. has consistently expressed concern that her relationship with her children will be diminished or

adversely affected if her father's parenting proposal is approved, because of her negative relationship with her father, the evidence also indicates that there have been periods of time and several occasions where B.B. and her father have had fairly positive or normal interaction. Indeed B.B. confirmed at trial that contact with her father on the July 1 holiday 2013 was positive and that two visits at her father's home since her return from Alberta have also gone well. It is obvious that placement with T.B. will not prevent or preclude a positive relationship between the children and B.B. providing B.B. is prepared to make the necessary effort to maintain contact with her children. The court also accepts the evidence of T.B. as to his willingness to permit and facilitate contact between his daughter and the children on a 24/7 basis.

[249] (b) Placement with T.B. will, of course, also permit the children to maintain an ongoing relationship with their uncle R.B., who is part of the household. I accept the evidence of T.B. as to his willingness to permit and facilitate contact between the children and their maternal grandmother P.B. and members of her extended family.

[250] (c) I find that the granting of T.B.'s application under the *Maintenance and Custody Act* recognizes the importance of continuity in the children's care and the possible effect on the children of the disruption of that continuity. As already indicated the evidence confirms that T.B. and his partner K.F. have provided excellent care for the children since February 2012 and the granting of T.B.'s application will ensure the continuity of that care and provide the children with the opportunity to continue to thrive and develop under the day-to-day care of T.B. and K.F. I find that approval of the respondent's parenting plan would produce the opposite result insofar as it would result in a disruption of continuity in the children's care. Both the respondent and P.B. agreed that disruption of the children's placement with T.B. would be traumatic for the children.

[251] (d) I find that the evidence supports and justifies the conclusion that there is at present a positive bond that exist between the children and T.B. and his partner K.F., the children's current guardians. The evidence does not indicate as significant a positive bond between the child K.D.B. and P.B. With respect to the younger child K.B., P.B. admitted herself that K.B. does not know her. I find that there is a positive bond between the children and B.B. but that that bond has been lessened or diminished by B.B.'s failure to maintain consistent access contact or to request increased access contact, as well as her absences during her visits to Alberta. Approval of T.B.'s application will permit the positive bond that

currently exists between the children and T.B. as the children's current guardian to continue.

[252] (e) I find that T.B. and his partner K.F. have demonstrated an ability to adequately meet the children's physical, mental and emotional needs and to provide the appropriate care or treatment to meet those needs. The evidence confirms that T.B. has proactively sought out services for both children on his own initiative. I find that approval of T.B.'s application under the *Maintenance and Custody Act* is most likely to ensure that the children's physical, mental and emotional needs will continue to be adequately met in future. While the evidence of P.B. certainly suggested a willingness to attend appropriately to the children's physical, mental and emotional needs there was inadequate evidence or lack of detail as to concrete or specific plans confirming how the needs of the children would be met if placed in the day-to-day care of P.B. and her partner. The evidence in support of P.B.'s plan was for the most part fairly general and based on good intentions rather than specifics.

[253] (f) I find that T.B. has demonstrated an appropriate awareness of the importance of the children's physical, mental and emotional level of development. He has sought out mental health services for K.D.B. He has sought out early intervention services for K.B. He and K.F. have enrolled in a parenting program for grandparents at Maggie's Place. T.B. and K.F. have demonstrated an ability to meet the children's needs given their current physical, mental and emotional level of development.

[254] (i) I find the plan premised upon placement with T.B. to have more merit than the plan premised upon placement with P.B. Again T.B. and his partner K.F. have a proven track record when it comes to their ability to care for the children and attend to their needs. Their commitment to parenting has been demonstrated consistently since February 2012. The children have thrived in their care. The respondent's plan would obviously result in disruption of the existing positive placement. The respondent's plan involves considerable uncertainty. Disruption of the existing placement would be traumatic for the children. In addition I remain unconvinced that P.B. really appreciates or accepts the protection concerns that resulted in the children being taken into care. If the children were to be placed in P.B.'s care I find that there would be a real risk that B.B. might be permitted to once again play a parenting role without adequate supervision and without having taken concrete steps to acquire necessary parenting skills required to ensure the children's safety and well-being.

[255] (l) I find the risk that the children might suffer harm by being removed from the care of T.B. to be significant. In particular I find that the children would likely be traumatized as a result of being removed from T.B.'s care and the security of the positive home environment that they've enjoyed since February 2012. I find the risk that the children might suffer harm by being placed in the care of P.B. to be significant based upon the potential for either inadequately supervised or unsupervised contact with B.B. given that B.B. also intends to reside with P.B.

[256] (m) I find the degree of risk that justified the finding that the children were in need of protective services to be significant or substantial. The evidence supports and justifies the conclusion that both children had been placed at risk as a result of neglect and inadequate parenting on the part of the respondent, B.B.

[257] With respect to the *Maintenance and Custody Act* I would confirm the following findings having regards to section 18(6):

[258] (a) It is clear that both children require the opportunity to live and grow in a safe and secure home environment where their needs will be adequately met on a consistent basis. T.B., with the assistance of his partner K.F. , has demonstrated since February 2012 an ability to meet the children's physical, emotional, social and educational needs. In particular I find that T.B. has demonstrated an ability to meet both children's needs for stability and safety given their ages and level of development. As noted earlier he has sought out services and supports for both children without being asked to do so by the agency, but based upon his own concerns for the welfare of both children. I'm satisfied based upon the evidence that T.B. will continue to provide adequately for the children's physical, emotional, social and educational needs, including in particular their need for stability and safety, in future. B.B.'s proposal, premised upon placement with her mother, gives rise to more questions than answers. The plan simply does not provide the same level of assurance that is afforded by T.B.'s plan and his proven track record. B.B.'s plan or proposal does not appear to be well planned or thought out. It is short on specifics or details.

[259] (b) I'm satisfied, based upon the evidence of T.B., as to his willingness to support the development and maintenance of the children's relationship not only with his daughter B.B. but also with their maternal grandparent P.B. I believe that T.B. is willing to encourage and support a meaningful and positive relationship between the children and their mother. As indicated earlier in my decision the

evidence confirms that despite the respondent's assertion as to the negative relationship with her father and an inability to get along with her father, they have in fact been able to enjoy a fairly positive and normal relationship at different times in the past and more importantly during recent access visits at T.B.'s home, during the July 1st weekend 2013, and Christmas 2012. I believe that the biggest obstacle to maintenance of B.B.'s relationship with the children is B.B.'s unwillingness or reluctance to put aside past differences or disagreement with her father in recognition of the priority she needs to place upon maintaining a relationship with her children. In other words I am satisfied that B.B. can have a meaningful and significant role in the lives of her children, even if they are placed in the day-to-day care of T.B., if she chooses to do so.

[260] (c) I'm satisfied that T.B. has demonstrated an ability to adequately meet the physical, emotional, social and educational needs of both children during the period of time that they have been in his care. Unfortunately P.B. has not been involved in the care of the children since her move to Alberta. B.B.'s care of the children was neglectful and resulted in the children being taken into care by the Minister in order to ensure their safety and welfare. Clearly B.B. was not able to provide adequate or consistent care commensurate with the needs of her children.

[261] (d) I have carefully considered the plan or proposal for the children on behalf of T.B. as well as the plan or proposal submitted on behalf of B.B. Based upon my review of the evidence I'm satisfied that the plan proposed on behalf of T.B. is more likely to ensure that the children's physical, emotional, social and educational needs are adequately met.

[262] (f) The children are not of an age where it is possible or appropriate to consider their views and preferences.

[263] (g) I find the relationship between the children and T.B., as current guardian of the children, to be positive. All parties agreed that T.B. has a very positive bond or attachment with both children. All parties agree that T.B. has done an excellent or good job in providing care for both children since February 2012. I also find that there is a positive bond between the children and B.B. However, I find that that bond or relationship is not as strong as it could be at present. I find that the bond has been lessened or weakened by the respondent's failure to maximize her opportunity for access contact with the children since the taking into care.

[264] (h) I find that there is a positive, strong and secure relationship between the children and T.B. and K.F. They readily acknowledged that assuming responsibility for the care of both children was challenging but it was obvious from their testimony that they take some pride in the fact that they responded well to the challenge and that their efforts have been rewarded by the manner in which both children have progressed and responded positively to their care. I find that T.B. and K.F. have provided both children with perhaps the most stable parenting relationship that they have experienced to date. While I accept that there is some positive connection between P.B. and K.D.B. again I have concluded that that connection has been lessened or diminished as a result of P.B.'s move to Alberta and the resulting lack of contact between P.B. and K.D.B. As noted earlier P.B. has admitted that the younger child K.B. really doesn't know her.

[265] (i) I find that T.B. has an ability to communicate and cooperate on issues affecting both children. While the relationship between T.B. and his daughter has been difficult there have also been instances where the relationship has been fairly positive. I believe that T.B. has an ability to communicate with and cooperate with B.B. on issues affecting the children despite his blunt demeanor and straightforward approach. I believe that T.B. has the ability to recognize that he needs to modify his approach to his communications with B.B. on issues affecting the children in the sense that he will need to avoid being confrontational or angry if communication is to be productive. Similarly I believe that B.B. has the ability to effectively and appropriately communicate and cooperate on issues affecting the children if she chooses to do so. Certainly T.B. has demonstrated an ability to communicate and cooperate on issues affecting the children with various professionals who have been involved with the children, including healthcare professionals and social workers.

[266] (j) I find that the children have not been directly or indirectly exposed to any family violence, abuse or intimidation while in the presence of T.B. I acknowledge the evidence of B.B. with respect to alleged incidents of abuse between herself and T.B. when she was approximately 13 years old. I did not find B.B.'s testimony with respect to physical abuse credible. She could not provide any explanation for why the abuse occurred despite the fact that she would have the court believe that it happened on a weekly basis. On more than one occasion she indicated she had difficulty remembering her childhood. I found R.B. to be a very credible witness and I accept his evidence with respect to how T.B. disciplined his children in preference to the evidence of B.B. R.B. denied that his father used physical force when disciplining.

[267] With respect to section 18(6) I believe that the granting of T.B.'s application under the *Maintenance and Custody Act*, in particular an order for joint custody between T.B. and B.B., with T.B. having primary day-to-day care of both children, and B.B. having a right of supervised contact, in the circumstances of this particular case, will give effect to the principle that a child should have as much contact with each parent as is consistent with the best interests of the child. In this instance, in light of the fact that the children remain in need of protective services vis-à-vis B.B., I believe that the need for supervision of B.B.'s access contact is obvious and consistent with the best interests of both children. Again I would emphasize T.B.'s willingness to permit his daughter to have as much contact as she wishes with the children while they remain in his care, subject to his supervision. I believe that it is B.B. herself who will ultimately determine the nature and extent to which she's involved in the lives of her children. If she gives appropriate priority to maintaining and hopefully increasing the frequency of her contact I believe that the proposed order in favor of T.B. will permit B.B. to have as much contact with the children as is consistent with their best interests.

[268] I have carefully considered the credibility of the witnesses who testified at trial. I agree with respondent's counsel's submission that T.B.'s demeanor on cross examination was different than on direct. I agree that he was argumentative at times and that his demeanor was certainly concerning. Having said that I am satisfied as to the reliability of T.B.'s testimony when it comes to his commitment to the care and parenting of both children. While I have reservations as to the reliability of his testimony with respect to his past relationship with P.B. again I believe that his evidence in support of his parenting plan has been corroborated and supported by the positive track record he has demonstrated since the children were placed in his care in February 2012. His evidence was also of course supported and corroborated by the evidence of his partner K.F. and his son R.B., both of whom I found to be credible witnesses, and to a lesser extent by the witnesses on behalf of the Minister.

[269] I have considerable concerns with respect to the credibility of B.B. I found her evidence at times to be inconsistent and contradictory. She was very quick to assert that another witness had lied or provided false information. She was very quick to blame others for issues or problems. For example she blamed the babysitter for K.B. having a urine soaked diaper and suggested that the babysitter was trying to set her up without being able to offer any explanation why. When questioned on cross examination as to why she had not maintained contact with

the children during her second visit to Alberta she blamed her brother R.B. for failing to respond to her request to arrange for contact by way of Skype. During her direct examination she was referred to some of the incidents that had led to the Minister's protection concerns and denied or disputed the accuracy of the information. She repeatedly indicated that she had done all the services or programs requested of her except for public health. However it was clear from the evidence that her participation in Maggie's Place programming as well as her participation in family support services was inadequate from the agency's perspective, her engagement with mental health services was not what the agency expected and her track record with respect to access visits with the children was at times inconsistent, disappointing and concerning from the agency's viewpoint.

[270] I found that P.B. and her partner L.D. gave their evidence in a fairly straightforward and honest fashion. However L.D.'s evidence was concerning because it was obvious that he had not participated in any really detailed discussions about B.B.'s proposal that the children be placed in his and P.B.'s care. There was little if any concrete evidence offered to confirm the nature and extent of L.D.'s past parenting experience which would qualify him to parent K.D.B. and K.B. I am however satisfied that L.D. did not arrange for or encourage his brother to attend at the Amherst Justice Centre during the course of the hearing.

[271] Similarly while P.B. was obviously concerned for the welfare of her two grandchildren, and believes her daughter's parenting proposal to be in their best interests, once again it appeared that little by way of detailed preparation or planning had been undertaken other than contact or communication with the local day care and the decision to move into a three-bedroom apartment. What was most concerning about P.B.'s evidence was her inability to acknowledge and accept the protection concerns on the part of the agency. She repeatedly expressed her view that her daughter would have done nothing to harm the children and that she didn't feel that her daughter would lie to her. This evidence was extremely concerning to the court because B.B.'s proposal, if accepted by the court, would see B.B. and the two children living with P.B. and her partner. While P.B. and L.D. both indicated their willingness to supervise B.B.'s contact with the children, it is questionable from the court's perspective, given the testimony of P.B., the extent to which the court would be able to rely upon P.B. to ensure the necessary and adequate level of supervision for her daughter. The court finds that the evidence of P.B. on this significant point is unreliable. The court therefore finds the risks to the children associated with B.B.'s proposal are significant. The court

is unwilling to expose the children to what the court believes would be a substantial risk of future harm associated with approval of B.B.'s parenting plan.

[272] I therefore find that the Minister and T.B. have successfully discharged the burden of proof that falls upon them and I have concluded on balance of probabilities that an order for custody as requested by T.B. would be consistent with the best interests of both children at this point in time. I find the evidence as presented on behalf of the Minister and T.B. to be persuasive, compelling and cogent. I find that the Minister has established on balance of probabilities that termination of the protection proceeding would be in the best interest of both children and I find that the Minister and T.B. have established on balance of probabilities that an order for custody in T.B.'s favor would also be in the best interests of both children.

[273] Accordingly I would confirm that the Minister's request for termination of the protection proceeding is hereby granted.

[274] I would confirm the following order under the *Maintenance and Custody Act* as requested by T.B.:

[275] 1. The children K.D.B. (DOB June [...], 2010) and K.B. (DOB September [...], 2011) be and hereby are placed in the joint custody of T.B. and B.B. with day-to-day care and the children's primary residence to be with T.B.

[276] 2. T.B. shall be responsible for day-to-day parenting decisions for both children. Significant parenting decisions, for example relating to the children's health, developmental or educational programs, shall be made jointly by T.B. and B.B. However, in the absence of agreement with respect to significant parenting decisions, T.B. shall have the ultimate decision-making authority. T.B. shall ensure that B.B. is kept up-to-date and informed with respect to the children's health and developmental progress. B.B. shall be permitted to obtain information directly from the children's family physician or other involved health professional as well as any professional involved in providing developmental or educational programming for the children.

[277] 3. B.B. shall be permitted to have reasonable supervised access contact with the children to occur at such time and place and be exercised in such manner as T.B. determines to be appropriate having regards to the best interests of the children. The nature and extent of supervision shall also be as determined by T.B.

to be appropriate and necessary to ensure the safety and welfare of the children. B.B. shall also be permitted contact with the children by way of phone, internet, Skype etc. so long as such contact is consistent with the best interests of the children. The discretion to be exercised by T.B. with respect to access for B.B. is to be exercised reasonably and not arbitrarily.

[278] 4. All communications between T.B. and B.B. are to be at all times reasonable and appropriate and in the event of an inability to communicate reasonably, communications can be by way of a third-party as designated by either T.B. or B.B.

[279] 5. T.B. shall also permit reasonable access contact between the children and their maternal grandparent P.B. as well as members of P.B.'s extended family, subject to such terms or conditions as T.B. considers appropriate having regards the best interests of the children. P.B. shall also be permitted to have additional contact by way of phone, internet, Skype, etc. as long as such contact is consistent with the best interests of the children. The discretion to be exercised by T.B. with respect to P.B.'s access contact is once again to be exercised reasonably and not arbitrarily.

[280] 6. Any direct access contact for B.B. or P.B. shall occur in the province of Nova Scotia unless an out of province visit is approved by T.B. T.B. shall determine the reasonable terms and conditions of any out of province visit having regards to the best interests of the children. Any out of province visit shall be conditional upon the understanding on the part of B.B. and/or P.B. that the children are to be returned to the care of T.B. in Nova Scotia at the conclusion of any such out of province visit.

[281] 7. The parties shall provide notice to the Minister of Community Services with respect to any formal or informal variation of this order.

[282] 8. The order will include a standard enforcement provision authorizing police agencies or authorities to enforce the provisions of the order as necessary and appropriate.

[283] Finally I would like to thank counsel for their participation in this matter and their able representations on behalf of their respective clients.

Morse, J.F.C.