# FAMILY COURT OF NOVA SCOTIA

**Citation:** Mi'kmaw Family and Children's Services of Nova Scotia v. M.T., 2013 NSFC 10

**Date:** 2013/04/09
**Docket:** FKCFSA-083127
**Registry:** Kentville

IN THE MATTER OF: The **Children & Family Services Act and the Child Protection Proceeding involving the children:**

**NOT (dob: August [...], 2007)**
**BOT (dob: December [...], 2010)**

**Between:**

MI'KMAW FAMILY & CHILDREN'S SERVICES OF NOVA SCOTIA
Applicant

v.

M.T., H.O.and B.T.
Respondents

DECISION

Editorial Notice

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

**Revised Decision:** The date at the top has been corrected from 2013/03/09 to 2013/04/09.

**Judge:** The Honourable Judge Marci Lin Melvin

**Heard:** March 18, 2013, in Kentville, Nova Scotia

**Counsel:** Paul Morris, representing Mi'Kmaw Family and Children's Services

Donald Fraser, representing the Respondent, M. T.

David Baker, representing the Respondent, H. O.

Sharon Cochrane, representing the Respondent, B. T.

**By the Court**:

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[2] **FACTS**

This is an application by B.T. pursuant to Family Court Rule 5.02 and Civil Procedure Rule 37.05 to separate the matters before the Court. BT is the father of BOT. MT is the father of OOT and NOT. MT is of First Nations descent ergo Mi'kmaw Family & Children's Services of Nova Scotia is the Applicant in the original application. BT - the Applicant in the interim application - is not of First Nations descent. BT wants the two matters severed, and wants the matter involving his child to be processed by the Minister of Community Services, citing privacy concerns. All three children have the same mother, who is not of First Nations descent. All three respondents are in agreement with severing the proceedings. Argument was heard with respect to this matter prior to the date set

for disposition hearing. The two Respondent fathers had been questioning the joined proceeding at almost every stage however, it wasn't until BT's counsel made a formal application to the Court, that argument was heard.

[3] ISSUE # 1

**Does the Court have jurisdiction to separate or sever the matter before the Court?**

[4] In Nova Scotia, Family Court Rules 5.02 allows the Court various criteria to use in determining whether a matter should be divided into two (or potentially more) matters.

**Family Court Rule 5.02 states:**

**When parties are joined in a proceeding and it may embarrass or delay the hearing, or the proceeding ought to be disposed of by a separate hearing, or it is otherwise inconvenient, the court may order separate hearings, or make such other order as is just.**

**[5]** Clearly the Court, by virtue of the above, does have the jurisdiction to separate hearings, and does so pursuant to Rule 5.02 that "the proceeding ought to be disposed of by a separate hearing" for all of the reasons contained herein.

[6] ISSUE # 2

> **If a Court separates a proceeding into two separate matters, so that, as in this matter, the Respondents are separated into two separate family units,**
>
> **(a) What changes?**

**[7]** If both families were of First Nations descent, and the Court separated the matters, the Applicant would remain the same**,** while the Respondents would be separated, creating two matters.

[8] In the case before the Court, the other common denominator is the biological mother of all of the children, HO. She would be a party in both matters.

[9] What makes this case different as argued by all three Respondents is that because of the different culture and heritage of the children and the parties, it is

not Mi'kmaw Family & Children's Services that should be the Applicant in the case involving the non-First Nations family, but the Minister of Community Services.

(b) Does the Court have jurisdiction to add the Minister of Community Services as a party?

**Section 36(2) of the *Children and Family Services Act*:**

**s.36(2) At any stage of a proceeding, where an agency other than the Minister is a party, the court shall add the Minister as a party upon application by the Minister.**

**[10]** Ms. Gerami, counsel for the Minister, has been present for most of the scheduled appearances for this matter.

[11] Ms. Gerami advised the court on February 21, 2013, that she had advised her client ( the Minister) of the separation issue and has been sitting in on the case, in case there was a severance. The Minister was not a formal party however, Ms. Gerami did not object on behalf of the Minister of Community Services to the separation of the matters.

[12] It is clear, pursuant to Section 36(2) of the ***Children and Family Service's Act***, without a formal application by the Minister of Community Services to be added as a party, the Court has no jurisdiction to add him, either as a party or as the Applicant. The Court must look at all times, however, to what would be in the best interests of these children. If it is in the best interests of the non-First Nations child that this matter proceed with the Minister as a party and indeed the Applicant, then the Court has to consider that. For all of the reasons noted in this decision, the Court finds it is in the best interests of these children that the Minister is involved as the Applicant in the non-First Nations matter, and recommends that the Minister of Community Services apply to be joined.

(c) Can a person who is not related by blood or marriage or even by a past relationship, and is not defined as a "parent" or "guardian" in the ***Children and Family Services Act***, be named as a party without their consent in an Application under the ***Children and Family Services Act***.

**[13]** Ms. Cochrane argued that the two separate fathers should not be parties to the same proceeding, likening it to an application under the ***Maintenance and Custody Act*** in which only one Respondent father is named per application.

[14] The parties to a proceeding are set out in Section 36(1) of the ***Children and Family Services Act***, which states:

> **Parties to Proceeding**
>
> **36(1) The parties to a proceeding pursuant to Section 32 to 49 are**
>
> **1. (a) the agency;**
> **(b) the child's parent or guardian;**
> **(c) the child, where the child is sixteen years of age or more, unless the court otherwise orders pursuant to section (1) of Section 37;**
> **(d) the child, where the child is twelve years of age or more, if so ordered by the court pursuant to subsection (2) of Section 37;**
> **(e) the child, if so ordered by the court pursuant [pursuant] to subsection (3) of Section 37; and**
> **(f) any other person added as a party at any stage in the proceeding pursuant to the Family Court Rules.**

**[15]** It is interesting to note, that the definition of a "party" does not include a non-biological father, with no connections to a child.

[16] As noted by Justice R. James Williams in ***MCS v. J.O.Y.***, **2009, NSSC 69, at paragraph 7:**

> **Section (3)(a)( r) of the Act defines "father" narrowly - far more narrowly than the biological reality."**

[17] ***The Children and Family Services Act*** clearly defines "parent or guardian" of a child to mean:

> **(I) the mother of the child,**
>
> **(ii) the father of the child where the child is a legitimate or legitimated child,**
>
> **(iii) an individual having custody of the child,**
>
> **(iv) an individual residing with and having care of the child,**
>
> **(v) a step-parent,**
>
> **(vi) an individual who, under written agreement or a court order, is required to provide support for the child or has a right of access to the child,**
>
> **(vii) an individual who has acknowledged paternity of the child...**

[18] Although non-biological fathers of children in an application under the ***Children and Family Services Act*** are often grouped together, there is no authority under the Act to do this. It has been done - no doubt - for convenience, and to consolidate matters before the Court; especially where there is one party in common, likely to be a birth mother, as in this case.

[19] Whatever procedure has evolved with respect to multiple Respondents, it is evident that Respondent father, BT, is not and can not be considered either a party, pursuant to s.36(1) or a parent or guardian pursuant to the definition section of the ***Children and Family Service's Act***, in the matter involving Mi'kmaw Family and Children Services, MT and HO.

[20] In **C v. Children's Aid Society of Shelburne County, 2001 NSCA 64 (Can LII),** where foster parents appealed a decision of the Family Court which dismissed their applications for standing, Justice Saunders, for the Court of Appeal, found that they did not come within the "definition of party" under the Act.

[21] Pursuant to the ***Children & Family Service's Act*** , the "party" provision is restrictive. If foster parents have no automatic right to party status (at least at this stage of the proceedings), then surely a legal stranger - as MT and BT are essentially to one another - have no right either.

[22] As noted in ***The Children's Aid Society of Algoma***, **L.(S.) 2009, ONCJ 660**: "Parenthood is in respect of a child. Party status is in respect of a court proceeding."

[23] In Algoma, supra., Justice Kukurin notes:

> **[28] Both the father, Mr. J.B., and the Garden River Band representative concede that they are not properly parties with respect to the child H. Mr. J.B. concedes that he is not a "parent" of H. within the definition of "parent" in the *Children and Family Services Act.* There has been no identification finding that H. is an Indian or native child or that she has any entitlement to be registered with any Indian band.**
>
> **[29] Although these appear to be meaningful concessions, the more fundamental concessions would be that they are not proper parties in an application in which H. is the subject child. Here lies the problem. In the same breath, they also say that they are very definitely proper parties in an application in which M. is the subject child. If, as everyone seems to agree, there is only one application before the court, and both M. and H. are the subject children in this application, then Mr. J.B. and the band representative are in an incongruous situation. They cannot be proper and improper parties in the same application simultaneously.**
>
> **[30] The reality of child protection litigation is that a respondent named in a child protection application is a party to that application, in fact, (whether properly or improperly so named) unless and until a court order removes that respondent. So, in a case like this, how does the court remove two respondents as parties for some purposes, and yet have them retain their party status for other purposes in the same (and only) court application before the court?**

> **[31] The most facile answer is to specify the persons who are parties in the case and for what purposes they are parties. This will almost invariably involve terminology such as:**
>
> > **In the case involving the child X ...**
>
> **This, of course, leads to the speculation that there is not, in reality, just one case before the court at all, notwithstanding the outward appearances of the contrary.**

**[24]** The Court concludes that the proper parties to a proceeding under the ***Children and Family Services Act*** are the Minister (or an Agency, as legislated by the ***Children and Family services Act***) and those defined as "parents" or "guardians" to a child subject to the proceedings.

[25] As stated in **Algoma**, supra:

> **[43] In summary, this is not a trivial procedural issue. It has potentially serious implications procedurally, substantively, and from an evidentiary point of view. This is an issue that transcends this particular case and the particular fact situation it presents. The possible relationships that dictate the party structure of a child protection case are virtually endless.**
>
> **[44] It would be wilful blindness to pretend that the *status quo,* at least in Ontario, is anything other than "one application - multiple children" regardless of how many party respondents this might**

> **necessitate. This is, in fact, the practice in this court location and has been so almost in perpetuity. This calls for an examination of how the court reconciles the statutorily mandated non-party status of an individual with that person's *de facto* party status in a child protection case.**
>
> **[45] The answer is not really very satisfactory. Partly, it is the fact that the application is presented to the court in the way that the applicant society prepared it, and seldom, if ever, do opposing parties take issue with this. Partly, it is an implicit belief by the court that it can mentally segregate who belongs as a party in relation to which child and that it can sort out what are the proper limits of involvement and participation of the various players. Partly, it is an unverbalized acknowledgement that the alternative (one child – one application) would result in consequences for child protection litigation that are undesirable for a multitude of reasons, not the least of which is the increase in volume in an area of the law that already has too high a volume and consumes as inordinate amount of judicial resources. Partly, it is simply the *status quo* that, on the whole, "ain't broke."**

[26] Child welfare cases are similarly brought to court in Nova Scotia**.**

[27] Nevertheless, it is the finding of this court that neither of the Respondent fathers have the right or the responsibility to be involved in one another's life, or children's lives, especially if they do not want to be, and should not be parties together in a consolidated application.

[28] ISSUE # 3

**Does Mi'kmaw Family & Children's Services have the jurisdiction to process an application involving a child who is not of First Nations descent?**

(a) Historical Background of Mi'kmaw Family & Children's Services

[29] The ***Children & Family Services Act***, supra., contemplated children of different ethnicities and races when it came into force in 1990.

[30] In the preamble of the ***Children & Family Services Act*** it is clear that the legislators were aware that "...The preservation of a child's cultural, racial and linguistic heritage promotes the healthy development of the child."

[31] The ***Indian Act***, **R.S.C., 1985, c. I**-5, defines a child as: "includes a legally adopted child or a child adopted in accordance with Indian custom." "Indian" is defined as "...a person who pursuant to this Act is registered as an Indian or is entitled to be registered as an Indian." And section 6 of the Act is definitive and specific as to who is entitled to be registered as "Indians".

[32] It was the introduction of section 88 which made all laws applicable to and with respect to First Nations people. Therefore, it became possible to enforce provincial child welfare legislation on reserves. Because of the different cultures, difficulties arose, and finally in 1985 a tripartite agreement was signed between the Federal Department of Indian Affairs and Northern Development, the Nova Scotia Department of Community Services, and the First Nations communities in Nova Scotia. As a result, the Mi'kmaw Family and Children's Services was born. (First Nations Child Welfare in Nova Scotia (2011), Kozlowski, Sinha, Glode, MacDonald; www.cwrp.ca)

[33] Five years later, when the ***Children & Family Services Act*** became the legislative vehicle for child welfare matters, the preamble and section 2(g) ensured a child's cultural, racial and linguistic heritages were to be considered. Section 8(1) of the ***Children & Family Services Act*** states: "Every society within the meaning of the former Act is continued as an agency within the meaning of this Act."

[34] Mi'kmaw Family & Children's Services is a private agency under the mandate of the ***Children and Family Services Act*** to investigate and make

assessments of any and all reports to suspected neglect and child abuse of children, sixteen and under, who live on reserves in Nova Scotia.

[35] Section 8(2) of the ***Children and Family Services Act*** allows for an agency to be established in the province. And section (4)(1)(j) of the Regulations for the ***Children and Family Services Act*** defines "Indian" to be "...a person who is registered as an Indian or entitled to be registered as an Indian under the ***Indian Act (Canada).***"

[36] It should be noted that the term "Indian" in the legislation has the same meaning as this Court's use of the term "First Nations."

(b) Cultural, Racial and Linguistic Heritage considered

[37] The existence of Mi'kmaw Family & Children's Services, in conjunction with the relevant section of the preamble to the ***Children & Family Services Act***, and section 2(g), confirm that children of different cultures, races, and linguistic heritages, need to be treated differently. Not better. Not worse. Equally, but in ways that are sensitive to their needs.

[38] **In Dassonville-Trudel (Guardian ad litem of) v. Halifax Regional School Board, 2004, N.S.C.A. 82, paragraph 31**, the court states:

> **"The child protection personnel have considerable expertise ... through front-lines experience with families in crisis. This relative expertise warrants considerable deference by the courts..."**

**[38]** Given the different requirements and needs of First Nations children subject to the ***Children and Family Services Act*****,** by virtue of their cultural heritage, might cause one to ruminate on the different skill sets a child protection worker with Mi'kmaw Family & Children Services might have, compared to a child protection worker employed by the Minister, who works with children of non-First Nations descent.

[39] One could also ruminate on this: if Mi'kmaw Family & Children's Services was set up specifically to deal with First Nations children to ensure the professionals working for them were sensitive to these children's needs, shouldn't the same consideration be given to non-First Nations children? That is, the

Agency set up to sensitively see to their needs, is the Agency that actually processes the matter.

**[40]** That a special agency was established for First Nations children is clearly an indication that different sensitivity is required for First Nations children and families. Taking this matter to it's end, if for instance, the Court orders permanent care of children in a Mi'kmaw Family & Children's Services matter, there are special provisions with respect to ensuring adoption is with a family that will provide for the children in a manner consistent with their heritage and culture.

[41] Mi'kmaw Family and Children's Services is clearly an Agency meant to process applications for First Nations children. Children not of First Nations descent are to be subject to an application by the Minister or another agency.

[42] ISSUE #4

**Is the decision of the Director of Child Welfare, to join the parties to one proceeding, within the bounds of the jurisdiction conferred by statute?**

**[43]** Counsel for Mi'kmaw Family & Children's Services argued that many matters under the ***Children and Family Services Act*** involved multiple parents and these cases proceed, without the necessity of separating them. Often there is one common denominator: one person who is the parent of all of the children, and several other people who are the other biological parents of those children.

[44] As previously noted, the difference with this case is that Mi'kmaw Family & Children's Services made a protection application, not only for children of First Nations descent (OOT and NOT), but also for a child of non First Nations descent (BOT) whose parents are non First Nations.

[45] In evidence is a letter written by the Director of Child Welfare, Ms. Vicki Wood, MSW, RSW, granting Mi'kmaw Family & Children's Services the ability to make a protection application regarding the child BOT - the child of non-First Nations descent.

[46] Section 8(5) of the ***Children and Family Services Act*** affords the Minister of Community Services the right to act as an agency throughout the province. The

Court has not found a converse provision that allows an Agency to act as the Minister.

[47] However, the letter from the Director of Child Welfare, is an administrative directive made in her discretion as to how the matter should proceed.

[48] The Supreme Court of Canada held in ***Baker v. Canada (Minister of Citizenship and Immigration),*** **[1999] 2 S.C.R. 817, paragraph 53:**

> **... [D]iscretionary decisions, like all other administrative decisions, must be made within the bounds of the jurisdiction conferred by statute, but ... considerable deference will be given to decision makers by the court in reviewing the exercise of that discretion and determining the scope of the decision-maker's jurisdiction. These doctrines recognize that it is the intention of a legislature, when using statutory language that confers broad choices on administrative agencies, that courts should not lightly interfere with such decisions, and should give considerable respect to decision-makers when reviewing the manner in which discretion was exercised. However, discretion must still be exercised in a manner that is within a reasonable interpretation of the margin of manoeuvre contemplated by the legislature... .**

**[49]** Clearly a court cannot interfere with an administrative decision provided it is made within the bounds of the jurisdiction conferred by statute. As there is nothing specific, in the ***Children and Family Services Act*** which allows Mi'kmaw Family & Children's Services to act for non First Nations people, one might query whether Ms. Wood's administrative directive was made within the bounds of the jurisdiction conferred by statute.

[50] With the greatest respect to Ms. Wood, the Court can only question how this act was made within the bounds of the jurisdiction conferred by statute.

[51] ISSUE # 5

**The Right of Children and Families to the least Invasion of Privacy, and the Integrity of a Family Unit**

**[52]** In the case of ***Children's Aid Society of Algoma v. L.(S),*** supra., which involved a protection application of two children with different fathers, the mother and the two fathers were named as parties. Also, the father of one child was "aboriginal" and as a result, the native band automatically became a party. The

other child, father and the mother were not "aboriginal". The mother brought an application to sever the matters. Although it was not the main part of the mother's argument, the court did explore the privacy issue starting at paragraph 35 which states:

> **"There was mention of privacy interests in the submissions made on this motion. In fact, privacy interests are recognized by the Child and Family Services Act, Section 45 concerns itself with several matters related to privacy, the most notable being the hearing of Part III proceedings in absence of the public subject to rare, limited, judicially permitted exceptions. This precipitates the question of whether Mr. J.B. and the band representative are merely members of the public in so far as a child protection case involving H. Is concerned. And is Mr. P.T. to be similarly classified with respect to the case as it pertains to M.? If so, they have no business being present or represented, much less participating, short of judicial permission to do so.**
>
> **This is only the tip of the privacy interest iceberg. So long as Mr. J.B., Mr. P.T. and the band representative are parties, they each have the right of a party to all of the information contained in the continuing record filed in the case, regardless of the nature of that information. Essentially, they each have carte blanche access to everything, even information to which may be attached a very high privacy interest [19] or information that has no, or marginal, relevance to their involvement.**
>
> **Even more objectionable is their ability to actively participate as parties. This includes many things that are highly intrusive by their very nature (e.g., questioning, cross-examining and making opposing arguments), especially in the context of an adversarial proceeding. In child protection cases, it is not invariably the society on one side and the respondents on the other. Respondents are often adversarial among themselves.**

**[53]** The Judge held that the mother's argument was "very solid" and the inclusion of Mr. J.B. and the band representative as formal parties was "simply

wrong" leading to prejudice to the mother and an injustice that should be corrected. The Judge split the case between the families, but also, because of the duplication of the mother's evidence ordered, that the matters be held together.

[54] The court further notes that the preamble to the ***Children and Family Service's Act*** sets out:

> **"And whereas the rights of children, families and individuals are guaranteed by the rule of law and intervention into the affairs of individuals and families so as to protect and affirm these rights must be governed by the rule of law;"**

[55] Although the definition of the rule of law may have staggered under the weight of different philosophies over the years, it essentially means that everyone is subject to the laws of the land. (wwww.parl.gc.ca)

[56] In ***Dassonville-Trudel*** (Guardian ad litem of) ***v. Halifax Regional School Board,*** supra**, paragraph 27**, the Court held:

> **"Considering the purpose of the legislation: the general scheme of the CFSA is to protect children from abuse and neglect and, where possible, to preserve the integrity of the family."**

**[57]** Preserving the integrity of a family is not only a "law of the land", but also in a child's best interests.

[58] A Court must be mindful of the preamble of the ***Children and Family Services Act***, supra., which embodies the basic philosophy of the Act:

> **"And Whereas the basic rights and fundamental freedoms of children and their families include a right to the least invasion of privacy and interference with freedom that is compatible with their own interests...."**

[59] This Court understands the usual interpretation of this part of the preamble. But, it can also be interpreted to mean - within the context of this case - that the two separate family units (albeit they share the same biological mother) have a right to the least invasion of privacy and interference with freedom that is compatible with their own interests ..."

[60] All Respondents have argued that the matter should be separated for privacy concerns. MT has been most vocal during the course of these proceedings, with BT close behind. Neither of these Respondent fathers want the other involved in his affairs.

[61] Counsel for MT, Mr. Fraser, argued his client did not believe it was necessary for the other father to know everything about him, his background, and previous matters before the Court. Counsel for BT, Ms. Cochrane, argued her client had no wish to know of MT's background, and conversely did not want MT to know about his.

[62] ISSUE # 6

**Would separating the matters cause duplication of proceedings?**

**[63]** Counsel for Mi'kmaw Family & Children's Services argues that "to separate the matter before the Court would cause duplication of the proceedings", which should be avoided at all costs.

[64] The Court is not convinced that separating the matter would fall strictly into a "duplication of proceedings" category.

[65] As previously stated, there are two separate families. The common denominator is a non-First Nations mother, HO. Each family has it's own story.

[66] All parties to an application under the ***Children and Family Services Act***, supra., are entitled to full disclosure, and this includes any disclosure, and this may include historical evidence of past proceedings pursuant to section 96 of the ***Children and Family Services Act.***

[67] Is it appropriate for MT to have knowledge of BT and vice versa? Does it benefit anyone, especially, does it benefit the children?

[68] The evidence of one family, will not be the evidence of the other, with the sole exception of that of the mother, HO. Although the evidence of HO may overlap, all other evidence (that of the two fathers, and that of the children) will be completely different.

[69] Therefore, the Court finds there is no duplication in the proceedings, only the overlapping of evidence of one of the parties. Also, it does not benefit the children for their respective fathers to have knowledge of the other, especially given the potential for antagonism between them as was evident during the brief times they were in Court together.

(b) Public versus Private

**[70]** Do the Respondents, MT, and BT, have any connection with one another aside from the fact that they have fathered children with the same woman? There is no evidence that there is any type of relationship between them. They are - but for their separate relationships with HO - strangers to one another. They are, for all intents and purposes, a member of the general public when it comes to each other's case and personal history.

[71] Is a member of the public entitled to sit in on a ***Children and Family Services Act*** matter and be made aware of all of the intimate details involving a Respondent's life? Intimate details which if made public might cause grievous harm to a child involved?

[72] The ***Family Court Act***, **Chapter 159, RSNS, 1989, section 10(2**) states:

> **"A Judge of the Family Court shall as far as possible guard against any publicity in proceedings in the Court."**

**[73]** Section 10(3) sets out the parameters of who may be permitted to attend and clearly sets out that the Family Court is not a public court.

[74] The ***Children and Family Services Act***, supra., section 93, however, deems that proceedings shall be held in public except where the Court is satisfied that:

> **(a) the presence of the public would cause emotional harm to a child who is a witness at or a participant in the hearing or is the subject of the proceeding;**
>
> **(b) it is necessary, to exclude the public to obtain the full and candid testimony of a witness at a hearing; or**
>
> **(c) it would otherwise be in the best interests of the proper administration of justice to exclude any or all members of the public from the hearing.**

**[75]** A court must vigilantly guard against information being made public that would cause harm to a child who is involved in a ***Children and Family Services Act*** matter, whether as a witness, or a participant or a subject of these proceedings.

[76] Children may undoubtedly suffer simply by being involved in a ***Children and Family Services Act*** matter. They do not need the added stress of any

member of the public knowing of their parent or guardian's deficiencies, abuse, lack of parenting abilities, or anything else that is adduced as evidence in a proceeding.

[77] "Privacy" is defined as"

> "The quality or state of being apart from company or observation [or] freedom from unauthorized intrusion; one's right to privacy." (Www.meriam-webster.com)

> "Private" is defined as:
>
> **"**Intended for or restricted to the use of a particular person, group, or class [or belonging to or concerning an individual person ... [or] restricted to the individual or arising independently of others ...**"**

(Www.merriam-webster.com).

> "Stranger" is defined as:
>
> "A person... that is unknown or with whom one is unacquainted [or] one not privy or party to an act ..."

(Www.meriam-webster.com)

"Public" is defined as:

"Exposed to general view; open."

(Www.meriam-webster.com)

[78] For the purposes of this particular issue, the Court finds that MT and BT are strangers to one another. They are neither privy nor should they be, to the intimate details of one another's lives. They are essentially little more than a member of the public to one another.

[79] And in accordance with section 93 of the Children and Family Services Act, the Court finds that the presence of the public or a member of the public would (or could) cause emotional harm to the children who are subject to this proceeding.

[80] ISSUE # 7

**The Best Interest of the Children**

[81] The ***Children and Family Services Act***, section 2(2) states:

> **In all proceedings and matters pursuant to this Act, the paramount consideration is the best interests of the child.**

**[81]** This Court has touched on numerous issues already involving the best interests of the children subject to this proceeding.

[82] It is in the best interests of a child to have kind, loving, understanding, supportive parents who recognize that their child is the very best part of them. It is in the best interests of a child to have parents who are happy and content in their own right, for a parent who is happy and content and not a victim of unnecessary stress, pressure and disharmony, may be a better person and therefore a better parent to a child.

[83] In Milne v, Milne, **1985, Can.[I] 786**, the BCCA upheld the decision of the trial judge that:

> **"...unhappy differences would turn access visits into unhappy occurrences harmful to the child as being disruptive of the relationship between the mother and the child ..."**

[84] The evidence is clearly that all Respondents are unhappy with this proceeding as one matter. If the matter were to proceed as one matter, given the personalities involved, the discomfiture of the Respondent fathers and the mother may well affect the children, and their relationship (as step-siblings) with one another.

[85] For this and all of the reasons noted in this decision, the Court finds it is in the best interest of these children, that this matter be separated into two matters.

# FINAL ANALYSIS & CONCLUSIONS

This is a very unusual fact situation involving Mi'kmaw Family & Children's Services and two families: one of First Nations descent, the other of non-First Nations descent. All of the Respondents have asked the Court to separate the application before the Court, so the matter involving the First Nations family is conducted by Mi'kmaw Family & Children's Services and the non-First Nations family by the Minister of Community Services.

A myriad of complexities have arisen as a result of this seemingly simple application to sever the case.

The Court has considered a number of issues and concludes as follows:

The Court has the jurisdiction to separate the matter pursuant to s.5.02 of the Family Court Rules. There is no jurisdiction to order the Minister of Community Services to be added as a party, or as in this particular case be substituted as the Applicant in place of Mi'kmaw Family & Children's Services. The Respondent fathers do not fall within the definition of parties to one another under the ***Children and Family Services Act***, and have no standing to be involved in each other's matters.

The Director of Child Welfare has to be "within the bounds of the jurisdiction as conferred by statute" to be able to join a Mi'kmaw Family Children's Services matter with a matter involving non-First Nations people. Whether she was within the bounds of the jurisdiction to make this particular administrative decision or not, the Court finds on other grounds that the matter should be separated.

There would be no duplication of proceedings, although there would clearly be an overlapping of some of the evidence given the birth mother is part of both family units.

The integrity of the family and the rights of children and families to the least invasion of privacy are important aspects, which the Court deliberated upon when considering the privacy argument of the Respondents. There is no benefit to the children and indeed there may be detriment if the matter were to proceed as a singular matter. The best interests of the children are best met by this matter being separated.

Having considered the evidence and argument before the Court, the Court concludes that the matter will be separated.

Although the court cannot order the Minister be added as a party, the Court recommends the Minister consider an application pursuant to Section 36(2). The

Court has found the Mi'kmaw Family & Children's Services has no standing to make an application for non-First Nations children under the Children & Family Services Act, and therefore, without the Application by the Minister, the matter involving the non-First Nations family will be dismissed.

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Marci Lin Melvin
A Judge of the Family Court
for the Province of Nova Scotia