IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: Children's Aid Society of Cape Breton-Victoria v. D.M.B., 2008 NSSC 122

Date: 2008 February 29
Docket: 044968
Registry: Sydney

Between:

Children's Aid Society of Cape Breton-Victoria

Applicant

v.

D. M. B., D. B., C. N.,
G. M. and I. S.

Respondent

Judge:	The Honourable Justice M. Clare MacLellan
Heard:	At Sydney, Nova Scotia
Dates Heard:	See attached list
Oral Decision:	February 29, 2008
Written Decision:	April 24, 2008
Counsel:	Robert Crosby, Q.C. Counsel for the Applicant
	Luke Wintermans, Counsel for D. B. M.
	Alfred Dinaut Counsel for C. N.
	Douglas MacKinlay Counsel for G. M.
	David Raniseth Counsel for I. S.

COURT HEARINGS

May 23, 2006
May 24, 2006
May 25, 2006
June 8, 2006
June 30, 2006
September 13, 2006
October 26, 2006
December 6, 2006
January 10, 2007
January 30, 2007
February 19, 2007
March 26, 2007
March 28, 2007
June 21, 2007
September 6, 2007
September 24, 2007
September 26, 2007
September 27, 2007
October 12, 2007
October 29, 2007
November 21, 2007
December 17, 2007
January 19, 2008
February 8, 2008
February 29, 2008

[1] The matter before the Court is the matter of a permanent care application for the five (5) children, M., A., B., T. and E. and the custody application for E..

[2] D. M. is the mother of all five (5) children. C. N. is the father of A. and B.. G. M. is the maternal grandfather of the children and he is the joint custodial parent of M. and A.. J. N. is the father of T.. He has not had any part in this proceeding. Mr. W. M. is the father of E. and he had some superficial involvement . He is not a party, although he did have notice of the proceeding relating to E..

[3] Ms. I. S. is a party as the paternal grandmother of E. and an applicant under the **Maintenance and Custody Act**.

[4] The exact names and dates of birth of the children are: M. B. born

August *, 1998; A. N. born November *, 1999; B. N. born March *, 2002; T. M. born August *, 2003, E. M. M. born January *, 2006. (*editorial note- dates removed to protect identity*)

[5] The Protection Application outlined concerns under s. 22(2)(b) in relation to the parents, D. M. and C. N., and s. 22(2)(d) in relation to G. M. of the **Children and Family Services Act**. These sections contain the following provisions:

> 22(2)(b) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (a);
>
> Clause (a) reads:
>
> (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;
>
> 22(2)(d) There is a substantial risk that the child will be sexually abused as described in clause (c);

> 22(2)(c) the child has been sexually abused by a parent or guardian of the child, or by another person where a parent or guardian of the child knows or should know of the possibility of sexual abuse and fails to protect the child;

[6] The Protection Application and affidavit of protection worker, Sandy Virick, allege long standing problems with Ms. M.'s ability to parent and her choice in partners dating back to 1998 when M. was apprehended as an infant in D. and remained in care for eighteen (18) months. The problems were the ability to parent and the choice of partners.

[7] In 1999, G. M., D. M.'s father, returned from T. where he resided and was employed as a * (*editorial note- removed to protect identity*). He returned to help put forward a plan together with the Children's Aid Society, D., for M.'s return. At this time A. was about to born or was born, it's not clear on the record. There was a risk of apprehension which was forestalled when Mr. M. came home. A plan was made that he would live with his daughter and help care for the two (2) children. Mr. M., at that time, had joint custody of M. and A. and he was involved in their day to day care. Mr. M. and his daughter were to live together with the children. This was the

arrangement put in place and agreed to by the Children's Aid Society, D., G. M. and D. M.. This plan finalized in approximately February, 2000.

[8] The Protection Application chronicles some difficulties between the Agency and the parties. There were communication problems, which were later confirmed by Mr. M. during his evidence at the Protection Hearing.

[9] Mr. M., D. M. and her partner, C. N., moved to Cape Breton in approximately 2001. The Children's Aid file was transferred from D. to Children's Aid Society-Cape Breton.

[10] In December, 2001, the Children's Aid Society-Cape Breton was informed by the Children's Aid Society, D., that there were allegations made against G. M. alleging that he sexually molested five (5) nephews when they were children. As Ms. M. was not living with her father at that time, the Children's Aid Society-Cape Breton took no further action. Ms. M. was advised by the Applicant that her father was not to have unsupervised contact with her children.

[11] In November, 2002, the worker reported in a home visit it was noted that D. M.'s home was in great disarray. There was food and dirty dishes throughout. There was dog feces on the kitchen floor and overflowing litter boxes. Subsequent visits chronicled improvement in the home conditions. In February, 2003, Ms. Virick spoke to Ms. M. regarding her failure to follow through on services and the need for her to follow through with family skills and to acquire a speech assessment for M.. Ms. Virick attended again at the home in March, 2005 as a result of a police referral regarding the conditions of the home. The workers, including Ms. Virick, found the home smelt of urine. Some rooms had human and animal feces on the floor. The little girls had dirty hands, faces and clothes and some of the beds were lacking bedding. C. N. was present during this March, 2005 interview.

[12] In April, 2005, D. M. wrote Children's Aid to express her disagreement with the Agency's stand regarding her father's restrictions on access. In May, 2005, Ms. Virick attended the home and found the home to be somewhat cleaner than on previous visits.

[13] On June 26, 2005, Children's Aid decided that if Ms. M. agreed to continue the supervision of the access between her father and the children, then the file could be

closed. If the supervision did not take place the matter would be brought to Court under a section 22(2)(d) **Children and Family Services Act** application. During these months, May, 2005 and June, 2005, the state of cleanliness in D. M.'s home improved. The Agency continued to be involved with Ms. M. in relation to the need for her to continue to supervise the access with G. M.. Ms. M. was advised that apprehension would be considered if she permitted unsupervised access between Mr. M. and her children.

[14] In December, 2005, workers investigated a referral by the police in relation to domestic disputes and poor hygiene. The worker investigated and found the home smelt of cat urine and both the little girls had dirty hands and feet. Otherwise, the house was tidy.

[15] On January 13, 2006, Sandy Virick visited the home and noticed a strong smell of urine and the children's feet were dirty. Ms. M. was advised to work to keep the house cleaner and the children clean. She agreed to do so.

[16] On January 18, 2006, interviews took place for the school officials in relation to the children, M. and A.. The school officials referenced that both children attended

school smelling of urine. On February 22, 2006, Sandy Virick attended the home and the home was in a very dirty state with flies present although it was winter. The two older children were not in school and the third child, B., was naked; there was feces on the floor and poor sleeping arrangements. Ms. M. denied that Mr. M. had access to the children unsupervised. Ms. M. denied being absent from the home and children for long periods of time. Prior to the February 22, 2006 incident, the workers had risked the matter and had concluded, before the February, 2006 visit, that recent allegations in 2005 could not be substantiated and that the matter was capable of termination. On February 22, 2006, Ms. Virick attended the home and the conditions were found to be not appropriate as to the state of the house and the state of the children. However, unsupervised access with Mr. M. was denied by Ms. M.. Ms. M.'s alleged absences from the home and from the children for long periods of time were also denied by Ms. M..

[17] On March 2, 2006, the 2 older children, M. and A. , were interviewed at school and advised that they were with the grandfather, G. M., alone and they were at his home overnight. At that point the decision was made to apprehend the children. On March 2, 2006, the apprehension took place. At that time, during the apprehension

at the home, Ms. Virick alleged the home was in disarray, smelt of urine and the children were very dirty.

[18] After the s. 39 hearing but prior to the s. 40 hearing, the paternal grandmother of E., Ms. S., was added as a party. The Protection Hearing was scheduled for 3 days and commenced on May 24, 2006 and continued May 25th and June 8th and an oral decision was rendered on the two sections, 22(2)(b) and 22(2)(d) on June 30, 2006. At the commencement of the s. 40 hearing, Ms. M. and Mr. N. consented to a finding under s. 22(2)(b). The Protection Hearing then focussed on the contested allegation in relation to s. 22(2)(d) and an application was made to add Mr. M. to the Child Abuse Register. By consent of counsel Ms. Virick's interviews with A. and M. were admitted into evidence as proof that Mr. M. did have unsupervised access with the children which included overnight access at his home.

[19] Little evidence was heard on the s. 40 hearing regarding the problems with proper hygiene and supervision in the home. Mr. G. M. did confirm in the Protection Hearing evidence that the state of Ms. M.'s home was a concern. The parties, Ms. M. and Mr. N., consented to the finding pursuant to s. 22(2)(b), which was based on Ms. Virick's affidavit, which formed part of the Protection Application. Ms. Virick

was not questioned on the allegations contained in the affidavit re child care, hygiene and supervision. She was questioned only in relation to the allegations in s. 22(2)(d).

[20] The conclusion of the hearing, the Court accepted the evidence of five (5) grown men, relatives of G. M., who gave evidence that Mr. M. had sexually interfered with them when they were little boys, commencing under the age of 10.

[21] During the s. 40 hearing, Ms. M. and C. N. agreed that they had been untruthful to the Agency initially as to whether or not G. M. had been permitted unsupervised access to the children before the apprehension. I found, at the Protection hearing decision, that Mr. M. continued to pursue unsupervised access and pressured his daughter when he knew that was against the Children's Aid instructions, both oral and written. I found that this pressure continued when Mr. M. knew his daughter's parenting skills were already severely challenged. I found that Mr. M. took the children without supervision from a filthy home to his home and then returned them back into this squalor without any effort to correct the hygiene problems. I found as well that Mr. M., based on the evidence of his five (5) relatives posed a risk of sexual abuse if left alone with his grandchildren. I found that Ms. M. was not able to protect

the children from her father and the failure to protect posed a risk of sexual abuse by G. M.. I found that Mr. M. knew the Children's Aid instructions to Ms. M. and pressured her to breach these instructions, even when he had been told by Children's Aid workers that apprehension could be the outcome of such a breach. I found that Mr. M. took the children to his home without supervision and introduced them to a new friend of his who shared his bedroom. This was a short term relationship but this was done knowing that the children came from a home where their mother had numerous unstable relationships. Mr. M.'s friend was a male and was introduced to these children as his boyfriend. This relationship lasted approximately three weeks.

[22] It was noted at that time that Mr. M., when he had an argument with his daughter, he would stop visiting the children daily as was his prior practice and he would not visit for weeks. In the evidence there is various estimates as to how long, but in the Protection hearing the estimate was, on occasion, up to two weeks.

[23] Findings were entered against Mr. M. and Ms. M. under s. 22(2)(d). Findings were made by consent in relation to s. 22(2)(b) against C. N. and D. M.. Mr. M.'s name was entered on the Child Abuse Register.

[24] At the end of the hearing I asked for information on access. On the record in that decision, I made the following comments:

> I began to talk about my difficulty with access and I digressed and it is not complete because I still have questions as to the best interests of these children to have access with their grandfather. I do not have enough material. I look at his disruptive effect on the family and his past history and then I have to weigh that against their relationship. So whatever access is going on we will continue it until disposition. At disposition I will make access a front row issue because I have to weigh their short term and long term interests. I was unable when I finished this decision to answer that question and so I am going on record because I do not know the answer. So an assessment is definitely necessary on these facts.

[25] The first disposition was held on September 13, 2006. Ms. S., at that point, had filed a maintenance and custody application on August 16, 2006 for E.. The plan of the Agency states the Children's Aid, at that time, were considering permanent care of the children but were awaiting assessments. The Children's Aid staff indicated on September 13, 2006, that they would be content with a current Order for temporary care of the children. Mr. MacKinlay, on behalf of Mr. M., consented to the Agency's plan for temporary care, but stated:

> As my friend stated, both of us have been making phone calls regarding finding someone who will be suitably qualified in the area of accusations and findings regarding G. M..

[26] In that same paragraph, Mr. MacKinlay stated that on behalf of Mr. M. that G. M. was agreeing to the temporary care and custody order but that he may seek joint custody in the future with his brother.

[27] To this point Mr. M. was seeking only to be an access relative and the indication was that this may change in the future. Mr. M. was, at that time, seeking an increase an access and at a different location, not at the Agency's office with many children in cramped quarters.

[28] Ms. M. took exception with some of the negligence allegations made against her in the Childrens Aid Society plan.

[29] All parties agreed that they would complete the s. 41 hearing by consent and await the psychological assessments. The assessor for Mr. M. had not been found at that point.

[30] David Raniseth, on behalf of Ms. S., who is the paternal grandmother, had the baby, E., placed in her care under the supervision of the Children's Aid Society. E. had been in foster care for a short time and was then placed with her paternal

grandmother. Ms. S., through her counsel, advised the Court that she took exception with any access being provided to G. M. and the Court instructed her to follow the Order and access was to continue.

[31] The matter was adjourned to October 26, 2006 for a disposition review to re-examine the temporary care order. That was a short turn around because at that time, efforts were being made to find assessors and to move the matter along. When the Court reconvened on October 26, 2006 to see to the status of the disposition assessments and the timing, the Court was advised that since September 13, 2006, counsel for the Children Aid Society and Mr. M.'s lawyer, Mr. MacKinlay, had agreed that Doctor Landry conduct the assessment on Mr. M.. Mr. Crosby, at that hearing, stated what had taken place since September 13, 2006.

> I have received word from Mr. M.'s lawyer that he is accepting of the suggestion that Dr. Landry conduct the assessment as well.

[32] All assessments were expected to be available shortly, particularly those of Ms. M. and C. N. because these were commenced prior to Mr. M.'s. At approximately this time the assessments on D. M. and C. N. were completed but had not been circulated. Mr. M.'s assessment, as of October 26, 2006, had not been commenced. Mr. M. was seeking increased access and he wished make-up visits for any access

missed. Mr. M. asked for Ms. I. S. to be assessed as well, given some concerns in her past. Mr. Crosby wished to await the assessments before proceeding. The Court agreed that Ms. S. would also be assessed and the matter would be adjourned to await the assessments. The make-up visits for Mr. M. were set up. Ms. S. again, through her counsel, objected to access and was advised by the Court that she was to follow the Order. It was Mr. M.'s main concern that lost visits at that time were not being made up, Counsel were encouraged by the Court to attempt to make access smoother and to make up for these visits.

[33] Throughout this whole hearing, which has taken a long, long time, there was a great deal of discussion as to timing and waiting for the assessments. These problems are part of the reason that I am giving such a detailed chronology because there was difficulty beyond the control of everyone that caused many more appearances than usual as well as going beyond the time lines to the greatest extent that I have experienced on any files in my thirteen (13) years as a Family Court Judge. The matter was plagued with illnesses by various participants, problems in securing Parental Capacity Assessments and co-ordinating five (5) counsel and one Justice.

[34] The October 26, 2008 disposition review resulted in a further temporary care and custody order by consent.

[35] The matter was adjourned to December 6, 2006 to examine the status of the assessments and a similar Order of Temporary Care was issued by consent. On December 6, 2006, the Court was advised again that the assessments were still not complete and again counsel and the Court discussed time limits. At that time the Court attempt to set hearing dates in January, 2007 . However, five (5) counsel were already scheduled for other Children's Aid matters.

[36] At the December 6, 2006 appearance, it was noted that the paternal grandmother and maternal grandfather's assessments were still not complete and no assessments had been circulated to date. At that time Mr. MacKinlay consented to Ms. S.'s leave application. The other parties wished to wait until the assessments before they took a position on leave. It was noted at that time that the Court had dates available for a contested disposition hearing in January, 2007. However, as already indicated, counsel were booked at other Supreme Court hearings on those dates.

[37] The December 6, 2006 disposition review resulted in a further temporary care and custody order by consent.

[38] The Court reconvened for a short appearance on January 30, 2007 and was advised that the assessments were ready but still not distributed. This was an organizational pre-trial. It was to deal primarily with Ms. S.'s leave. Mr. Crosby advised that all the assessments were ready but had not been circulated. Mr. Crosby advised that Children's Aid have problems making recommendations without reviewing the assessments. Mr. MacKinlay sought another pre-trial and advised as the trial is only one month away that there may be troubles being ready on that date. All counsel agreed that it is in the children's best interests and for good preparation for the hearing to await the Parental Capacity Assessments. Again at this time, counsel, Mr. Wintermans and Mr. Dinaut, wanted to await the Parental Capacity Assessment on Ms. S. before committing to leave for Ms. S.. Counsel dealt with the problems with timing and dates were again reviewed. The next review was set and at that time the matter was adjourned to February 19, 2007.

[39] When the Court reconvened, just days away from the previously set trial date of February, 2007 and still the assessments were not available. The matter was

rescheduled to March 28th and 29th, 2007. Again, problems with time was discussed. All agreed, based on the best interest of the children, to go past the internal deadlines in order to receive the assessments.

[40] I asked Children's Aid to comment on the maternal grandfather's access and recalled that I had asked for this information back at the time of the Protection Hearing in June, 2006. The Agency's position on the maternal grandfather's access was set out in the Agency Plan. The hearing was set for February 22nd and 23, 2007, which was not possible in the absence of the assessments and preparation time to digest the assessments. All matters were adjourned by consent to March 28th and 29th, 2007. There was a consolidation, which was opposed, but was granted by the Court in relation to the paternal grandmother's application under the **Maintenance and Custody Act,** leave for the grandmother and the extension of time were all agreed to as it was counsels' view and the Court's view that the adjournment was necessary and in the best interests of the children. I ordered that the Childrens Aid Society Plan be filed and available to all parties by March 15, 2007, as well as any other Plan. Once again counsel and the Court were faced with the very difficult task of securing trial dates that accommodated the Court and five (5) lawyers who were frequent lawyers

appearing in Family Division and frequently on Children's Aid files, which comprise eighty (80%) percent of this Court's docket.

[41] The file indicates that the assessments were received approximately around February 21, 2007. Some Plans of Care were received from the various parties between March, 2007 and June, 2007. As of June 18, 2007, Mr. M. had filed a Plan; Children's Aid had filed a Plan on June 12, 2007; Ms. S. had filed her Plan in March, 2007; and Mr. C. N. filed his Plan in April, 2007. This would be the first time that the Court was clearly advised that Mr. M. intended to make a custody application or to contest the application in relation to the placement of the children. His plan speaks of all of the children and he is the joint custody parent for two (2). Until the completion of the hearing the only application under the **Maintenance and Custody Act** until December 3, 2007 was made by Ms. S.. All other matters were dealt with pursuant to the **Children and Family Services Act**.

[42] On March 26, 2007, the Court reconvened for disposition review. At this time, Mr. Crosby asked for an adjournment as the principle worker was unavailable due to a serious family illness. All counsel consented to this adjournment of the hearing set for March 26, 2007. Again another Temporary Care and Custody Order was issued

by consent for three (3) months and the matter was rescheduled to June 21st and June 22, 2007. Mr. Crosby also advised he was working on a Plan of Care, but that the worker was unavailable. The time lines were once again examined by the Court with counsel.

[43] On June 21st and 22, 2007, counsel requested a further adjournment because of the lack of clarity in the Children's Aid Plan. The Plan indicated that the access sought was to be terminated, but was unclear. The written Plan within itself was conflicted . The Court understood Respondents' counsels concern that the Plan was unclear. It was not what they understood to be the Applicant's position. Counsel for the Respondents indicated that if there was a wish to terminate the access to the parents, then counsel would need additional time to prepare. Unfortunately, this arose because the Plan was filed late. That was part of the difficulty. It was my instructions that it would be filed by March 15, 2007, but it was not.

[44] Mr. MacKinlay advised the Court that he sought increased access since the fall and that he had not had any success. He had just now learned that Children's Aid now wished to terminate Mr. M.'s access and he was not aware that was an issue.

[45] At that same time in June, 2007, Mr. MacKinlay presented a recusal argument which was heard and dismissed with reasons given.

[46] D. M. also indicated that she needed time to put forwarded a Plan, according to her counsel, Mr. Wintermans. At this point, in June, 2007, I advised Mr. MacKinlay and Mr. Crosby go and see Doctor Landry together to see if they could work out some more form of agreed to access for Mr. M., but that I was unwilling to sever that portion from the main hearing. It was my view that all witnesses were to be heard at that same time. However it was, in my view, if it was possible for a recommendation to come back on increased access, I was amenable to examine the recommendation. Once again, the Court and counsel had great discussion regarding time lines, time and how to get this matter before the Court. The case was set on everyone's docket, for September 4th, 5th, 6th 7th, 2007. Also, I directed the Children's Aid Plan clarified.

[47] The matter concluded in June with a consent temporary care and custody order.

[48] There was also concern raised by Mr. MacKinlay that his disclosure packages were not complete. It was ordered that the disclosure packages be completed and that this information be made available to the Respondents. The matter at that time, as I indicated, was set over for four (4) days, September 4th, 5th, 6th and 7th, 2007. At that time, as I have indicated already, there was great problems obtaining these dates from the docket, and other cases had to be moved so that we could have four (4) consecutive dates. The matter had appeared to grow from the need for 2 days to 4 days, which was more realistic.

[49] On August 21, 2007 the new Agency Plan was received. On August 30, 2007, Mr. MacKinlay, counsel for G. M., broke his foot and was not healthy enough to attend a four (4) day hearing and it was agreed that it would not be possible for him to do so. Therefore counsel and the Court were once again trying to find four days to hear this matter. On September 6, 2007, Mr. MacKinlay was able to attend Court in order to secure new dates only. At that point, the only way to have four (4) consecutive days would be to move other Children's Aid cases, which had deadlines as well. So the best the Court and counsel could do was to set aside days on September 24th, September 26th, October 12th and November 21st, 2007. The

September 6, 2006 disposition review proceeded by consent and a further temporary care and custody order was issued.

[50] The Court commenced evidence on September 24, 2007. The first witness to give evidence was Doctor Landry, who outlined his reports of the four (4) Respondents (Exhibits #2, #3 and #4). Ms. M., and Mr. N. are in the same assessment. Doctor Landry was qualified, by consent of counsel, to give opinion evidence in the area of parental capacity.

[51] In regard to D. M., Doctor Landry stated that unless she assumed responsibility for the apprehension or her role in the apprehension, then an intervention would not be possible. When he interviewed D. M., his conclusion was that she did not take responsibility and that she minimized the blame that may be attributable to her for the state in which the children were kept and for their apprehension. Ms. M., he concluded, enjoyed good mental health and that she was not devastated by her children being apprehended but that did not mean that she did not love them. He indicated that she was of average intelligence. It was his view that the children would benefit from some form of access with D. M..

[52] In regard to Mr. N., Doctor Landry concluded that Mr. N. has no cognitive challenges and does not suffer from depression or anxiety. Doctor Landry found that Mr. N. did not accept any responsibility for his role in the events leading up to the apprehension. Doctor Landry found that Mr. N. lacked maturity, which precludes him from seeking goals in life. He found Mr. N. to be egocentric. Doctor Landry indicated that for Mr. N. to change some of the critical results on the Millon and the MMPI would require a substantial amount of psychotherapy.

[53] Doctor Landry reviewed the childrens problems from a psychological stance. He viewed M. as having cognitive impairments and is below average in writing, reading and math. It is suspected that M. has attachment issues. Doctor Landry believes M. has eating problems, particularly in relation to overeating. Given M.'s comments regarding G. M., it is possible that M. may be more attached to G. M. than he is to his mother. During the evidence, he classified M.'s learning problems as significant, together with M.'s behavioural challenges. When asked to draw a picture, M. drew a picture of him alone and then one of his mother alone.

[54] Doctor Landry saw A.'s problems as less severe than M.'s. Her intellectual abilities are within an average range. She related to him that her mother was absent

a lot. When A. was asked to draw a picture of her family, she drew a picture of her foster family.

[55] B. was viewed by Doctor Landry as being at risk of having learning difficulties and exhibits weakness in language skills.

[56] The tests on T. suggest her development is extremely delayed in all aspects and she is at risk of significant learning problems.

[57] E. progressed at a normal rate. There was no negative observations to make in relation to her current needs.

[58] In relation to D. M. and C. N. and their ability to parent five (5) children, four (4) of whom have special needs, Doctor Landry expressed the view that they were unable to parent. Neither has significant mental health issues to preclude parenting; both have relationship challenges; they cannot maintain a stable routine; both are not child centred in their orientation and would have problems meeting the childrens basic needs. Also the children themselves, due to their special needs, would put more stress on the care givers than typically developing children. Ms. M. and Mr. N. are

unlikely to change their parenting problems and therefore Doctor Landry recommended permanent care. He stated both parents exhibited little motivation to fix these deficits. Although Doctor Landry could not assess the affect of subsequent courses and training by Mr. N. to any clear degree. He did indicate that although Mr. N. did take parental raining after the assessment was conducted, it was Doctor Landry's view that given C. N.'s Millon and MMPI results, he would require long term psychotherapy before change in the critical areas would occur. Doctor Landry viewed the family skills assistance and parenting programs would typically not impact on the Millon and MMPI findings in the Parental Capacity Assessment on C. N..

[59] The Court had originally ordered, as indicated in this chronology, Parental Capacity Assessments on all Respondents. There were no restrictions on the scope of the Parental Capacity Assessments ordered.

[60] In relation to G. M.'s Parental Capacity Assessment, Exhibit #3, there was an issue as to the completeness of this Assessment. This will be examined more fully at the conclusion of the evidence summary in this decision. In relation to G. M., Doctor Landry's view was that the children's attachment to G. M. was "they certainly seemed very fond of him and all are attached to him". Doctor

Landry indicated if access was not to continue, the children would have problems adjusting to the change, at least on the short term and they would grieve because he (G. M.) is a consistent part of their lives. Doctor Landry could not predict the long or short term affects on the children or the grief period.

[61] On the objective psychometric tests performed on Mr. M., which were almost identical to the ones performed on Ms. S., Mr. M. achieved positive evaluations. He was rated as responding truthfully; he was not experiencing any psychopathology and was unlikely to physically abuse a child. He also had a very low probability of substance abuse. Mr. M.'s stress was as a result of Children's Aid and the loss of his job. During the subjective intake part of the Assessment, Mr. M. denied to Doctor Landry that he had ever molested his nephews and believed he was unfairly persecuted.

[62] Doctor Landry agreed, when questioned, that G. M. is child centred and can care for the children's basic needs. Doctor Landry viewed G. M. as the more consistent figure in the children's lives than D. M. and C. N.. Doctor Landry concluded that he could not make comments in relation to a custody recommendation for G. M. due to the extenuating circumstances relating to the sexual abuse issues,

which were outside the scope of Doctor Landry's competency. The issue that he believed he was to assess was the attachment between G. M. and the children.

[63] Doctor Landry's work did not include any assessment of G. M.'s relationships, that is, the presence or absence of stability in these relationships. Doctor Landry did not discuss the allegations of sexual abuse by the five (5) relatives with Mr. M.. Doctor Landry completed his report, which is Exhibit #3, page 9 as follows:

> In talking with the children and other sources, it appears as though he (G. M.) has been a consistent in their lives. The three oldest children were able to articulate their genuine affection for Mr. M. that was also represented in some of their drawings about their family life. Their attachment to Mr. M. was evident during the office visit where they all attempt to garner his attention and had obvious pleasure in interacting with him.

[64] I understood that portion I quoted related to the attachment between the four (4) children and Mr. M.. I am unsure if it included the attachment in relation to the baby, E., who was too young to assess but may have been observed.

[65] Ms. I. S.'s assessment is Exhibit 4, Ms. S. is E.'s paternal grandmother and has had E. in her care for almost all of the apprehension period and during many days in

the pre-apprehension period. Her assessment is positive overall. Doctor Landry described her home as very suitable for E. and described Ms. S. as child focussed. He indicated that E. is too young to conduct an attachment assessment. Doctor Landry concluded at page 8 of Exhibit #4:

> The assessment was requested to determine Ms. S.'s ability to provide consistent parenting to E., her granddaughter. E. presents as a typically developing infant. No obvious atypicalities were noted in her development. She evidenced appropriate emotional regulation and appeared to be attached to Ms. S. with whom she has been living. There is no indications that E. will present with any atypical challenges for which a parent must provide.
>
> Ms. S. has been settled in her current residence for some time and lives with her mother. This has been a stable place of residence and there are no features of her life that would present as significant stressors that would affect her ability to provide consistent care giving.
>
> In addition, Ms. S. does not present with any significant psycho pathology presently that would interfere with her ability to provide consistent parental care. She evidences appropriate parental ability and obviously cares for E. a great deal and is able to provide consistent nurturing.
>
> In the event that the children are placed into permanent care, it is recommended that E. be placed into the care of Ms. S..

[66] Donna Mikkleson was the second witness called in a permanent care hearing. She was the author of the final Applicant's Plan (Exhibit #5) and she has been the Protection Worker on this file since April, 2006. During her viva voce evidence, Ms. Mikkleson basically presented Exhibit #5 in verbal form. She reviewed in detail the

state of the four (4) older children at apprehension compared to their current state. She reviewed as well the reasons the Agency was seeking permanent care. She reviewed the proposed future Plan for the five (5) children, the proposed access regime of the Agency and the reasons the Agency was seeking, in some cases restriction, in others denial of access.

[67] In relation to M., she described M. as having severe speech problems at the time of apprehension, with are currently being professionally treated. He had been exhibiting head banging behaviours at apprehension, which have decreased; he had presented as having nightmares which have ceased; his food behaviour, that is, hoarding and stress regarding food sufficiency has decreased; he is being seen by a pediatrician. M. has also had a psycho-educational assessment with Doctor Landry and is awaiting another such assessment; his severe dental problems have been addressed since coming into care; he sees a general practitioner to deal with his acid reflux problems; he has seen Dr. Marsman at Child & Adolescent Services who felt at the time that Ms. Mikkleson, gave evidence that it was not necessary for M. to continue therapy; his school work had improved; he had a private tutor and his school reports are very positive. The school officials had reported to this witness that M. had made significant progress in school in the past year.

[68] In relation to A., her problems are described as less severe than M.'s, but she also had headaches and had food hoarding issues when apprehended, both behaviours have subsided since in care; all necessary work to correct her poor dental conditions is completed; her speech problems have been addressed since apprehension and she no longer needs the services of a speech pathologist; she continues to be followed by a pediatrician. A. has also made progress in school in the past year.

[69] B. and T., both children had hoarding problems with food. B. after apprehension was observed eating from garbage cans. T. urinated in the corner of various rooms; both did these actions as if it was acceptable routine behaviours. At the time of apprehension, both children had behavioural problems and were difficult to control. T. had problems leaving her clothes on; both had severe dental problems that were corrected by dental surgery. It is noted that the corrected dental surgery related to baby teeth. Both see a speech psychologist and are doing well in that area. B. has started school since the apprehension and is reported to be doing well.

[70] Ms. Mikkleson says that E. thrives in I. S.'s care and has no special needs.

[71] Ms. Mikkleson described D. M. as meaning well but showing the same parenting problems for eight (8) years. She describes the Agency's view that D. M. and C. N. are unable to be consistent and adequate in their parenting practices. D. M. has had the benefit of family skills training on a number of occasions, but does not follow through. She has also had a Family Skills Worker and an assessment in D. in relation to M.; as well as counselling sessions with the Agency from time to time when they would visit her house, but all interventions were unsuccessful. The interventions on the part of the Agency were not followed through by D. M. and some of them were refused. Ms. Mikkleson viewed that D. M. has the intelligence to change but does not. Ms. Mikkleson indicated that D. M. has problems with relationships and changes residences too often.

[72] It was the witness's view that D. M. does not put her childrens basic needs first, such as food and hygiene. All previous interventions in these areas have been unsuccessful. Ms. Mikkleson indicated that D. M. had failed to see the risk that unsupervised access with G. M. could cause her children, both to the children themselves and in her relationship with the children and the Applicant.

[73] Ms. Mikkleson indicated D. M.'s access has not been consistent in the nine (9) months previous to this worker giving evidence. She indicated Ms. M. attended thirty-five (35) out of seventy-two (72) access visits that were supervised by the Agency and that she attended nine(9) out of thirty-six (36) visits supervised by Ms. S. with E..

[74] Post apprehension C. N., and again this is Ms. Mikkleson's evidence, had followed through with Shelly Sherlock, a Family Skills Worker, and had been co-operative in his training with Ms. Sherlock. His access had not been commented on specifically by this witness but it appears overall to have been more consistent than Ms. M., as other witnesses attested. C. N. enjoys a good relationship with the children and he knows how to play with them. He has learned some parenting in the past from the Family Skills Worker. He now lives alone in a one bedroom apartment which is kept clean. The Children's Aid Plan (Exhibit #5) indicates that while C. N. has made progress, the progress is not sufficiently significant or consistent to allow the return of the children to Mr. N..

[75] In relation to Mr. G. M., Ms. Mikkleson describes him as an erratic access parent, who was there to help D. M. at times when she was in need and not at other

times. Ms. Mikkleson stated that due to the s. 22(2)(d) finding against G. M. and his breach of a Children's Aid directive to have no unsupervised access, the Agency cannot view him as a suitable parent or as an access parent. The witness advised that Mr. M., in their view, did not take ownership of the risk of abuse to these children and had not entered into any form of therapy. Mr. M. has been consistent in his access with the children post apprehension and she agrees that there is a genuine bond especially between the four (4) older children and their grandfather. She acknowledged that the children will grieve Mr. M.'s absence if there is no access, specially the two (2) older children. The Agency, according to this witness, believes the long term risk to these children if access is granted outweighs the pain they will experience if access ends. The worker fears if access continues the children, when the children are more independent, will slip away from their caregivers to visit Mr. M. who can exert pressure and that this would result in harm to the children.

[76] Donna Mikkleson outlined the future plans for the children. M. and A. will remain with the long term foster family with whom they have been since the date of apprehension. This will be a long term foster placement. These children have, because of their ages, what the Applicant calls a low likelihood of adoption. B. and T., according to the Agency, have a high probability of adoption as the foster parents

who have raised them since apprehension wish to adopt them. The Agency supports access for D. M. and C. N. with M. and A. and seeks a Permanent Care Order in relation to these two children, with access to D. M. and C. N..

[77] In relation to T. and B., as they are eligible for adoption, the Applicant maintains there can be no Court ordered access in the current state of the legislation if an adoption is to take place. The proposed adoptive parents have agreed to follow an openness agreement, which will allow access between D. M. and C. N. with those two (2) children, B. and T.. The proposed adoptive parents will foster an Openness Agreement with all the children so that the children can have access together. Ms. S. also supports a plan that all the children would be together, all five (5) children could be together to visit if she is successful in her application for E..

[78] Ms. Mikkleson indicated that contact with the foster parents and proposed adoptive parents did not support access with G. M.. The Agency/Applicant does not does not support access between any of the five (5) children and their grandfather. Ms. Mikkleson stated the Agency considers Mr. M. to be a risk to children now and when they become older. She explained her view that if the relationship is supported when the children become older, they may slip off on their caregiver and be with him

and be at risk with him if they are alone. This worker concluded the reasons why G. M. should not have access in the last paragraph of the plan, which is Exhibit #5:

> The Agency does not believe that continued access between M. and A. with their grandfather, G. M. is in their best interests. The Agency does not dispute there is a positive relationship between M. and A. and their grandfather. However, this positive relationship puts them at jeopardy. Mr. M. was found to be at risk under section 22(2)(d) of the **Children and Family Services Act** and has not taken ownership of his substantiated pattern of abuse. Mr. M. has never been a primary caregiver. He has intermittently provided conditional support to his daughter, D. B.. In addition to the finding that he sexually abused 5 children, the Court also found that he was extremely manipulative and threatening to his own daughter, D. B.. Should the Agency be granted permanent care and custody, the Agency does not believe as legal guardian that it should be compelled to maintain a bond that places children at risk.

[79] The witness concluded that all appropriate interventions with the Respondents were tried and failed through a lack of follow through and the inability to make sufficient change. It is the failure of these interventions that would result in the inability to protect the children if they are returned to their parents. The witness stated that there is no extended family members who came forward who can adequately care for the children, with the exception of I. S. in relation to E.. The Agency Plan and viva voce evidence alleges there is no likelihood of change for the Respondents in the foreseeable future. This is based on the passage of time and the limited progress by the parents and Mr. M.. Although it is noted that D. M. and C. N. both have the same

difficulties, but with Ms. M. she has the additional difficulty of partnership instability. The worker indicates that Mr. M.'s issues preventing him from parenting are different but are equally fatal to his Plan of Care for these special needs children. She outlined her concerns in relation to the finding of sexual abuse against other children who were his relatives.

[80] On the next adjourned date, September 26, 2007, the Court reconvened and at that time Ms. M. was ill and the Court noted that she certainly looked ill that day. It was agreed that the matter would be adjourned and some additional time would again be sought.

[81] The Court next heard on the reconvened date from Deanna Rohbar, who was a Parent Aid and Access Facilitator but is now only an Access Facilitator. She is not a Parent Aid any longer because the children's behaviours are now under control. She indicated the four (4) older children are very happy to see D. M. and C. N. and G. M.. The children are sad when the visits end with G. M.. On one occasion, T., and this was admitted into evidence, said that she wanted to go and live with her grandfather. She indicates that Mr. M., G. M., was consistent in his access but that D. M. missed a number of access visits. C. N. however never missed an access visit until it began

to conflict with his work schedule. Ms. Rohbar indicated she could not rank the children's preferences by their conduct to any of the three (3) Respondents because the children were happy to see all three (3) Respondents, Mr. M., Ms. M. and Mr. N. and to see each other.

[82] Brenda MacInnis, an Access Supervisor for Children's Aid gave evidence of her involvement since the spring, 2006 for G. M. and the five (5) children and from January, 2007 for D. M. and E.. She did not have much involvement with C. N. except on the occasions when she would fill in for Deanna Rohbar. She had supervised G. M.'s access for a long period of time, eighteen (18) months and she described these visits as very positive, which the children enjoyed. The children didn't want the visits to end.

[83] A. stated, and this statement was again admitted into evidence, that she missed B., E. and T. and wanted to go home with her grandfather, G. M.. Brenda MacInnis stated visits between E. and her mother went well except that D. M. missed visits and at times when she did not come she would not call to notify. She indicated that G. M. did not miss access with E. or with the other children.

[84] As indicated already Ms. I. S. is E.'s paternal grandmother. Her son, B. M., W. M., is E.'s father and has not played an active role in this case. E. has been in the care of I. S., with the exception of two (2) weeks, since apprehension when E. was in foster care. Other than that, she has been with her grandmother. Mrs. S. was with E. on a daily basis prior to apprehension. Ms. S. indicated that she saw E. for the six (6) weeks prior to apprehension and during this time she complained that E.'s clothes were smelly when she resided with her mother, D. M.. Ms. S. described E. as thriving and that she has attained all developmental goals for her age. She has supervised visits with D. M. and C. N. at the home of Ms. S. since December 6, 2006. Ms. S. asked to do supervised access at her home so E. would not have to get dressed to go out in the winter for a winter access visit in the event her parents failed to attend. Since December 6, 2006 she estimates D. M. missed half of the Saturday visits and does not call to cancel.

[85] Exhibit #6 is Ms. S.'s Plan of Care, which she filed March 7, 2007 in which she agrees to foster a bond between the five (5) children. She sees no need for C. N. to have access with E. as he does not have a bond with her. He has been present for some visits when all of the children were present, but he has not attended visits with E. alone. Ms. S. believes that D. M.'s access must be supervised until she becomes

consistent in her access practices. Ms. S. denies that she has any personal conflict with G. M. but is not supportive to access between he and E..

[86] C. N. tendered his Plan (Exhibit #7). He is the biological father of B. and A. and he has been the long term partner of D. M. until April, 2005 when the relationship ended, prior to E.'s conception. However, he continued to see the children on a daily basis and spend the day with them, getting them off to school and generally taking care of them during the day up until the date of apprehension. It is his wish to parent all four (4) children. He admits that E. doesn't know him so he is not seeking care of E.. He plans to get a larger home if he obtains custody. Mr. N. believes the children were apprehended due to the state of the home and for allowing G. M. to have unsupervised access. Mr. N. is working now, but he still requires some financial assistance from Community Services. He feels that he will be able to improve his finances and he will be able to take care of the four (4) children if they are in his care. Mr. N. believes he would be a good role model.

[87] Mr. N. indicated he does not have any family support in the area. He advised that after he and D. M. separated in April, 2005 up to the date of apprehension, he was at her house every day. He cared for the children while D. M. worked. He explained

that he cleaned the house every day, but the children would undo his work. He agreed that up to the apprehension he was at D. M.'s house more than he was at his own apartment. He maintained that there was always sufficient food. He accepts that her house was as described in the Protection Affidavit as of the date of apprehension, but he cannot explain why the house was in that state. He indicated that it could be due to the children or could be due to the pets. Mr. N. chronicles his prior separations from D. M. from 2001 to 2005. He recalled that when he was with Ms. M. it was typical for G. M. to visit every day and then to not visit for a three (3) week period. Pre-apprehension C. N. agrees that Children's Aid were often at the home, up to two or three times a month. After reading Doctor Landry's assessment, he believed that he should try to get back to work and get off disability. He was successful in finding and job and was working at the time of the permanent care hearing.

[88] Mr. N. is not seeing anyone re Doctor Landry's assessment regarding his need for therapy as he wishes to work through his problems himself. He does indicate, however, that he was consistent in his training with Ms. Sherlock and that he felt that he benefited from Ms. Sherlock's help and training in improving parenting problems. After the apprehension he indicated that he took this training from September, 2006 until June, 2007. If he is successful in his wish, he will ensure the children all have

their needs and special needs met. He does not use or abuse drugs or alcohol. If he has the children, he indicates that he will attempt to support them financially but he would probably need to be supplemented by Social Services.

[89] Mr. N. has friends in the community who will help him babysit while he works if he has custody. He does not get along very well with G. M., but he agrees that the children love G. M.. He believes that D. M. can parent all the children now because she has been consistent in her access since apprehension. If he is unsuccessful in achieving custody of the children,

he hopes he will be able to continue with access or an openness agreement so that he can maintain contact with the four older children.

[90] The Court heard from D. M. on October 14, 2007. Currently she is 29 years of age and at the time of the hearing she did not have her own home but was living with friends and hoped to find a suitable home in the future if she was successful in her custody pursuit. She provided an oral Plan but did not provide a written Plan for Care. At the time she gave evidence she was hoping to begin to work shortly.

[91] In relation to the pre-apprehension conditions in her home, Ms. M. states that her home could be dirty at times and it could be spotless at other times. During her evidence, D. M. agreed she knew how to keep a house clean but could not explain why she did not. Elsewhere in her evidence, she maintained that she cleaned the house every day. She also maintained that food shortage was not an issue. She agreed that she did allow G. M. to have unsupervised access on a couple of occasions, including one overnight. She described her relationship with her father as "on and off". When she and her father had a falling out he would not visit for two to three weeks. She believes this happened four or five times, although subsequent in her evidence she reduced the number of times. D. M. believes that G. M. gave her money a few times over the years and when he lived with her in the same apartment in D., he did help her clean but when he moved upstairs in the same house, he no longer helped her with the chores. She described the custody arrangement as she and G. M. had custody of M. and she, G. M. and C. N. had custody of A..

[92] D. M. maintains that G. M. pressured her to allow unsupervised access and was annoyed with her for not allowing unsupervised access. It was his wish to have the children with him every weekend and if she did not wish to come, it was his wish to take the children alone. On occasion she sought assistance from Children's Aid to

write a letter to Mr. M. so that he would stop requesting to take the children alone in his car.

[93] In relation to her life, she indicates that she enjoys visits with the children and they enjoy her. She believes that she or C. N. could parent all the children. If she does not have the children returned to her, she would like to have access. She feels supervised access is not necessary any longer and she is willing to follow all Children's Aid instructions.

[94] Ms. M. was able to describe the bond between G. M. and the children and she described it as a strong bond. She maintains that she and her father no longer have a relationship. They have not spoken since the children were apprehended.

[95] Regarding remedial measures, she has indicated that she is trying to see a psychiatrist two weeks before the permanent care hearing. She did see Mr. Sandy Burns, a therapist, for a while and found this helped but stopped because she had to start work. She did work with Shelly Sherlock, at Family Skills for a while, but she is unsure why or how that training ended. She denies that she's ever refused any Family Skills training from Children's Aid.

[96] Ms. M. does agree that her children have made great strides in care. If she is unsuccessful in obtaining custody of the children, she would like to see the four (4) children together in one home and E. with Ms. S.. Ms. M. describes that since the apprehension she herself has changed and now she knows how to stand up for herself.

[97] The Court next heard from Mr. T., who is Ms. M.'s boyfriend. They were friends for six (6) years before they had a romantic relationship. The state of the relationship at the time Mr. T. gave evidence was somewhat uncertain, but they are at least friends. He indicated that he had visited her house before the apprehension. He describes the house as messy but this would be expected in anyone's home when they have five (5) children. He describes D. M. as a good mother who engages in activities with the children and plays with the children. He believes that she misses the children. He blames himself for D. M. missing visits with E., as he would keep her out late at night and she would be too tired in the morning, but once he realized this he stopped keeping her out late at night before a scheduled visit with E.. He refers to these as appointments, but I understood that he meant access.

[98] The Court next heard from M. M. who gave evidence on behalf of G. M.. They are brothers. He describes his brother as a law biding person who enjoyed his work with *. (*editorial note- removed to protect identity*) He describes his brother's bond with the children as loving. M. M. visits with the children during G. M.'s access. He is willing to continue to assist G. M. in parenting and he lives in an appropriate home with lots of room. He is willing to make his home, property, and his income available to these children. He does not believe that G. M. molested his nephews but he will supervise all G. M.'s contact with the children in his home. He is 65 and in good health. He has never parented in the past but believes he is capable of helping his brother co-parent these children.

[99] G. M. gave evidence. G. M. worked in the *for a while and then went back to * school which he graduated from in approximately 1991 and he's been in that profession for seventeen (17) years. (*editorial note- removed to protect identity*) It's a profession that he enjoys. He has worked in the United States and in Canada. He lost his employment because Children's Aid staff notified his employer, the N. H., regarding his registration in the Child Abuse Register.

[100] He maintains that throughout the years he has a very good work record and anyone can examine his work record. He describes himself as a law biding person. G. M. describes his daughter's poor housekeeping as always poor and worsened when she got pets. The state of the house was a source of friction between he and his daughter. Mr. M. worried that the house was dirty and there was little food. There was stress between he and C. N.. Before the apprehension he was also concerned as D. M. was absent from the house ninety (90%) percent of the time. He felt the children should be with him in his clean house with sufficient food. He provided food to D. M. and school supplies. He believes that he gave her food approximately every month. He describes D. M.'s house, as being in bad condition eighty (80%) percent of the time, but then it could be spotless. He did clean D. M.'s house from time to time but he felt there were two (2) adults living there who ought to be able to maintain a clean house. He wanted D. M. to move to his home. However, the Children's Aid Society were not supportive of this idea. He indicated he and D. M. do not talk, they do not have a relationship since the apprehension. He is unsure how this situation can be remedied.

[101] After the apprehension, Mr. M., who was used to seeing the children every day, found it difficult to have his access under supervision and only at set times. He

indicated that when he was on the Criminal Undertaking, he could still see the children every day but that was in D. M.'s presence in the pre-apprehension era. He indicates now that he sees the children for one and one half hours every two (2) weeks at the Children's Aid Society's office. All requests that he has made for increased access were denied by the Children's Aid. He indicates the children are happy to see him and are sad when the visit ends. E. has taken a while but she has now warmed up to him. He described how happy the children are when they are in each other's company.

[102] Mr. M. has described his Plan of Care where he and his brother, M., will care for the children. His brother's home appears to be well suited for this purpose. When his brother is away, he has alternates who will fill in to supervise him with the children so he is never with the children alone. He has provided a written Plan of Care. He describes a plan where the children's physical needs and their special needs will be met. He describes a more enriched environment such as A. would take ballet, activities that the children are interested in besides meeting their special needs.

[103] He sees that his Plan with his brother, with his alternates as put forward in viva voce evidence, to be an effective plan for raising these children if D. M. is not successful in regaining custody. He indicates that he has not made an Application himself for custody although he was present in Court when Ms. S. took her various steps in that application for standing and to seek custody. Mr. M. did make an application under the **Maintenance & Custody Act** but that was at the conclusion of evidence. However, Mr. M. decided he would not be proceeding with that application.

[104] He indicates that he saw Doctor Paul Sheard in order to try to prove that he's not a child molester and to get support for his removal from the Child Abuse Registrar so that he would be able to work again. He indicated that part of his Plan would be that the children would be taught how to guard against sexual interference and good touch and bad touch. He does not believe it is the children's job to protect themselves but they should have a certain awareness so they would be more likely to report if they are harmed.

[105] The Court heard from S. H., who is D. M.'s mother. She refers to G. M. as a good man and father. He was D. M.'s principal caregiver. Ms. H. is willing to assist

him in the care of the children. Currently she is raising grandchildren of her own and plans to move to P. for a new job as a *. (*editorial note- removed to protect identity*) However, if it is necessary she will leave P. and return to this area to help G. M. and M. M. raise the children.

[106] The Court heard from Doctor Sheard who was qualified to give opinion evidence in general psychiatry with some restrictions in his comfort level to give opinions in relation to children under eighteen (18). That was one area and the other area was forensic psychiatry. Doctor Sheard received a referral from Mr. M.'s general practitioner to help deal with depression and anxiety due to his job loss. The Doctor was attempting to assist G. M. in regaining his position at the *. (*editorial note- removed to protect identity*) At the time, Doctor Sheard wrote his letters exhibited as #12 and #13, he had not read the Protection decision. At the time of giving evidence, he had read a portion of the Protection decision the night before giving evidence.

[107] Doctor Sheard discussed setting Mr. M. up with* (*editorial note- removed to protect identity*), but that has not occurred to date. He indicated that if he had made a recommendation to G. M. on a certain type of therapy that he was confident that Mr. M. would follow through. Doctor Shears identifies his reports as being prepared to

help deal with the Children's Aid for custody and access. It was Doctor Sheard's view that access was the prime issue for Mr. M.. Doctor Sheard gave evidence as to the importance of children to maintain bonds with adults. If bonds between parents and children are appropriate and are not maintained, this can have a harmful effect on the children. If these healthy bonds are terminated, the children would be at risk of loss of self esteem as well as some academic challenges. Doctor Sheard does maintain that if a child has a bond with an adult who physically or sexually abuses the child, the bond will be broken.

[108] Mr. M. has maintained his innocence in relation to his grown nephews to Doctor Sheard. However, Doctor Sheard is willing to monitor Mr. M. if he is to receive custody of any of these children. In his report, Doctor Sheard maintains that Mr. M. took care of the four (4) children from 1999 to 2001. I think this is an error given that it is not borne out by the evidence but during that time period there were only two (2) children born and the parenting of the two oldest were co-parenting; not parented exclusively by anyone as Doctor Sheard seems to believe.

[109] Out of order due to unavailability, Shelly Sherlock, Family Skills Worker for the Children's Aid, gave evidence. She was Family Skills Worker for C. N. and D.

M.. She worked with C. N. from August, 2006 to May, 2007. She described him as diligent in his lessons; he learned daily routines; needs of the children to see doctors and dentists; and financial planning. He was surprised to learn about the children hoarding food. He knew of services available to him and presented to her as if he had insight on how to raise children. She also believed that D. M. had insight on parenting but failed to keep appointments or to make up for lost appointments. Therefore Shelly Sherlock was unable to make a fuller comment on D. M.'s ability to improve her parenting.

[110] Summations were set for December 17, 2007, which had been a previously scheduled vacation day, but this was the only Court time available. Due to the various illnesses that I have already referred to, the scheduling became a more serious problem than it had in the past and as indicated in this decision, scheduling this case with the number of participants and the number of difficulties and illnesses, the Court had to find whatever days it could, including vacation days or chambers time, which is usually allocated for only chambers matters, were used to complete this matter. The shortage of Court time coupled with deadlines and the other unforeseen difficulties that arose made completing this case very difficult for the parties, counsel and the Court.

[111] Up to the final disposition hearing, all previous disposition orders were consented to by counsel.

[112] Counsels summations were December 17, 2007 and the Court began to review the evidence and the Exhibits shortly after Christmas. After summations, the Court had a question upon the review of the documentation as to why G. M.'s Parental Capacity Assessment appeared to be more restricted than the others. The psychometric testing was the same as Ms. S.'s but the focus on whether he could ultimately parent was not contained in the Assessment. To respond to this question, the Court had I had the pre-trial conferences transcribed verbatim and Doctor Landry's evidence transcribed verbatim to see if this would contain any response to the difficulty.

[113] It appeared that Doctor Landry did refer to the limitation in this Parental Capacity Assessment in his viva voce evidence in September. On the front page of the Parental Capacity Assessment in which he indicated he was instructed by counsel for the Agency to look at attachment and that he did an assessment on attachment only, in relation to the grandfather. As indicated, in an effort to answer this question

I had the evidence transcribed and I met with counsel as to what was their understanding of the situation. At the end of that session, I was satisfied that all counsel knew of this limitation in Doctor Landry's ability to prepare a full Parental Capacity Assessment for Mr. G. M. before Doctor Landry was retained. This conclusion is based on a reading of the transcript of the Court appearance on September 13, 2006 and October 26th, 2006. I noted as well in my deliberation that Mr. M.'s own psychiatrist, Doctor Sheard, placed access as the main issue . However, I requested counsel to come to the Court and discuss this issue and to see if Doctor Landry could complete the assessment. I was advised that Doctor Landry felt that he could not. Of concern to me, on January 18, 2008, was how this narrowing occurred. I asked counsel to come in on the record. By that time I had secured the transcript of Doctor Landry's viva voce evidence and the transcript of the pre-trial conferences of September 14th and October 26th, 2006, which dealt with who could prepare the Parental Capacity Assessment..

[114] It was expressed by Doug MacKinlay that it was his belief that Mr. Crosby had narrowed the focus of the Parental Capacity Assessment. Mr. Crosby denied that this was the case and that he had only retained Doctor Landry to do Parental Capacity Assessments. The query of January 18, 2008 was whether or not anyone could recall

the narrowing of the focus. I could not recall it and I could not find it in the evidence. Once I reviewed the transcript of all the pre-trial conferences, which I have indicated were transcribed verbatim, and the transcript of Doctor Landry's evidence verbatim and heard from Mr. Crosby, I concluded that any confusion was misinterpretation. Mr. Robert Crosby advised that he had advised Doctor Landry there was to be a Parental Capacity assessment and the Court wanted to hear about the attachment between the grandfather and the children. I accepted this as an accurate statement from counsel for the Agency that he did not narrow the scope of Mr. M.'s assessment.

[115] I sent all counsel back to see Doctor Landry to see if the Parental Capacity Assessment could be completed in a short time. Without sufficient knowledge, I felt since the psychometric testing had been done equivalent to Ms. S., it would not take a great deal of time to complete the Parental Capacity Assessment. After three (3) weeks and no definitive answer as to whether or not the Parental Capacity Assessment could be completed, the Court again reconvened on February 8, 2008. At that point it was clear that Doctor Landry could not do the assessment due to the s. 22(2)(d) finding against Mr. M. and it was also clear from a review of the evidence in 2006, the September and October's Court sessions, that counsel knew that this was a concern

and nevertheless retained Doctor Landry to do the Parental Capacity Assessment on G. M..

[116] Also in viva voce evidence in September, 2007 , Doctor Landry did say that this was a restriction on his ability to do an assessment and Mr. MacKinlay did mention it on his submission.

[117] On February 8, 2008, I concluded that I had the answer I sought in January, 2008. This was a matter that counsel had been aware of, whether or not the Court was at the time. It was also noted that the Court does not take a critical read of Parental Capacity Assessments until the report has withstood scrutiny in viva voce evidence. However, the assessment was available to counsel since February, 2007 and if there was a restriction that neither Mr. M. or his counsel were not comfortable with, that would have been appropriate time to raise it or, at least, at the time Doctor Landry gave evidence in September, 2007.

[118] However, in January, 2008, I concluded that there was no wrong doing or no alteration of the Court's direction by anyone and I accepted Mr. Crosby's explanation. When we reconvened on February 8, 2008, I was given a copy of correspondence from Mr. Doug MacKinlay to Doctor Landry after which I cautioned Mr. MacKinley regarding his comments in that correspondence about unilateral communication between Robert Crosby and Doctor Landry, as this had already been ruled upon. Mr. MacKinlay indicated that he felt that Mr. M. should have the option of having a complete new assessment done. However three (3) weeks after the Parental Capacity Assessment issue was raised by the Court Mr. MacKinlay was unable to provide an assessor. The Court examined what the parties knew, what was more apparent to them than I, and I concluded that there was an appropriate time to raise this issue long before the Court raised the issue. It was not done.

[119] The children's sense of time takes preference over this particular situation. On the totality of the evidence with Mr. M. on the Child Abuse Registrar and with the finding of s. 22(2)(d) and with the Appeal Court's determination of why persons are placed on the Child Abuse Registry, the very best outcome that Mr. M. could have expected was to be permitted access. He was not prejudiced by the absence of a full Parental Capacity Assessment. I wanted to know how it happened. I was advised

how it happened. I accepted the explanation as: (1) that the parties knew of Doctor Landry's limitation; and (2) selected him: and (3) had ample time if they were prejudiced to bring this forward prior to the Court raising it in January, 2008.

[120] Before I raised the issue in January, 2008, the Court had to consider whether to do this or not. I felt I should have an answer in fairness to all the parties but I was very concerned about the children's sense of time and the time periods. I took some solace that the children had remained in the same foster homes that they had been in since apprehension and that from all reports their health, their speech, their school, their dental situation, had all improved. Therefore I felt that the children would not be jeopardized by waiting a month or two to secure an answer to the assessment question. I should note that all the various extensions up until January 18, 2008 were agreed to by counsel as to be in the children's best interest and found by me to be so. I note as well that if Mr. M. feels that he is in any way jeopardized by the absence of completeness in the Parental Capacity Assessment, I should add to the reasons I have already given that he did not make an application for custody until the evidence was complete and he did not file a written Plan indicating that he was interested in custody until June, 2007 <u>after</u> the assessment had been completed. The reality is, as I have indicated, that based on the evidence before the Court, he was precluded from being

considered able to be a custodial parent of these children, with supervision or otherwise.

[121] Having heard from all the parties and having read the assessments and having read the plans of the Respondents, it is clear that none of the Respondents involved have any debilitating mental health issues that would preclude them from being parents. In relation to the time line, in a case with multiple issues, multiple parties, multiple illnesses, it is on occasion not possible to determine all cases within the outer limits of the time periods. Exceeding a time period may be necessary if the children remain at risk. To exceed the time limits in this case was necessary to serve the best interests of the five (5) children involved and to secure a full hearing on the evidence and I find at the end of the day I am satisfied that I had a full hearing on all the evidence relevant to this matter.

[122] The **Children and Family Services Act**, section 2 indicates

> 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 the children.
>
> (2) In all proceedings and matters pursuant to this Act, the paramount consideration is the best interests of the child.

[123] I refer as well to section 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 the family;
>
> (b) the child's relationship 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.

[124] The headings that I have examined and evidence considered in this case are all in s. 3(2) with the exception of (g) and (h), which is the child's cultural, racial, linguistic heritage and the religious faith. I have heard no evidence on those except a brief reference to Ms. S.'s plans in the future. So those two (g) and (h) are not relevant in my considerations. I refer counsel as well to s. 13:

> 13(1) Where it appears to the Minister or an agency that services are necessary to promote the principle of using the least intrusive means of intervention and, in particular, to enable a child to remain with the child's parent or guardian or be returned to the care of the child's parent or guardian, the Minister and the agency shall take reasonable measures to provide services to families and children that promote the integrity of the family.
>
> (2) Services to promote the integrity of the family include, but are not limited to, services provided by the agency or provided by others with the assistance of the agency for the following purposes:
>
> (a) improving the family's financial situation;
>
> (b) improving the family's housing situation;
>
> (c) improving parenting skills;

(d) improving child-care and child-rearing capabilities;

(e) improving homemaking skills;

(f) counselling and assessment;

(g) drug or alcohol treatment and rehabilitation;

(h) child care;

(I) mediation of disputes;

(j) self-help and empowerment of parents whose children have been, are or may be in need of protective services;

(k) such matters prescribed by the regulations.

[125] The services or the aims in this particular case that I have selected as being relevant are (c) , (d), (e), (f), (h), (I) and (j).

[126] The next relevant section is section 41(3):

(3) The court shall, before making a disposition order, obtain and consider a plan for the child's care, prepared in writing by the agency and including:

s. 41(3) (e) where the agency proposes to remove the child permanently from the care or custody of the parent or guardian, a description of the arrangements made or being made for the child's long-term stable placement.

[127] As well, section 42 is important in this particular decision:

42(1) At the conclusion of the disposition hearing, the court shall make one of the following orders, in the child's best interests:

(a) dismiss the matter;

(b) the child shall remain in or be returned to the care and custody of a parent or guardian, subject to the supervision of the agency, for a specified period, in accordance with Section 43:

(c) the child shall remain in or be placed in the care and custody of a person other than a parent or guardian, with the consent of that other person, subject to the supervision of the agency, for a specified period, in accordance with Section 43:

(d) the child shall be placed in the temporary care and custody of the agency for a specified period, in accordance with Sections 44 and 45;

(e) the child shall be placed in the temporary care and custody of the agency pursuant to clause (d) for a specified period and then be returned to a parent or guardian or other person pursuant to clauses (b) or © for a specified period, in accordance with Sections 43 to 45;

(f) the child shall be placed in the permanent care and custody of the agency, in accordance with Section 47.

(2) The court shall not make an order removing the child from the care of a parent or guardian unless the court is satisfied that less intrusive alternatives, including services to promote the integrity of the family pursuant to Section13:

(a) have been attempted and have failed;

(b) have been refused by the parent or guardian; or

(c) would be inadequate to protect the child.

(3) Where the court determines that it is necessary to remove the child from the care of a parent or guardian, the court shall, before making an order for temporary or permanent care and custody pursuant to clause (d), (e) or (f) of subsection (1), consider whether it is possible to place the child with a relative, neighbour or other member of the child's community or extended family pursuant to clause (c) of subsection (1), with the consent of the relative or other person.

(4) The court shall not make an order for permanent care and custody pursuant to clause (f) of subsection (1), unless the court is satisfied that the circumstances justifying the order are unlikely to change within a reasonably foreseeable time not exceeding the maximum time limits, based upon the age of the child, set out in subsection (1) of Section 45, so that the child can be returned to the parent or guardian.

47(1) Where the court makes an order for permanent care and custody pursuant to clause (f) of subsection (1) of Section 42, the agency is the legal guardian of the child and as such has all the rights, powers and responsibilities of a parent or guardian for the child's care and custody.

(2) Where an order for permanent care and custody is made, the court may make an order for access by a parent or guardian or other person, but the court shall not make such an order unless the court is satisfied that:

(a) permanent placement in a family setting has not been planned or is not possible and the person's access will not impair the child's future opportunities for such placement;

(c) the child has been or will be placed with a person who does not wish to adopt the child; or

(d) some other special circumstance justifies making an order for access;

[128] Basically, to paraphrase where the child is placed in a long term foster placement and it is appropriate and is in the child's best interest to grant access, access can be granted. Where the child is being placed for adoption, an adoption is planned and is feasible, then access cannot be ordered.

[129] At this stage the Court must carefully consider the evidence given and the seriousness of the decision. Placing a child in permanent care is a most serious decision as it has permanent effects on the children, their parents and the extended family. Such a decision can affect all aspects of the child's life now and in the future. Similarly, access considerations are not a side issue. Attachment is an important building block of human behaviour. The needs of the children and the ability of the parent to nurture affects the quality of this attachment.

[130] The Agency submits that E. is not a child in need of protective services and asks that the matter involving E. be dismissed and Ms. S.'s application be granted. Ms. S. has been there for E. before and after the apprehension. E.'s bond or attachment is strong with Ms. S.. Ms. S. has been able to meet all of E.'s needs almost since birth but certainly and exclusively for the past twenty-two (22) months since apprehension. The parenting shortcomings of the Respondents are set out more fully in this decision

relating to the four (4) older children, but these shortcomings are equally applicable to E.. She is not a special needs child as are her siblings. However, the Act is preventative in nature. It would be experimenting to attempt to return E. to her mother at this time, who basically has no Plan for E. and has been inconsistent in access. To attempt to place E. with C. N., G. M. or D. M. would not be in E.'s best interests. Their Plans are fundamentally flawed. It is not in E.'s best interests to be placed in her mother's custody. E. is thriving, based on all the evidence and it is in E.'s best interests that custody be granted to Ms. I. S..

[131] G. M., the maternal grandfather, was found on June 30, 2006 to pose a risk of sexual abuse to children left in his care. This was found on a balance of probability that Mr. M. posed a real risk of danger to children left in his care, apparent from the evidence. Since that finding Mr. M. has done almost nothing to mitigate this finding. He has participated in a Parental Capacity Assessment, which was favourable to him on the attachment issue. He saw a psychiatrist on two occasions to help with depression, anxiety, attachment and to help him regain his employment. Mr. M. advised Doctor Landry he was a constant in the children's life. The evidence shows that Mr. M. was there at their homes often but that he left them in squalor and for the most part did not intervene. He admitted this failure at the Protection Hearing. He

brought food to his daughter on some occasions, but on one occasion he brought food and when they argued he left, taking the food with him. He had to be aware of the squalor in the home but he rarely cleaned it. The children were speech delayed, severe dental problems, they were dirty, they were missing school, they weren't supervised and he did not intervene himself in any meaningful manner and he did not cause anyone else to intervene.

[132] Against repeated warnings by Children's Aid, Mr. M. pressured his daughter to allow him to have the children overnight and alone, when he was aware of the Children's Aid instructions to the contrary. Mr. M. was unsupportive of his daughter's attempts to follow the Children's Aid instructions on this point. He undermined her relationship with the Agency who, the evidence showed, tried repeatedly to help her deal with her parenting deficits. These deficits were harmful to the children. D. M. admitted to this two years ago. Mr. M. undermined the Children's Aid help and he provided little help himself in substitution. Therefore, the evidence does not support Doctor Landry's comments that Mr. M. was a constant in the children's lives or consistent in his care of the children. The evidence shows that he was there often but he was not a constant or consistent help in the children's lives

and there is an aeon of difference between the two. Also he undermined and pressured his daughter who already had her

challenges to put the children in jeopardy by unsupervised access is simply unacceptable. It is further evidenced that when he and his daughter argued he would go missing for two days or two weeks at a time. This conduct is unrefuted in the evidence and it paints a clear portrait of a person who is not positively consistent. This conduct shows that G. M., while an educated man, did not put the children's serious needs first. This conduct cannot be described as that of a consistent, concerned parent or guardian. Mr. M.'s conducted his pre-apprehension behaviours , was in his best interests not at all in the best interests of the four (4) older children.

[133] Mr. M.'s counsel encourages me to examine that the passage of time should affect the Court and that there is eighteen (18) years since the last allegation. This submission has no effect given that there is no admission or ownership taken in relation to the presenting problem, which was the risk of sexual abuse.

[134] Mr. M.'s counsel wishes a negative inference to be drawn that Mr. M. was offered no remedial measures. It was noted that Doctor Sheard offered help from the Human Resource Department of the Regional Hospital but that was not accessed by

Mr. M.. Services as meant by section 13 of the **Children and Family Services Act** mean services that had the potential to reunite the family. The services must be reasonable and must be capable of affecting change in the problem areas and within the accepted time frame. G. M. has never accepted the finding, based on the evidence of his nephews, and so the risk remains as real as it was on the day the Protection finding was rendered.

[135] Mr. G. M. has missed access with his grandchildren before apprehension. He has never missed access since apprehension. He has maintained a bond with the four (4) older children. Doctor Landry and the Children's Aid personnel chronicle the strong bond the four (4) older children and G. M. enjoy. The question is, is it in their best interests to be with G. M.? He made no application for custody until the close of evidence. He filed a Plan with the help of his brother. His Plan was filed a year after the apprehension. He is a joint custodial parent of the two (2) older children although he has not lived with them since approximately 2001 - 2002. At the current stage of this proceeding, the law requires that I dismiss the matter or place the children in permanent care. Based on the evidence provided; that is, the risk of sexual abuse and the general failure to protect the children from the years they spent in squalor, there is no basis on the evidence to grant G. M. custody of his five (5) grandchildren.

If it were legally possible, it would not be in the children's best interests to live with G. M., even under the restrictions proposed in his Plan. The children would remain at risk of being sexually abused as their cousins were when those cousins were children. I find that least intrusive methods could not be implemented with Mr. M. because this would be difficult where he denies that there is a problem with the risk of sexual abuse. However, services offered by his own psychiatrist were not accepted by him, with the exception of the two sessions he had with Doctor Sheard.

[136] In relation to the extended family members, M. M. and S. H., neither could provide services that could sufficiently protect these children. The time to effect change, the foreseeable future, has lapsed.

[137] Access between Mr. M. and the five (5) children is a serious issue. There is a bond, a strong bond, between the grandfather and these children. Doctor Landry and Doctor Sheard believe these children will grieve if this bond is severed. Doctor Landry could not predict how long the grieving process would last. Ms. Mikkleson believes contact causes risk to the children, in the short term and in the long term. Mr. M.'s wish pre-apprehension to have the children in his home without supervision, I find to be disconcerting. He was able to visit them every day at his daughter's home;

he was not denied access to them; he had daily access if he wished but he was aware of the restrictions and for some reason it was important that he have these children alone. Sexually abuse occurs quickly, it's generally surreptitious, the effects are long lasting and may be forever. All five (5) of Mr. M.'s nephews were alone when the abuse occurred. Mr. M. M. has offered to supervise Mr. G. M.. However, he doesn't believe any of the findings against his brother so the level of his diligence would have to be questionable when he does not believe that there is a concern.

[138] Donna Mikkleson believes that to maintain contact could cause the children to visit G. M. as they become older, without permission, and that would put them at risk of sexual harm. Based on the evidence, it is in the children's best interest to sever their bond with their grandfather at this time. The potential risk of sexual abuse far outweighs the benefit they may have from any access to their grandfather. Access is to be a benefit to the child. G. M. does not present as an admirable role model for children, rather he presents as a risk of abuse to them if given the chance. Doctor Sheard viewed sexual or physical abuse would end the positive bond a child might have of the parent or guardian. I find the risk of sexual abuse leaves an emotional scar on the child that no child should have to experience, especially children with current special needs.

[139] The foster parents of the four (4) older children and Ms. S. do not wish G. M. to visit, which can also impact on the caliber of the children settling down in their placements and making a life for themselves that is secure, where they can continue to take care of their special needs and achieve their potential, hopefully regaining the ground they lost prior to apprehension.

[140] Mr. M.'s past history with his nephews and his neglect of these children and his insistence on access without supervision prior to apprehension all weight against continued access with any of the children. Access with G. M. and the five (5) children is not in their best interests and is denied. As the children may grieve his absence, he shall have access for a period of six (6) months supervised and decreasing. All deportment is to be proper, failing which the access supervisor, a Children's Aid employee, shall report such conduct and the access shall be terminated before the six (6) month period has lapsed. If the children ask what happened to their grandfather who they refer to as "poppy" and it seems highly likely that they will, they will be given age appropriate explanations as designed by the Applicant Agency in conjunction with a psychologist.

[141] In relation to D. M. and C. N., both feel that the other can parent all the children although Mr. N. believes if D. M. is unsuccessful, E. ought to remain with Ms. S.. We have been told by the Appeal Court, that the history of past parenting is an invaluable tool in assessing the fitness of parents to continue to have custody of their children. Almost from inception, Ms. M. has exhibited poor parenting practices. She does not acknowledge this point. She does not explain why she has four (4) special needs children or if she had any role in their poor states at apprehension. She has no mental, emotional or physical handicap that would impede her parenting. She is simply not child centred.

[142] As outlined by Doctor Landry, her interests are not centred on the children and she has accepted little or no responsibility for their apprehension. There have been many interventions to assist Ms. M.. Family Skills has been trying on a number of occasions. She had two assessments. She had interventions by the Children's Aid staff, who have given her advice on the state of her home; she had difficulty with her father insisting on having the children alone in the car; she sought out Shaun Butler, or one of the staff, who wrote a letter on her behalf to assist her in keeping her father's access supervised and deal with the pressure between she and her father. She

has been able to talk to Children's Aid about the pressure placed on her by her father and has done so on occasion..

[143] Ms. M. has consistently failed to follow through with any of the measures taken to correct her chronic parenting problem. She has left her children in squalor without sufficient food and alone with their maternal grandfather knowing that if she did so it could lead to their apprehension, which would mean they would not be with her. When she was confronted with it, she was not truthful until some time later. Ms. M. has very poor choices in partners and moves residences often. She does not currently have a place of her own. She has shown a chronic lack of ability to parent, even to the most basic needs and a chronic inability to protect her children. She cannot provide any reason to mitigate the well documented and accepted evidence relating to the poor parenting. This evidence relates to almost every aspect of parenting, which is confirmed in Ms. Mikkleson's evidence, which I accept, and further cooberated by the evidence put forward by teachers as to the state of the children pre and post apprehension.

[144] Since apprehension, Ms. M. has availed herself on no services. She did not complete her course with Shelly Sherlock, Family Skills Worker, and can't really say

why. The interventions outlined by Ms. Mikkleson chronicle reasonable and unintrusive measures which have failed due to Ms. M.'s lack of follow through. Ms. M. also failed to protect her children from the possible risk of sexual abuse at the hands of her father. Furthermore, once her last child was born she began leaving the children alone for long periods of time and leaving them with C. N. during the day so that she could spend time with E.'s father.

[145] Only two weeks before she gave evidence on a permanent care hearing did Ms. M. begin to try to find a psychiatrist in order to review her problems with partners and the events of the time of apprehension. Ms. M. has also been very inconsistent with access, even though she knows the children are happy to see her and she is happy to see them. I found that hard to understand and after considerable deliberation I still do not understand her access absences unless it is a reflection of Doctor Landry's comments that she is simply not child centred. Ms. M., through her evidence, could not excuse or mitigate her chronic parenting problems, which remain despite appropriate interventions. She cannot maintain sufficient stability to parent despite all the remedial measures and the attempts by the Applicant to assist her in this matter.

[146] If the children were returned to Ms. M., the risk would remain and given the progress they have made in relation to their special needs while in the care of the foster parents, this progress would no doubt recede. Ms. M. cannot parent these five (5) children. Her past conduct makes this very clear on the balance of probabilities and a strong balance of probabilities. The children would be at risk if returned to her. It is not in their best interests that D. M. regain custody. It is not in their best interests to remove them from their current foster parents. who have worked so hard with their various needs to make sure those needs are met and where the children are currently thriving and are not at risk.

[147] C. N. shares some of the same problems as D. M.. He has been in the children's lives since 2001. He has been a partner to Ms. M.'s chronic neglect, particularly of the four (4) children, including hygiene, supervision, food, school attendance, medical and dental neglect. He admits the relationship ended in 2005; however he attended at the home every day before apprehension. Mr. N. does not seem to have the same problem of selecting unfortunate partners to the degree that Ms. M. has. However, his parenting problems and his absence of recognition of these problems remain. He also accepts no responsibility for his part leading up to the apprehension and the children's state at apprehension. He left the children in squalor as chronicled repeatedly by the

Children's Aid and was present when the Childrens Aid Society saw the home in unacceptable disarray with the recurring theme of pet feces on the floor, along with other problems as already set forward. It is of concern that for a short period of time he was also untruthful to Children's Aid as to whether or not G. M. had unsupervised access with the children, although later he did come forward and tell the Agency that G. M. did have unsupervised access with the children.

[148] Since apprehension Mr. N. took Family Skills training and applied himself to these lessons. He has recently sought and obtained a job. However, I assess Mr. N.'s progress as not significant enough to allow the return of his two (2) children to him. Doctor Landry stated it will take long term psychotherapy to impact positively on Mr. N.'s negative results in the MMPI and Millon, which outline serious areas of concern. C. N. has not engaged in any form of psychotherapy. Mr. N. appears from the evidence to be more consistent in his access than Ms. M..

[149] Both C. N. and D. M. have demonstrated a chronic inability to parent, despite reasonable interventions and services as contemplated by sections 13 and 42 of the **Children and Family Services Act**. The time periods for improvements have passed and neither parent has made significant change to remove the risk to these children.

There is no time left for the parents to effect change, even if they were willing and able. This is certainly so given we are months past the outer deadline.

[150] The evidence clearly proves on a balance of probabilities that the Respondents cannot change. The same risks would exist if these children were returned to D. M., C. N. and G. M.. It is in the children's best interests that an Order for Permanent Care and Custody be issued for the four (4) remaining children and that the Applicant's current Plans in place, which have resulted in great strides for these children, be put in place permanently. No other extended family members, other than Ms. S., have been identified as a reasonable placement. I acknowledge that Mr. M. M. certainly had best motives and did attempt to be of assistance but given his absence of recognition of the real risk of sexual abuse, he could not be considered as a family member who the can protect the children.

[151] On the evidence, the requirements of s. 42(2) have been fulfilled but were unsuccessful. No other relatives except Ms. S. put forward a solid plan. The targeted serious problem areas for the Respondents cannot change in the foreseeable future which has lapsed.

[152] As I have indicated under section 47(2), the foster parents for A. and M. are willing to continue to foster these children in the long term and therefore there shall be access to D. M. and C. N. with these children if they are consistent, access has to be consistent. Access can't become a negative in this home because these foster parents have and will continue to have greater responsibility getting these children to their various appointments to deal with their special needs. I acknowledge that A. and M. have a low probability of adoption but that their current placement where they have been for approximately the last two (2) years has worked out very well because of the commitment of the foster parents. This is a long term commitment that the foster parents are making to these children.

[153] With B. and T., the current foster parents wish to adopt them but will foster an openness agreement with D. M. and C. N.. The foster parents of A. and M. and the proposed adoptive parents of B. and T. and I. S. are all willing to allow the four children to be with each other and to know each other. I. S. believes that C. N. and E. have no bond. It appears that Mr. N., although he didn't say it that clearly but he alluded to it, and I believe that he does not have a bond with E. and therefore there will be no access between C. N. and E., as it is not in her best interests. If there is a

gathering of all five children, it may be appropriate that Mr. N. attend. However, one on one access with E. is not ordered.

[154] The Applicant has discharged the onus of proof on a balance of probabilities and has fulfilled all the obligations imposed in s. 42 of the **Children and Family Services Act**.

[155] Given the remarkable progress the four (4) children have made in care, the commitment of the foster parents, the C.A.S. plans put in place for them are in their best interests. There shall be therefore permanent care of all four (4) children with access to A. and M. for D. M. and C. N., so long as it is consistent. There shall be permanent care without access to B. and T., but with an openness agreement. The application for Ms. S. for custody of E. is granted with reasonable supervised access to D. M., if she is consistent with her access. It is accepted that Ms. S. will accept regular visits from all four (4) children. It is accepted there is a bond between the five children, which should be retained if at all possible.

[156] For the purposes of clarity, all of D. M.'s access with E. and C. N.'s access with A. and M. shall be supervised. C. N. shall have no access with E.. G. M. shall have

no access with any of the five (5) children. D. M. and C. N. are to follow all instructions given to them by Children's Aid in relation to messages given to the children as to why the grandfather is no longer part of their lives. This is to be monitored by the supervisor of access. Supervision of access can be lifted once the parties have shown a commitment to access and an ability to have access in the children's best interests on a consistent level. This can be done in conjunction with the Children's Aid Society and discussion with the foster parents, without the need to return to Court, unless there is the need for Court intervention..

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MacLellan, J.