

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

**Citation:** Mi'kmaw Family and Children's Services v. B.L.,  
2011 NSSC 161

**Date:** 20110427  
**Docket:** SFPACFSA-065972  
**Registry:** Port Hawkesbury

**Between:**

Mi'kmaw Family and Children's Services

Applicant

v.

B.L. and L.I.

Respondent(s)

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

Section 94(1) provides:

“No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding pursuant to this Act, or a parent or guardian, a foster parent or relative of the child.”

<b>Editorial Notice</b>
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Identifying information has been removed from this electronic version of the judgment.
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**Judge:** The Honourable Justice Moira C. Legere Sers

**Heard:** March 15, 16 and 17, 2011, in Port Hawkesbury, Nova Scotia

**Counsel:** David Raniseth, for the applicant  
Sam Moreau, for the respondent B.L.  
Coline Morrow, for the respondent L.I.

**By the Court:**

[1] This protection application began **August 24<sup>th</sup>, 2009**. The two children who are the subject of these proceedings are H.L., born January \*, 2008, (currently 3), and J.L., born February \*, 2009, (currently 2).

**Legal History**

[2] By court order in **August, 2009**, the children were left in the mother's care under a supervision order.

[3] From August, 2009, until late November, 2010, the agency worked with an expectation that they would provide services to the parents with a goal of keeping the children with the mother.

[4] On **September 30, 2009**, the children were apprehended from the mother's care and placed in a kinship foster placement.

[5] First Disposition occurred January 18, 2010.

[6] The children were returned to the mother's care under conditions on **October 25, 2010**, and on **December 1, 2010**, they were reapprehended and returned to the kinship placement where they remain pending the final hearing.

[7] In later November, 2010, the agency changed their Plan of Care due to:

- a) a lack of sufficient compliance with the agency plan;
- b) ongoing relationship issues, including domestic violence;
- c) a lack of insight and a lack of evidence of positive parental behavioural changes; and
- d) positive urine results, including a hair analysis sample that indicated that the mother was exposed to frequent cannabis users.

Final Disposition was scheduled to begin within the January 18, 2011, time line in accordance with Section 45 of the *Children and Family Services Act*. However, the commencement of the proceedings was delayed and could not begin until March 15, 16 and 17, 2011; almost 2 months beyond the time lines.

[8] In March, 2011, at the commencement of the hearing all three parties sought an adjournment to obtain a follow up psychological report to determine whether the parents had made sufficient progress.

[9] The Court denied this motion. There was insufficient evidence to determine that a further delay was in the best interests of the children.

[10] The agency now seeks a permanent care order with no order as to access. At this final hearing, the father withdrew his plan for custody and now supports the mother's plan which is to have the children returned to her care.

[11] The kinship placement is prepared to adopt these children.

### **Events leading to Court Application**

[12] The mother is 20; the father 22. The mother has completed grade 11. The father plans to obtain his GED in future.

[13] Beginning in April 7, 2008, the agency received six referrals regarding this family.

[14] The agency identified their concerns of substantial risk of physical harm to the children, parent mental/emotional health, domestic violence including the mother's violence towards others, relationship issues and substance abuse:

1. The father reported on **April 7, 2008**, that the mother punched him three times in the face while the child was present. He asked her to leave the home. The child was left with the father. At that time, the parties were not living together.

2. The police made a referral to the agency on **May 29, 2009**. They were called to resolve a conflict between the parents who could not agree on who would take one of the children to the hospital. The RCMP and a social worker facilitated an agreement between the parents.

3. On **July 13, 2009**, a **third referral was received** by police. They were called on July 11<sup>th</sup> due to the father's efforts to harm himself and his assault on the mother. Alcohol was involved. The children were in the home. After an argument between the parents, the father ran out of the home intent on harming

himself. When the mother attempted to stop him, he hit her on the head with a beer bottle. The mother's brother intervened and there was an altercation with injuries to the father. Thereafter, he continued his attempt to commit suicide. He was later arrested.

4. **On August 5, 2009**, a fourth referral was directed to the agency because the mother's home had been without power for two weeks. The children were in the home and the parents had been heard arguing.

5. **On August 13, 2009**, the police again referred the matter to the agency. The father took the 18 month old child from the mother's residence at a time when he was on conditions to stay away from the mother. The police responded to the mother's call. The father refused to return the child to the mother. The social worker intervened to require the parties to settle their domestic issues by way of court order. The mother accused the father of kicking in her door two days earlier.

6. **On August 17, 2009**, the agency received other referral information concerning the attempted suicide. The agency met with the father and noted that he had 28 stiches on his arm. The mother and paternal grandmother subsequently informed the agency the father had been drinking. The mother said he was "loaded".

[15] On August 14, 2009, the agency decided to seek a supervision order. The overriding risk was the relationship issues, alcohol abuse, family violence and how this affected the parental ability to provide a safe and secure living arrangement for the children.

7. **September 15, 2010**, the agency continued to receive referrals that CJM (the mother's boyfriend) was visiting the mother daily and sometimes nightly. They advised her of their concerns regarding CJM 's involvement in drugs and alcohol. They also did not want the father and CJM to be together when the children were present.

[16] The mother told the agency she did not accept this prohibition.

### **Supervision Order**

[17] Despite notice and the provision of transportation, the parents declined to attend the First Interim Hearing.

**First Interim Order - August 28, 2009**

[18] The two children remained in the care and custody of the mother subject to agency supervision on conditions including:

The agency had the right to enter the residence to provide guidance and to ascertain that the children were properly cared for.

The father was not to reside in the home with the mother and the children. In addition, C.J.M. was not to have any contact or association with the children.

The mother was to immediately report to the agency, should C.J.M. attempt in any way to reside, contact or associate with the children.

The father's access to the children was to be arranged through the agency. During this access, the mother was not to be present.

[19] The agency clearly communicated to the mother that failure to comply with any term of the order could result in the removal of the children from her care.

[20] **On September 23, 2009**, the Interim Hearing was completed by consent order. The children remained in the care of the mother subject to the supervision of the agency, again with conditions.

[21] The mother expressed her displeasure that her new partner, C.J.M., was not allowed in the home of the children. She informed the agency that, indeed, C.J.M. would be coming to her home.

[22] The mother was again advised that a violation of the conditions of the order would result in the agency taking the children into their care.

[23] **On September 25, 2009**, the agency received information that C.J.M. was in the mother's home while the children were present and that he attends her home every night and sneaks out in the morning.

[24] **On September 28, 2009**, the agency again advised the mother about the conditions of the supervision order. The mother advised she had not read the agency case plan or the Order.

[25] The worker outlined the conditions of the Order, including the no contact provision with the father during his access with the children. The worker reinforced that C.J.M. was ordered to stay away from the family home. The mother was again informed that any breach of conditions would result in the children coming into care.

[26] On **September 29, 2009**, the conditions were reinforced with the mother given her reluctance to accept the rationale for the imposition of the conditions.

### **Apprehension / Temporary Care Order**

[27] Due to her refusal and then denial that C.J.M. was in the home, the worker asked to search the home. While she was initially refused permission, she was subsequently permitted. C.J. M. was not found.

[28] However, the mother informed the worker that she did not intend to abide by the Court Order. She told the worker to leave and not to come back.

[29] On **September 29, 2009**, the agency spoke to the police and were advised that CJM was involved in an assault on a man and alcohol was a factor.

### **Breach**

[30] The father's access to his children was to be arranged by the agency. The mother was not to be present during the father's contact with the children.

[31] The father advised the worker that the mother brings the child H. to him in the morning. He then brought H. to daycare while the mother attended school. He was advised to stay away from the mother's home.

[32] The father also advised that he was informed by the mother that C.J.M was in the apartment on a daily basis.

[33] On **September 30, 2009**, the agency concluded that they could not adequately protect the children while in the mother's care due to her refusal to abide by the terms of the Order. On that date, they removed the children from their mother's care.

[34] The children were placed in the temporary care and custody of the agency with supervised access to the mother and father.

## **Placement**

[35] The children have been consistently placed with the paternal aunt in another region of the province. The father's sister also resides in this home.

[36] The children have settled in their foster home. The agency reports the children are doing well. They have remained in care with the paternal aunt since September 30, 2009, save for a brief return to the parents in October, 2010. Once reapprehended in December, 2010, they returned to this same placement where they remain today, some 17 months later.

[37] The parents have some complaints about this placement. There are three occasions in the supervision notes where issues of concern were raised by the parents and apparently verified by the access supervisor. They were told to bring their complaints to the agency.

[38] These complaints related to lack of adequate clothing, dirty bottles provided for the youngest and sleeping arrangements in the mobile home. The oldest child sleeps in the same bed with the foster mother and her male partner.

[39] Given the cost of expert witnesses, etcetera, it would be reasonable to assume that a bed could be provided for the child to allow her separate sleeping quarters.

[40] The worker advises they have followed up on these complaints and are satisfied with the placement.

## **SERVICES**

[41] A child protection worker and a family social worker were assigned to the case. References for addiction services, random uranalysis, personal and couple counselling, parental capacity assessments, information sessions on domestic violence and parent education were offered.

### **Random Drug Testing**

[42] The respondents were to abstain absolutely from the use of alcohol and non prescription drugs and participate in random drug testing. Any incidents of alcohol or non prescription drug use were to be reported immediately.

### **Addiction Services**

[43] The respondents were to engage in addiction services and to have SASSI assessments completed.

[44] The agency worker continued to provide the father with numbers and connections, with encouragement to connect with services including an addictions counsellor.

[45] When the father finally connected to a counsellor of his choice, Mr. M. MacInnis, he informed the worker that the father attended two brief sessions and vented about the agency involvement. The evidence discloses that these sessions did not substantively address the addictions issues.

[46] The mother did not follow up on the original referral made by the worker to an addictions counsellor. She later chose to see Ms. MacDonald from addiction services (GASHA). She could not provide the agency with her name and did not give the agency any information on which they could follow up on her progress with this counsellor.

### **Missed Random Urinalysis Testing**

[47] The mother was not available for testing on November 8, December 12, 25, and 27, 2009. The father was not available for testing on October 1, 2, and November 11, 2009. For the samples they did provide, no drugs or alcohol were detected.

[48] The agency continued to receive information that C.J.M. was still attending the apartment while the father was present.



[49] The agency acknowledged that, for the most part, the parents made themselves available for testing. However, the agency was concerned about the missed appointments for the drug and alcohol testing.

[50] On December 17<sup>th</sup> and 21<sup>st</sup>, the agency met with the parents separately to discuss the missed appointments.

### **Family Support Worker**

[51] The agency offered a family support worker to work with the mother teaching life skills, caring for children, nurturing and disciplining children. Both parents were referred to the community centre for assistance in January, 2009.

[52] The agency worker testified that the father was not always focussed enough to make the necessary connections. The worker continued to have difficulty contacting the parents to engage in the programs as of **March, 2010**.

[53] When the instructor finally connected, she met with the mother eight times over the course of nine months between February 9<sup>th</sup> and November 12, 2010.

[54] As of the preparation of the final Plan of Care, written after the last apprehension in December ,2010, the father had not engaged in parenting classes.

### **Private Practice Counsellor**

[55] Both of the respondents were to, and did, attend individual therapy sessions with therapist between September, 2009, and early December, 2010. Mr. Burns was to address concerns for mental health issues, domestic violence and relationship issues. The worker discussed with the counsellor the goals of counselling, the report and the needs of the clients relating to the child protection proceedings. Although they continued to attend and engage, the worker found the parents reluctant and, at times, uncooperative.

[56] On **October 23, 2009**, the mother advised the agency worker that she did not like attending counselling with Sandy Burns and would not talk to him.

[57] The parents were reluctant throughout to continue with the counsellor. They objected to this counsellor in part because he found them to be immature.

[58] They informed their driver sent to pick them up that they were not interested in returning. They did not go back after December, 2010.

[59] Mr. Burns testified that the father showed very little insight and no change in behaviour. He concluded the mother had insight, understood the changes that the agency and the counsellor thought were necessary. She did not follow through such that a workable situation could be sustained. He saw no behavioural change or follow up.

[60] Late in the proceedings, the parents chose to visit Mr. MacInnis. This resulted in a reduction in counselling sessions from once or twice a week with Mr. Burns, to twice in 5 months with Mr. MacInnis.

[61] There is no evidence that this new counselling situation was specifically focussed on the child protection concerns or that it was other than a loose arrangement available to the parents if and when they decided to participate.

### **Parental Capacity Assessment**

[62] Both respondents were expected to attend and participate in a Parental Capacity Assessment. Michael Bryson was engaged to complete those assessments.

[63] On November 9, 2009, the assessor informed the agency that the mother cancelled and/or missed five appointments with him and had attended only three. The father had attended three and cancelled or failed to show for four.

### **Further Referrals**

[64] On **November 1, 2009**, the RCMP responded to a call from the mother because of an argument between the two parents as to who was the lawful tenant.

[65] On **December 21, 2009**, the agency spoke to the mother advising her of their concern about her missed appointments.

### **First Disposition**

[66] On the **18<sup>th</sup> day of January, 2010**, the First Disposition Hearing resulted in a consent order for temporary care and custody while the agency provided services to the mother and father.

[67] They proposed to continue working with the respondents in a supportive role, assessing needs, offering services to ameliorate their current circumstances and functioning within the family with a view to having the children returned to their care.

[68] Both the mother and father expressed an interest in putting forward a plan separately for the care of the children. At that time, the mother informed the agency that her relationship with the father was over. However, she remained in a relationship with C.J.M.

[69] As of the review application in January, 2010, the respondents access visits were noted to be positive. They missed a few scheduled visits on October 26 and November 2, 2009. The father advised that he had a conflicting appointment for the October 26<sup>th</sup> date. The mother chose not to attend. No explanation was provided for the November 2<sup>nd</sup> missed visits.

[70] As of **January 20, 2010**, a family support worker, Ms. Denny, had not been able to contact either the mother or the father.

[71] To assist in moving the parenting forward, the family support worker and the agent for the applicant attended the mother and father's home to introduce the worker to the parents.

### **Domestic Violence/ Parenting Education**

[72] The respondents were referred to a neighbouring community healing centre on January 12, 2009, as per the agency Plan of Care, to assist the respondents in education on domestic violence and its effects on the children.

[73] The mother was informed that referrals had been made for her on her behalf by the agency to attend domestic violence education. She was provided contact information on January 22, 2010. The mother stated that she would follow up on

Monday, January 25, 2010. The first meeting was set up for the mother by the agency on January 28, 2010.

[74] In early 2010, when the family support worker attended the mother's home to engage in the family support session, initially the mother remained in the bedroom. Eventually she came out to talk with the worker.

[75] On February 10, 2010, the father met with the agency. Although he was living with the mother, she had not been home for two days and he did not know where she was.

[76] He informed the agency that the mother had not started the domestic violence course and she had not called to arrange the program. The agency worker again provided the father with the contact information.

[77] On March 9, 2010, Mr. Burns, the therapist, advised the agency that the mother was struggling with being fully committed with making the changes required of her. He confirmed that the parents struggled as a couple.

[78] On March 29, 2010, the supervisor reviewed the file. They confirmed that the parents were undergoing random drug testing. As of March 29, 2010, both parents had been below the level of detection for substances; they continued to attend counselling with Mr. Burns and they had completed their sessions with Mr. Bryson. However, the agency was having difficulty contacting the respondents.

[79] They understood that they had recently started domestic violence counselling, were not residing together and that the father was referred to the Second Chance program.

[80] The mother finally completed six sessions of the family module on domestic violence education at the community health centre and received a certificate evidencing this on **April 9, 2010**.

[81] The parenting course consisted of three sessions, each 45 minutes in length, on Parenting (Simple Gifts). The mother also attended one 2 hour course on healthy relationships on May 3, 2010.

[82] There were six sessions (45 minutes) on family violence and one session on anger management on November 12, 2010.

[83] The worker offered the mother the opportunity to complete anger management but the mother did not follow up on her offer. The agency worker advised that access to these courses is open and they will actually go into the parents home on their request.

[84] At the Final Hearing, the parents continue to indicate/promise they will follow up by attending future courses if mandated. There was no individual initiative to access available services to address risk issues. Serious, significant followup remains a problem.

[85] The course participation came late (April, May and November, 2010, for the courses with the last attendance in November). There is no evidence of follow up after November, 2010.

[86] The father took considerable time before participating in the Second Chance program. I have no evidence of his progress.

[87] The father finally completed the Second Chance Society program. Initially, the program had no contact information for him. The agency made arrangements for him to attend an appointment with Second Chance on April 22, 2010, and again confirmed this information with the father.

[88] On April 9, 2010, the police had to remove the father from the apartment as a result of an allegation by the mother that he, the father, had assaulted her. The father denied the assault.

[89] Mr. Burns confirmed that this couple were presenting as immature and the likelihood of conflict between the two is elevated "unless a large change takes place". He confirmed that both respondents had, at that time, poor insight into their roles and difficulty functioning as a couple and as parents.

[90] In their March 30<sup>th</sup> session, the mother advised that they were again involved in a relationship; that the father was like a friend that she could be in touch with for sexual fulfilment.

[91] On April 9<sup>th</sup>, the mother admitted to the therapist that the father did not physically assault her. When she discovered he was ‘texting’ another girl, she called the police to have him removed from the apartment. She admitted to the therapist that the relationship between the respondents was over.

[92] At that point, Mr. Burns advised the agency that:

“it was unlikely that the respondents would work well together as parents, and that individually they may function in their role as parents, but with their mistrust and immaturity as a couple, there is a real possibility of something escalating out of control.”

He recommended both continue to access remedial services.

[93] The Court was informed at the Review Hearing that the mother continued to participate in random drug and alcohol testing. She was unavailable for specific tests, including December 25, 2009; December 27, 2009; March 1 to March 24, 2010.

[94] The father consistently made himself available for testing but as of the date of the review affidavit he had missed the January 19<sup>th</sup> and 20<sup>th</sup>; March 2<sup>nd</sup>, 3<sup>rd</sup>, 19<sup>th</sup>, and 24<sup>th</sup>, 2010, testing.

[95] At the Review Hearing on the 19<sup>th</sup> of April, 2010, the agency informed the Court that the parents continued to have supervised access with the children twice per week.

[96] Mr. Burns, the individual and couple therapist, informed the agency that both parents had informed him that they were alcohol and drug free; the mother was working to improve her parenting skills, maintaining control, and the father had no further thoughts of self harm.

[97] Mr. Burns believed the parties were of different minds as to whether the relationship between the two should continue. The mother was not expressing the same wish to continue the relationship as the father.

## **Parental Capacity Assessments**

[98] The Parental Capacity Assessments were completed in April, 2010.

[99] The mother attended eight sessions with Mr. Bryson, cancelled two sessions and simply did not show for four sessions. Another two sessions were cancelled for understandable reasons.

[100] The assessor described the mother's attitude as largely cooperative, friendly, and attentive. At times she appeared tired. He advised that on December 23, 2009, she declined to provide written information about herself and her family despite his encouragement for her to participate. Later on, he observed her to be sleeping.

[101] The assessor noted that the mother appeared to have limited insight into her behaviours and relationships.

[102] The mother spoke of her relationship history as well as her history with the agency. Generally, the mother describes a chaotic existence, multiple relationships, frequent reconciliations and break ups with the respondent father, alcohol use and their disputes about the father not being invested in the day to day care of the children. These resulted in relationship discord. While she criticizes him, she denies any current concerns about his parenting.

[103] The mother recounted the circumstances surrounding the parents relationship and the father's attempted suicide:

She advised that the parents were angry with one another. Both admitted both were drinking. The father told her he was going to kill himself. He grabbed an extension cord and starting walking towards the woods. She grabbed one of the ends and told him not to do it. She let go, walked to him and grabbed the extension cord again to bring the father closer to her at which point he hit her with a fireball bottle and with his hand. He continued walking towards the woods when her foot got tangled in the cord. She ran to the step, called her friend and asked for her brother. Her brother ran to the father's mother's home. The mother ran into the woods and found the father in a tree where upon he fell down on his back. She picked him up so he could breath, grabbed the extension cord and took it, disposing of it, so he could not get it. She got out of the woods, saw her friends, asked for her brother, ran to get him and asked for his assistance in finding the father. The three (her brother, her friend and herself) went back into the woods. Her brother asked her to call the police, which she did. They found the father, whereupon, she advises that her brother hit him a few times in the head, grabbed his arm, thought he broke it but actually dislocated it.

Her brother picked the father up, took him out of the woods, put him on the ground when the police arrived. The father was “freaking out”, they took him to the hospital, then to the lock up. She gave a statement to the police, as did her brother. She then stayed with the father’s mother. An agency from Mi’kmaw Family and Children’s Services came to her, asked her more questions about what the father had done, then left. Then Ms. M. came over and kept coming, after which she and the father moved into the apartment. Subsequently, as a result of a complaint received from the agency about the parents fighting, the agency came once again to investigate. As a result of this complaint, she and the father “started getting mad at each other and then broke up with B. and kicked him out” whereupon he went back to his mother and he continued to call Mi’kmaw Family and Children’s Services. The relationship terminated and the mother began another relationship with CJM, another individual.

The agency advised her that CJM was not allowed to be near her children. After that she began to reacquaint herself with the father whereupon the agency intervened.

She admits she hit the father in March of 2008; that she failed to admit and disclose other incidences of domestic violence because she didn’t like talking to them about it. She was vague on the details of the ongoing domestic discord.

She advised they separated in August, 2009, when she entered into a relationship with CJM. She admits she was drinking and while she knew CJM was not to be around her children, she engaged in a relationship with him. She confirmed CJM abused alcohol and street drugs and was possibly selling street drugs. She confirms he drank and smoked weed. She denies he used psychoactive substances at her place or came over in an intoxicated condition.

She confirmed that she and the father had been together since they were 14 and there were multiple breakups in their relationship. She admits they both were unfaithful in that relationship.

Despite an on again, off again relationship when she was 16, the father wanted a baby even though they each knew they were too young. When the respondent father was released from Waterville, they got back together. The father was in Waterville for three months with over 20 charges of break and enter related to burning down a home.

They still wanted a baby so she got pregnant again and the relationship continued until January 9, when they fought. At that time, she was 10 days to her due date.



She advised that she returned to the home of a friend to obtain her belongings and the father was drunk and passed out. She moved back to her mother's.

Not long after, they were together again and on January 19<sup>th</sup>, their oldest child was born and they were re-united.

It was shortly after this that the altercation happened that they were fighting over separating and the father wanted to take the oldest child and the mother hit him in the face three times.

This on and off relationship continued with domestic violence occurring within the context of the breakups. When the oldest was five months old, the mother was again pregnant. They argued about whether to keep the baby. The father promised he would help her this time around.

After the second child was born, she received little or no help from the father and he spent much of his time away from the common residence.

There are other reports of mutual assaults and fights involving alcohol. She reported to Mr. Bryson "another time I hit B. before he assaulted me" in April, 2009.

She tells the story that she and the father were drinking. The father's sister was 19 and pregnant. She admits having black outs from her alcohol use in April, 2009, after consuming "half of the Fireball (whisky), vodka".

She admits, during a 12 month period, she drank alcohol in April of 2009, June of 2009, July of 2009, August of 2009, and November of 2009; once each month.

[104] In spite of this turmoil, the mother denied that alcohol use resulted in difficulty in her life. She advised Mr. Bryson that if the random testing was discontinuing she may return to alcohol use although she wouldn't be drinking all the time.

[105] She advised that "it's so boring in \*, that is why everybody drinks in \*, they have nothing to do." When asked if this was the bad side to not drinking, she answered no.

[106] She admits to a great deal of mobility.

[107] At the time of the assessment, both parties intended to continue living together, at the time of the hearing, both had finally decided to breakup permanently.

[108] The results of the father's assessment indicates:

“ a lack of insight into the effect his ongoing conflict with the mother has on his children . ..There appears to be a lack of empathy, as well as responsibility for his behaviours. Despite a court order preventing their contact he openly admits violating the order and continuing with the relationship.” (P.55)

“The test results conclude he has significant difficulty managing his anger ....anger difficulties have resulted in on-going domestic abuse. Complicating his limited success with controlling hostile impulses, (he) acknowledges using alcohol problematically.”

“..he is found to have a substance dependence problem, alcohol....video game playing is also an addiction ...he reports that while doing so he cares for his children by putting on the television for them to watch.”

“He is found to have difficulty with impulse control as evidenced by his two suicide attempts and the PAI results. ..The MMPI-II RF suggests he remains a risk for suicide attempts. Further consistency between the MMPI-II RF and his self reports indicate memory problems and a low tolerance for frustration, difficulty coping with stress and difficulties in concentration. Of the parents assessed by the PDI, fewer than 1 in 100 report experiencing stress levels as high as those reported by (the respondent father).”

“The prognosis for (the respondent father) being able to provide a consistent and appropriate care of his dependant children is guarded at this time. He faces many challenges which are unresolved: anger and stress management difficulties, emotional regulations, appropriate empathy and assumption of responsibility for events in his life, a pattern of domestic violence, instability in relationships, impulse control, gaming addiction, self injurious behaviours, significant life stress and poly substance dependance.”

“He is credited with accessing counselling in the past, although lacks serious followup.”

## **Assessment of Parents with Children & Collaterals**

[109] The assessor visited with the parents during a supervised access visit. His report indicates that the parents were appropriate, affectionate, concerned, gentle, worked well with each other and worked well with the children.

[110] The assessor also interviewed the *access facilitator* who indicated she had no difficulty with the interaction between parents and children, reporting that they brought healthy snacks, made good decisions, disciplined well, were affectionate and emphasized the positive relationship between the children and the parents.

[111] The assessor, and independently the Court, have concluded that the father cares about his children, enjoys them and in supervised access visits was observed to be affectionate, appropriately child focussed, genuinely concerned about their safety and interacting with them in a caring fashion. The children responded with affection to their father.

[112] The *foster mother* did not provide a great deal of helpful information with respect to the children, although did raise the issue of concern regarding the older child's aggressive and attention seeking behaviour. Otherwise, the children seem to be doing well.

[113] The assessor interviewed the *favourite sister*. She gave a very positive report. She denied that alcohol use and domestic violence were an issue. She indicated: "her and B.L. had ... regular boyfriend and girlfriend 'difficulties' didn't really fight, just arguing." She denied there were couple difficulties. When asked if there was violence in her sister's relationship with B, she answered "no, there was before, nothing now". She reported the father was drinking, was depressed and would take it out on L., arguing with her. She suggested the mother did not initiate arguments, rather "she would argue back". This was a couple of years ago. She denied other conflict. She reports that the mother and father have a good relationship. "It is like they are best friends."

[114] Given the degree of minimization and denial of the issues that are clearly of concern in this case, I place no weight on this evidence.

[115] The assessor attempted to interview *another sister*. However, when he found that the mother was not happy with the contact he made with this sister, the assessor and the sister terminated the interview.

[116] The interviewer spoke with *the current child care provider* for the two children, who has cared for the children since December, 2009. She confirmed that the youngest child has no difficulties but the oldest child does have a problem with patience and anger.

## Test Results

[117] The *Minnesota Multi Phasic Personality Inventory-2-RF* and the *Child Abuse Inventory Form* suggested there was a low possibility of the mother physically abusing children in her care.

[118] The *Substance Abuse Screening* has been referred to previously as not indicative of having a substance dependency disorder.

[119] Three *SASSI reports* exist with respect to the mother. One of the *Substance Abuse Subtle Screening Inventory III* was administered by the assessor Michael Bryson who prepared the Parental Capacity Assessment.

[120] The *SASSI III* identifies substance dependence with an overall empirically tested accuracy of 93% (“94% of substance dependent people are correctly identified; 93% of non-substance dependent people are correctly identified”). Part of the *SASSI* is self report.

[121] Mr. Bryson advised in his report that the mother produced a valid profile. Her responses in the questionnaire suggested that there is a low probability of her having a substance dependent disorder.

[122] The results of the *Personality Assessment Inventory* were not provided because the test results were considered invalid.

[123] There was a heightening score on some of the *Parent Stress Indexes Scale* and a 99 percentile score on the measure of life stress. This is significant. The testing indicates that “parents who earn high scores such as this find themselves in stressful situations, circumstances and are often beyond their control”.

[124] The mother’s score (80) on the *Anger Expression and Anger Control* was elevated. The *Feeling Angry Sub Scale* (80) score indicates she is experiencing relatively intense feeling of angry emotions ranging from annoyed to furious; 90

percentile on the *Feel Like Expressing Anger Physically* Sub Scale and 80 percentile on AC-O suggests that she spends a great deal of energy monitoring and preventing outward expression and experience of anger. She is likely expending a great deal of energy in calming down and reducing her anger as soon as possible.

[125] The assessor concluded as follows:

“The relationship of Ms. I. with Mr. L. has reportedly experienced several chronic stressors: mutual violence, many separations, difficulties arising from substance misuse, attempts at self harm, infidelity, unclear parenting roles, and perceived lack of parenting support. Her feeling towards ‘the father’ are ambivalent. She is angry at him, yet they speak of having more children together. While she speaks of them returning to their relationship, she also speaks of them not.”

[126] The mother was a victim of sexual abuse in her early adolescence . At the time of the assessment she did not wish to engage further in discussion or a therapeutic involvement. Mr. Bryson noted:

“As the perpetrator was an adult it likely further jeopardizes her ability to develop safe and secure relationships with others. The MMPI-II RF supports that Ms. I. is suspicious of others, and does not easily trust. This pattern is also found in her therapeutic relationship with Mr. Burns, whom she does not appear to share her thoughts and feeling with. Given her history and assessed psychological make up it would likely be difficult for Ms. I. to form a therapeutic relationship with a therapist and to be compliant with treatments.”(emphasis mine)

[127] While he notes her to be a sociable and enthusiastic person who is open to new experiences, he notes:

“The history of Ms. I. suggest difficulty establishing and maintaining close relationships. When there is conflict, it seems that it is not resolved, which likely contributes to a pattern of chronic, problematic relationship choices and instability in her living situation. It seems that Ms. I. does not feel competent in her ability to exist outside of an abusive relationship with males whom she indicates use psychoactive substances problematically. She acknowledges her anger towards Mr. L. but does not seem to understand the origins of that anger. **There appears to be limited emotional awareness.** The MMPI-II RF supports her difficulty with insight. As a result, there is a pattern of conflict which threatens their ability to provide a consistent and appropriate environment for the children.” (emphasis mine)

“The use of alcohol by Ms. I. does not suggest that she has an alcohol dependency issue. At times alcohol is involved is when situations escalate. This is frequently the case of conflict between she and Mr. L. **She does meet the DSM-IV criteria of alcohol abuse including: continued substance use despite having persistent or recurrent social or interpersonal problems caused by or exacerbated by the affects of the substance** (emphasis mine) (e.g. arguments with spouse about consequences of intoxication, physical fights) as well as a recurrent substance use resulting in a failure to fulfill major role obligations at home (e.g. neglect of children or household). She, Ms. I., admits to consuming alcohol to the point where she blacks out. This could meet another DSM-IV criteria of substance abuse. Recurrent substance abuse in situations in which it is physically hazardous.”

[128] The assessor noted that the child H. could be a behavioural challenge when her needs were not met. He did note that the two children appeared to be healthy, age appropriate children who did not currently present with any special needs. Both appear to have a secure attachment to their mother. The mother was attentive of them, provided good supervision and adequate care when observed.

[129] In conclusion, he noted:

“The assessor found that the mother lacked the understanding and practical experience of parenting that would provide necessary care and attention to the children.”

“Ms. I. is a young mother of two healthy girls. Some of her current difficulties may be related to her youth and lack of life experience. By completing her education, she is demonstrating motivation to improve the family situation for herself and her dependant daughters. It is realistic that with further support (parenting, relationship, mental health and alcohol use treatment) that she could be in a position to adequately and appropriately care for her children.”

[130] He recommended as follows:

For Ms. I.:

1. It is recommended that the dependant children...remain in the temporary care of the applicant.
2. It is recommended that Ms. I. have supervised visits with her... children.

3. It is recommended that Ms. I. remain abstinent from alcohol and any psychoactive substances, such as marijuana and any other street drug, in addition to any medication that is not prescribed to her.
4. It is recommended that Ms. I. and Mr. L. attend conjoint relationship counselling. It seems that they continue to be in an intimate relationship. The focus of relationship counselling should include: assertiveness, anger management, communication, mutual respect and co-parenting.
5. It is recommended that Ms. I. attend individual counselling to assist her with : anger management, stress management, emotional awareness and self esteem. Survival of sexual abuse is also a trauma Ms. I. has not overcome. Ms. I reports a history of relationships with males despite their use of psychoactive substances.
6. It is recommended that Ms. I. attend and complete parenting courses at the \* in W., NS.
7. It is recommended that Ms. I. attend a physician to determine the origin of her gastrointestinal complaints.
8. It is recommended that Ms. I. attend counselling so that she can learn to use alcohol in a non-problematic manner (harm reduction) or be able to abstain from alcohol. Ms. I. does not seem to appreciate how alcohol use is having an impact on her ability to care for her children.

For Mr. L., the recommendations of the Parental Capacity Assessment are as follows:

1. It is recommended that the ...children remain in the temporary care of the applicant.
2. It is recommended that Mr. L. have supervised visits with his dependant children.
3. It is recommended that Mr. L. remain abstinent from alcohol and any psychoactive substances, such as marijuana and any other street drug, in addition to any medication that is not prescribed to her.
4. It is recommended that Ms. I. and Mr. L. attend conjoint relationship counselling. It seems that they continue to be in an intimate relationship. The focus of relationship counselling should include: assertiveness, anger management, communication, mutual respect and co-parenting.
5. It is recommended that Mr. L. attend individual counselling, the focus being to assist with anger management, stress management, communication skills, and the affects of domestic violence on families. As a survivor of sexual abuse, he would also likely benefit from supportive counselling to assist him with resolving his anger related to these events.

6. It is recommended that Mr. L. attend parenting classes and complete parenting courses offered through the \* offered in \* or \*.

7. It is recommended that Mr. L. attend addictions counselling so he can abstain from alcohol and other drugs. Mr. L. does not seem to appreciate how psychoactive substance use is having a negative impact on his ability to adequately care for his children.

8. It is recommended that Mr. L. attend and successfully complete the Second Chance Program in \*, a program for male batterers.

9. It is recommended that prior to any unsupervised visits with his children, that Mr. L. be reassessed for his ability to manage anger and impulse control specifically related to substance use, self harm and violent behaviour towards others.

[131] As of the June 11, 2010, Review Hearing, both parents missed drug testing on March 14, 2010, and March 27, 2010. They had been available for the rest of the testing and the results of those tests for which they were available were negative for drugs and alcohol.

[132] As of April 22, 2009, the father began attending the 12 week Second Chance program and was scheduled to complete it on July 15, 2010.

[133] They continued to attend sessions with Mr. Burns.

[134] In a session on May 27, 2010, the therapist was advised the mother was six weeks pregnant with the father's child. The parents continued to struggle with whether they should stay together or separate.

[135] Other than illness and scheduling conflicts, the parents attended the access visits.

[136] On **May 28 and May 29, 2010**, the respondents had an overnight visit at their home and after two unannounced visits, all appeared well.

[137] After the June 11, 2010, order there was a domestic dispute that occurred between the respondents. The mother charged the father with assault. As a result, he was not allowed back in the apartment. She pushed him aside because he was blocking her from getting something she wanted from a desk. She was experiencing sleeplessness, feeling stressed out and spotting blood.



[138] The police were called because the mother was becoming upset. She was then on conditions not to attend the father's apartment.

[139] The mother would not go to the hospital but agreed to go to the \* for the weekend. Subsequently, the mother was taken to the hospital where she had a miscarriage.

[140] On June 14<sup>th</sup> the parents began to have separate access visits with the children.

[141] On June 17, 2010, Bayshore Home Health Care advised the agency that the mother missed three drug tests that week.

[142] On June 22, 2010, the agency was advised by the RCMP that the mother had been charged as a result of the domestic dispute and was to appear in court on July 7, 2010.

[143] At this point, it appeared that the continuing conflict between the parties seemed to be the most difficult aspect of resolving the issues of concern in this family.

[144] By July 21, 2010, the family support worker advised the agency that the parents appeared to be doing well with the completion of courses and individual appointments with their therapist. The parties remained separated. The access visits appeared to be going well.

[145] On August 20, 2010, the agency decided to begin weekend access visits during which each parent would have a separate overnight visit with the children under certain conditions. Among other conditions, neither were to consume alcohol during the visits.

### **Addictions Counselling**

[146] Starting in September, 2010, the mother began the first of six sessions with Ms. Mac Donnell, an addictions counsellor with Addiction Services for GASHA.

[147] The letter of January 11, 2011, from the addictions counsellor confirmed that the mother had attended one on one addictions counselling sessions with her on **September 14, 2010; September 21, 2010; October 4, 2010; October 19, 2010; and October 21, 2010.**

[148] The sessions, in total, lasted six and one half hours. There was no report on the supportive counselling session of October 21<sup>st</sup>.

[149] It is important to note that the mother tested positive for drugs on a sample taken September 9, 2010. She also tested positive for alcohol on a sample taken October 2, 2010. Neither of these reports were known to the addictions counsellor.

[150] In fact, in the October 4, 2010, session with the addictions counsellor, the mother advised she continued to stay away from alcohol and denied current use. She admitted subsequently to the agency worker that she had been drinking.

[151] Clearly the mother was not forthright and honest with this addictions counsellor, nor was she honest when speaking to the Family Group Conference on October 8, 2010, when she said she continued to abstain from alcohol and drugs.

[152] She also tested positive on a hair sample collected approximately 10 days after the reapprehension. Due to the problematic file management of the test results, the ability of the expert was limited in drawing precise conclusions regarding the mother's usage.

[153] However, the results signify significant and frequent exposure to an environment in which cannabis is present. The mother has indicated by this point she was no longer associating with persons involved with drugs and alcohol.

[154] The mother completed another SASSI report based on her last six months (April to September, 2010). As had the Bryson SASSI report, this report also concluded the mother had a low probability for having a substance dependence disorder.

[155] The counsellor indicated the mother presented positively with hope for her future to complete her grade 12 education and to stay away from alcohol.

[156] In the September 21<sup>st</sup> session, by self report, the mother advised and confirmed that she and the father has been very abusive to each other. She acknowledged assault charges against herself and indicated alcohol had played a role in their unhealthy relationship, although she denied that alcohol was a major factor in the assault.

[157] She denied any alcohol use for months.

[158] In looking at her test scores, her answers to questions provided, it is notable that she answered “never” to the following questions to obtain the result:

1. Have problems in relationship because of your drinking (e.g. loss of friends, separation, divorce, etc.);
2. Argued with your family or friends because of your drinking; and
3. Gotten into trouble in a job, in school, at home because of drinking.

[159] The actual evidence of the domestic violence, police involvement and relationship difficulties would not accord with her answers.

[160] She acknowledged that she was beginning to develop an unhealthy relationship with alcohol and needed to make some changes.

[161] **On October 8, 2010**, a family group conference was attended by both respondents and workers with the applicant agency. The agency agreed to return the children to the mother under a supervision order on certain terms and conditions.

[162] The agency recognized that their ability to parent separately better ensured the safety of the children. The agency acknowledged that both parents addressed the risk concerns and recognized that they are unable to parent jointly.

[163] This conclusion was not wholly accurate. The agency was acting on false information and belief.

[164] Weekend visitations were granted after the last court hearing on September 7<sup>th</sup> and they went well.

[165] For a planned overnight visit to the father's home on **September 24, 2010**, the agent first attended the home of the father and upon entering determined that the home was in disarray. There were tools and knives on the floor, dishes on the table and dirty floors.

[166] The father knew and could have been prepared for the overnight visits with his children.

[167] The worker gave him a short period of time to clean up the apartment. The father did not comply. The worker cancelled the visit. The mother agreed to take the visit in her residence.

### **Reinstating a return of the Children under a Supervision Order**

[168] On October 21, 2010, the applicant requested an order that the children be returned to the respondent mother under a supervision order with a further review to be held on January 18, 2011.

[169] This decision was made very close to the approaching time deadlines of January 18, 2011, at which point the Children and Family Services Act demands final disposition and permanency planing for these children.

[170] The terms of the return were incorporated into the plan:

Both parents would agree to meet with Mr. Burns to develop a strategy to establish boundaries.

They agreed upon a three month period of supervision.

They agreed to keep the father in contact with the children everyday.

They agreed they would have a drug free environment.

The plan required the parents to absolutely refrain from the use of non prescription drugs and from the abuse of alcohol, submit to random drug screening and not associate with individuals who are suspected or known to use non prescription

drugs or abuse alcohol. During the family conference, both parents assured the social workers that they were drug and alcohol free.

### **The Plan Unravels**

[171] On **October 26, 2010**, after the family conference occurred, after the decision was made to return the children, a toxicology reported dated **October 2<sup>nd</sup>** showed that the mother had tested positive for ethanol.

[172] The mother, when asked on November 1<sup>st</sup>, had no explanation for the positive test result. She did advise that she drank because she felt like it. The mother was informed that if another toxicology report returned positive or if any drug testing was missed, the agency would take action for the safety of the children.

[173] On **November 25, 2010**, the agency received a further toxicology report as the result of testing that occurred on **September 9, 2010**. The mother tested positive for benzodiazepines. Despite efforts, the agent could not contact the mother at her home until November 30<sup>th</sup> when she informed the mother that a positive toxicology report had been received. The mother was asked to disclose whether there was any medications that might have produced this and the mother indicated that there were none.

[174] Initially the mother presented no explanation. Subsequently, she stated she did not remember taking any pills and did not say anything further.

[175] The case worker noted that the father, as of that date, had not attended an addictions counsellor.

[176] On **December 1, 2010**, as a result of their concerns about the safety of the children and the apparent lack of insight of both mother and father, the agency decided to bring the children back into care to protect their health and safety. They were returned to the kinship placement.

[177] A contested Final Disposition Hearing was inevitable. Previously, all three counsel had operated under common understandings throughout. A contested hearing was not anticipated.

[178] The last minute reapprehension required all parties to prepare for a contested hearing when each party had expected the matter would resolve by consent with a return of the children to the parents.

[179] Immediate disclosure of agency records was required. Some files, including this one, were in the possession of an auditor in process of an internal audit. A court order was required to facilitate last minute disclosure.

### **The Results of Random Urine Testing and Hair Sample Analysis**

[180] The mother advises she commenced random sampling sometime in September/October of 2009. Exhibit 24, filed by the respondent's counsel, contains only those test results starting December 8, 2009, up to and including February 7, 2011.

[181] Exhibit 24 contains the results of 135 reported tests over a 14 month period (verses the total testing) all of which proved negative for the identified drugs and alcohol.

[182] There was another small selection of tests.

[183] The mother's and father's counsel assert that exhibit 24, together with additional evidence from Bayshore Health, showing samples taken for which no reports have been received in evidence, contain the total disclosure they have received from the agency. This leaves September to December, 2009, missing. The agency has been unable or unwilling to provide an explanation for the missing samples.

[184] Exhibit 6 reflects an October 9<sup>th</sup> collection in where the mother was unable to void and no sample was taken. It also contains information concerning the sample taken on October 11<sup>th</sup>, for which results have been provided in exhibit 24.

[185] Missing from exhibit 24 is the urine sample taken as evidenced by exhibit 7 on December 31, 2010, again evidence that the mother was unable to void. The collector advised the mother that failure to provide a sample could be interpreted as a positive test. She offered to stay longer to obtain a sample. The mother declined her offer.

[186] On October 27, 2010, no sample was obtained (Exhibit 8). The mother did not respond to a cell phone call or the nurse when she was called on three more occasions, with no answer.

[187] The second group of exhibits numbered 25, 26, 27 and 28, all evidence samples taken on November 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 8<sup>th</sup>, for which there are no corresponding laboratory reporting which would confirm that the testing was in fact done.

[188] While the collections records confirm that each of these specimens had been sent by courier to the laboratory, exhibit 24 does not contain disclosure of the results of this testing.

[189] Exhibit 16 contains two reports from the Capitol Health Central Laboratory confirming the presence of drugs and alcohol in the mother's urine sample by collection date **September 21<sup>st</sup>**, report date October 28<sup>th</sup>. The report shows the presence of benzodiazepines (a "Valium type" medication) and by collection date **October 2<sup>nd</sup>**, report date October 13<sup>th</sup>, ethanol was detected.

[190] Those are the only positive reports in the evidence presented to the Court. There is no explanation provided for the presence of this in her urine.

### **Expert Testimony**

[191] A report dated March 14, 2011, was prepared by Joey Gareri of the Motherisk Laboratory, a recognized expert in this analysis from the Motherisk Laboratory of Sick Kids in Toronto. No objection was made to his qualification as an expert.

[192] He spoke to the results of hair test samples taken from the mother on December 9, 2010, after the re- apprehension. He provided an explanation for the discrepancy between the results in the urine samples reporting and the hair sample analysis.

[193] He noted that all urine samples were collected under direct supervised/observation thus reducing the risk of tampered samples and false negative findings.

[194] The hair test analysis of the mother's hair samples was completed at Motherrisk Laboratory. The sample collected represented approximately six months of drug exposure history from **June to November, 2010**, inclusive. The report states:

“The sample was decontaminated (i.e. washed) prior to analysis in order to remove drugs possibly present externally on the hair via passive exposure to drug smoke or drug residues present in contaminated environments. This sample was tested for cocaine, benzoylecgonine (i.e. cocaine metabolite), opiates (e.g. heroine, morphine, codeine), cannabinoids (i.e. marijuana or hashish), amphetamine (i.e. speed), benzodiazepines (i.e. Valium - type medicine ‘medications’), and frequent excessive alcohol consumption being an analysis of fatty acid ethyl esters (FAEE).”

This hair sample tested positive for cannabinoids.

[195] In his explanation, he confirmed that:

“the concentrations of cannabinoids found in hair are much lower and individuals generally must use, on average, several times a week in order to test positive in hair; therefor any positive finding for cannabinoids in hair indicates frequent use of cannabis. This hair sample tested positive (above the cut off level of 0.20 ng/mg indicating frequent use of cannabis by this individual during the six month time period tested).”

[196] Having reviewed the urine and hair test evidence together pertaining to the six month period, he initially concluded that cannabis was part of this (the mother's) individuals lifestyle during the tested time period in that this individual **either:**

I) exhibited **frequent cannabis use** during the above noted time periods between urine sample collections; **or**

ii) was consistently **passively exposed** to cannabis during the six month time period tested **by being in direct contact** with the drug.

[197] The expert was sent only some of the test results. Subsequent investigation by the respondent's counsel discovered that the expert was missing some of the results.



[198] Based on what he had assumed was full disclosure, he concluded that the mother was a frequent cannabis user. He noted there were large gaps between the testing periods. For example, he concluded that there was a 22 day gap period, a period without testing, between June 4<sup>th</sup> and June 26<sup>th</sup> ).

[199] The mother's counsel was able to provide evidence that there were eight tests that occurred between June 4<sup>th</sup> and June 26<sup>th</sup> showing no drugs detected.

[200] The expert also noted there was another 18 day period between October 6<sup>th</sup> and the 22<sup>nd</sup>. Counsel confirmed that, in fact, there was a test done on October 11<sup>th</sup> which showed negative results.

[201] The expert relied on another 14 day period between October 28<sup>th</sup> and November 11<sup>th</sup> during which he assumed no testing was done. Counsel was able to provide evidence that there were missing tests from November 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 8<sup>th</sup>.

[202] No explanation was provided for the eight day period between June 30<sup>th</sup> and July 8<sup>th</sup>; the seven day period between July 22<sup>nd</sup> and 29<sup>th</sup>; the 14 day period between July 29<sup>th</sup> and August 12<sup>th</sup>; or the nine day period between September 1<sup>st</sup> and 10<sup>th</sup>. There was one test on July 4<sup>th</sup> that was listed as dilute.

[203] The test results from the hair strand analysis collected on December 9, 2010, shortly before the Final Disposition Hearing triggered a concern that the mother was a frequent cannabis user. It also appeared to conflict with the results of most of the testing on urinalysis which showed no alcohol or drugs detected.

[204] The agency sent him urine samples they described as urine samples taken approximately two to three times per week. Clearly, the urine sample collection did not achieve that level of frequency throughout the six month period.

[205] When confronted with the missing test results, the expert indicated that the existence of these additional test would cause him to conclude that **one could not prefer the option proposed that the mother was a frequent cannabis user as he had originally concluded.**

[206] Based on these discrepancies, one could only **safely conclude at a minimum that the mother was consistently passively exposed to cannabis during the six month time period tested by being in direct contact with the drug.**

[207] Therefore, one could not conclude reliably that she was a frequent cannabis user.

[208] His amended conclusion was more consistent with the results of the urinalysis testing.

[209] The lack of full disclosure and incomplete provision of testing results impaired the experts ability to provide a more definite conclusion.

### **Drug Addition Services**

[210] The father was required to submit to random urinalysis . The documents marked as exhibit 19 reflect those reports that have been disclosed to both his counsel and the Court from the agency. There were 150 tests reported, with no positive findings, i.e. no drugs or alcohol were detected.

### **Conclusion**

[211] The mother appears to have largely refrained from the use of alcohol and any proactive substance although a definitive conclusion on this point is difficult to make. There are missed tests, insufficient continuity of testing and the mother has not been totally forthcoming to the addictions counsellor and the agency team about her use.

[212] She has also indicated without testing she would continue to use.

[213] The mother did attend conjoint counselling, although somewhat reluctantly, and terminated this involvement in November/December, 2010, at the same time as she was looking at a return of her children, when therapeutic support would have been critical.

[214] The counsellor concluded the couple did not complete their work. He found them immature, unable to work together as a couple and he did not see behavioural change as a result of the sessions they attended.

[215] The mother and the father has no real interest in following recommendation # 5 (counselling for the survival of sexual abuse). While both advise they would be prepared to if ordered, neither followed up on this recommendation made in April, 2010. Neither expressed a commitment or insight into the necessity of this.

[216] Mr. Bryson suggests the historical abuse affects the mother's ability to choose healthy relationships. This has been a significant risk issue to the children.

[217] Regarding parenting and domestic violence courses (recommendation # 6); to the extent required of her, she complete the offered courses late in the process. Its effectiveness is not evident and domestic discord and relationship uncertainty continued after the completion of the courses late into the proceedings.

[218] There is no evidence to illustrate that the mother understands or has insight into the effect of alcohol use in her life and relationships.

[219] The mother and father have not engaged significantly in educating themselves in order to effectively address her lack of insight. It would be a fair conclusion to suggest the mother attended the addictions counselling services in order to comply with the order in form and not in substance.

[220] The risk to these children became evident in April, 2009, such that child protection intervention became necessary.

[221] The domestic violence and relationship issues between the mother and her partners placed the children in physical and emotional danger.

[222] There was significant police intervention made necessary by domestic disputes and violence, alcohol abuse and the fathers attempted suicide.

[223] The relationship issues continued despite the intervention and availability of agency resources up to and including December, 2010.

[224] There were significant drug and alcohol testing that showed no alcohol or drugs detected. There were periods of missed and incomplete testing. If the results prove anything, they show the parents can abstain when they choose to.

[225] The considerable exposure to soft drug usage (according to the expert) demonstrates at the very least that the mother associates with those who are frequent users of cannabis.

[226] This demonstrates a considerable lack of judgement and insight. The children had been out of their parent's care since September 30, 2009. The stakes were as high as they can get. The children were returned with the parents promise to absolutely abstain from alcohol or drug use.

[227] The testing of September 21<sup>st</sup> and October 2<sup>nd</sup> produced positive unexplained results. The return of the children was done under false pretext.

[228] The parents lied to the agency during the family conference when they assured the agency they were drug and alcohol free and had been for some time.

[229] More critically, the mother shows no insight into the necessity to remain drug and alcohol free. Nor does she articulate a desire to do so. Without the testing, she told the assessor she might use again. She drank because she wanted to even when the consequences of doing so could result in the loss of her children. She associates with those who use cannabis frequently.

[230] There is evidence that the mother participated in the domestic violence and parenting course offered her. The hours offered to them were very limited.

[231] I have no information before me that allows me to conclude she developed insight or altered her behaviour as a result of these courses.

[232] There is evidence that both mother and father received high praise at supervised access visits.

[233] The children were apprehended in September, 2009. The mother finally attended six sessions with an addictions counsellor in April, 2010. When she attended, she did not represent to the addictions counsellor insight or accuracy regarding the effect of alcohol in her life.

[234] Her behaviour also consistently exhibits a lack of insight or simply refusal to maintain contact or to participate in the ongoing support services available to her.

[235] The refusal to be consistently open and available does not argue well for the safety of the children in her care unless there is a demonstrated change in perspective, insight and behaviour such that external resources would not be necessary to provide external support and observation.

[236] The mother's affidavit and testimony provide scant detail that would assure the Court that placement of the children in her care could occur without conditions.

[237] There is no evidence before me that would address the on and off again relationship between the parents and the domestic violence.

[238] While they currently present as separate, this has been a long term relationship with many separations. The therapist concluded they could not parent together, presented as immature and lacking in insight regarding their relationship.

[239] While they presented a separate plan, apparently recognizing that together they continued to pose a risk to the children's environment, there were occasions when they continued to associate and stay together in the home. This does not support a conclusion that, left on their own, they have the necessary insight to address the risk their ongoing relationship difficulties present to their children.

[240] The assessor noted that each should address the history of sexual abuse that victimized each of them. Each expressed, understandably, a reluctance to do this. However, the goal of such therapy was to create the capacity for each of these parents to enter into mature and healthy relationships in future.

[241] The relationship issues between the parents and the mother's choice of other partners has been a major cause of conflict and chaotic lifestyle to which the children have been exposed.

[242] I cannot conclude with any confidence that the mother has the insight and motivation to address her relationship issues sufficiently such that the children will not in future be exposed to violence, substance abuse and the fathers mental health issues.

[243] The mother's testimony did not address with certainty any insight into her selection of partners who expose her to unhealthy circumstances.

[244] The negative testing does suggest the parents can remain drug free while being tested. There are sufficient missed testing; such that I cannot conclude this issue has been addressed by the father or that the mother understands how important abstinence is. However, this is not the major factor.

[245] The most serious impediment is the clear lack of insight and understanding regarding how the parents lifestyle issues, domestic violence, and instability affects the children. This was something that Mr. Bryson said the mother could develop.

[246] Unfortunately, after 20 months there is little evidence to see that this intervention has made a difference. **That is not to say it can't happen for the mother.** It is simply to say, currently it has not happened in this case with these children.

[247] These children have been in a kinship placement for in excess of 15 months. I have only the evidence of the parents to support their belief that they understand and have made significant progress.

[248] I have no evidence from any other source indicating that these children could be placed in the care of the mother without conditions and they would be free of the risks identified at the beginning.

[249] I have no doubt, whatsoever, that these parents love their children as they can at this point in their lives. The parents have not reached a sufficient maturity to address the need for change.

[250] They individually still need care to address their own victimization from the past, a lifestyle of domestic violence and serious impediments to providing a risk free environment to their children.

[251] Full time care of the children would simply be placing on this mother expectations that she cannot meet.

[252] These parents have dreams and hopes for their future. There are recommendations in the Plan of Care that they need to seriously address, to parent without intervention.

[253] The description of the courses offered did not create proof that the issues have been addressed. More critically, there is a lack of evidence that the mother has gained sufficient insight to effect the necessary cognitive and behavioural changes such that these children can safely return to their mother's care.

[254] I am satisfied that the agency has provided sufficient evidence on the balance of probabilities to prove that these children continue to need protective services.

[255] I am unable to place the children in the care of their mother without imposing multiple conditions to ensure their day to day safety.

[256] According to Section 45 of the *Children and Family Services Act*, the time has passed and Final Disposition must be made to address the needs of the children for permanency planning.

[257] It is the duty of the agency to ensure the placement of the children meets their best interests and any concerns of the parents have been properly reviewed.

[258] Access to the parents by way of court order will impair the adoption process. Accordingly, no order authorizing access will be made.

### **Deficiencies in Process /Evidentiary Deficiencies**

[259] The following points of concern are not intended to be a criticism of any individual agent or service provider. The individuals before me clearly appear to attempt to offer services and assistance to the parents to protect the children and at the same time maintain the integrity of the family. The intent appears to be to interfere in the least intrusive manner possible.

### **Psychological Assessment - Parental Capacity - April 7, 2010**

[260] In preparation for assessment, Mr. Bryson wrote the agency on September 30, 2009, asking for the names and telephone numbers of foster parents, the medical treatment providers, the name of the daycare for the children, and requested of the agent then responsible, consent for the release of information forms to be signed by the agency and be returned to his office to assist him in the preparation of the report.

[261] He asked and received, by same date, the requested names and telephone numbers of the foster parents, the medical treatment providers, the name of the daycare and the signed consent forms allowing him to speak to collaterals.

[262] He also received from the mother, her consent to these collaterals, such as treatment providers, family members and friends, to be contacted as a component of the Assessment.

[263] Armed with the parental and agency consent, Mr. Bryson requested **and did not receive** information requested from the community medical centre; a history of the mother and the children's medical treatments, including diagnosis, prescription medications, current treatments, and pending treatments.

[264] The mother advised that she attended parenting at this centre. The health centre reported they had no record of her participation.

[265] Correspondence was sent to the \* on October 6<sup>th</sup> requesting the completion of a care giver/teacher report form for ages one and a half to five by the daycare teacher to be returned to his clinic. **Again, no information was received** and no order sought.

[266] Finally, correspondence was sent to the therapist engaged by the agency, requesting the forwarding of dates of appointments, including attendance and non attendance, assessment, diagnosis, treatments plans, session notes, treatment progress, referrals made and prognosis. **The assessor received no information from the therapist.** The Court heard his testimony but had no written report.

[267] The assessor also requested but did not receive any information from C.I. Medical Centre , St Martha's Regional Hospital -Mental Health Department and Mr. Burns regarding the father.

[268] Thus, the assessor was unable to verify information from these collateral resources.

[269] There are remedies available to address third party disclosure. Given the significant cost and time investment in Parental Capacity Assessments, this



deficiency ought to have been remedied well before the assessor was obliged to tender his report.

[270] There was no evidence offered to address the difficulty the assessor encountered.

[271] These are matters that ought to be addressed internally at least by counsel, the agency and the Department responsible for the care and protection of children.

### **The Agency Plan to Return the Children Backfired**

[272] This is another area that causes some concern. This resulted in late disclosure of records, inadequate and partial disclosure and necessitated a number of pretrial appearances.

[273] The agency worker requested the file to fully disclose to counsel. She advised she was unsuccessful in obtaining the file due to a provincial audit of the file.

[274] A court order was required to obtain disclosure in a more rapid manner. The file was disorganized when returned and was not reordered.

[275] Disclosure of this nature ought to be immediate and ongoing over the course of the proceedings; eliminating the need for last minute, untimely disclosure.

[276] In addition, some random tests results were not disclosed. No explanation was offered for the incomplete disclosure to the expert and the Court. The proper custody and control of the agency file causes the Court considerable concern.

[277] The disclosure of the test results also exposed some deficiencies. There was late disclosure to the agency and parents' counsel made after the agency made important decisions about the children.

[278] Where were the complete records of testing from the lab? Who had custody of these records and why were they not produced? These issues diverted the focus of the proceedings until they were resolved.

[279] I have no information before me to measure the sufficiency of the course material offered by the agency. There was little evidence to allow the Court to conclude what the parent could have learned.

### **Multiple Transitions**

[280] The Court was left wondering how return of the children in October, 2010, could take place on the scant written information available to the agency providing proof of a change in the level of insight of the parents.

[281] This transition of the children, first from the mothers' care, then to the kinship placement, back to the mother's care and, almost immediately afterward, back to kinship placement, raises serious questions about the sufficiency of information available to the agency when these decisions were made.

[282] Multiple transitions for children in care does not address their best interests.

### **Psychological Updates**

[283] The request to complete a follow up assessment to determine whether the parents had in fact made sufficient progress, well after the Section 45 time lines, is concerning. It was suggested the original assessment was dated. The information regarding whether the parents had incorporated the information they received in counselling and educational sessions should have been evidenced by their conduct and that should have been available to the agency by way of regular supervision, recording and reporting.

[284] Finally, these difficulties in file management, disclosure, observing the legislated time deadlines, assisting the assessor obtain disclosure, assessment of the parental needs and tools to measure the success of parental programs and instruction as demonstrated by the parents ought to be the source of internal self examination at the least.

[285] The focus in these proceedings must be the best interests of the children and ought not to be diverted by those procedural and evidentiary deficiencies which are legitimately within the control of the agency.

[286] They provide unnecessary distractions to the proper and timely resolution of the case which ultimately impacts on the children.

[287] Counsel for the agency will draft the permanent care / no access order.

Moira C. Legere Sers, J.