

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Nova Scotia (Community Services) v. NL, 2014 NSSC 201

Date: 20140610

Docket: 83964

Registry: Sydney

Between:

Minister of Community Services

Applicant

v.

NL and WM

Respondents

Editorial Notice

Identifying information has been removed from this electronic version of the judgment.
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Judge: The Honourable Justice Theresa M. Forgeron

Heard: February 17, 19, 20, and 21, 2014 in Sydney, Nova Scotia

Last Submissions: March 18, 2014

Oral Decision: May 28, 2014

Written Decision: June 10, 2014

Counsel: Tara MacSween, Counsel for the Minister of Community Services
Alan Stanwick, Counsel for NL
Kimberly Franklyn, Counsel for WM

[1] **Introduction**

[2] After years of adverse results, WM finally produced a clean drug test. Mr. M states this result confirms the successful resolution of his addiction issues. Ja, the son of Mr. M and NL, should therefore be returned to Mr. M's care under a supervision order. In the alternative, Ja should remain in the temporary care of the Agency. Mr. M urges an immediate dismissal of the Agency's request for permanent care because the statutory time line has not expired, given the clean drug test and his love for Ja.

[3] Ms. L supports Mr. M. She is abandoning all plans to parent Ja.

[4] For its part, the Agency states that a permanent care order, without a provision for access, is the only order that meets the legislative requirements. Protection concerns have not resolved. The clean drug test is "too little, too late". The Agency states that less intrusive alternatives, including services to promote the integrity of the family, have been attempted and have failed, or would be inadequate to protect Ja. These circumstances are unlikely to change within a reasonably foreseeable time. Ja deserves to live with a loving and nonviolent family. A permanent care order will ensure this goal is achieved.

[5] **Issues**

[6] The following issues will be determined in this decision:

- Should an order for permanent care and custody be granted when legislative time lines have not been exhausted?
- If so, should access be awarded?

[7] Before considering these issues, I will provide background information and I will summarize the trial evidence.

[8] **Background Information**

[9] Ja was born on December [...], 2012. He was taken into Agency care at birth. On December 17, 2012, Ja was placed in the interim care and custody of his paternal grandmother, BM. Mrs. M was also acting as the custodial caregiver to Ja's older sister, Ab, who was two years old.

[10] After Ja was placed in Mrs. M's care, the Respondents were granted liberal access. Ms. L was entitled to supervised access from 7 a.m. until 9 p.m. daily at Mrs. M's home. Mr. M was granted supervised access, two days a week, for three hours per visit. Ms. L was entitled to attend these visits as well.

[11] On April 4, 2013, access was varied. In addition to the periods of supervised access, Ms. L was granted unsupervised access, three times per week, for two hours each visit, but subject to periodic check-ins by an access worker. Mr. M was not permitted to be present with Ms. L and Ja during the unsupervised visits.

[12] On May 3, 2013, as matters appeared to be progressing, access arrangements were extended a third time. Ms. L was now allowed to reside in Mrs. M's home, but subject to continued supervision by Mrs. M. Mr. M's access was also increased; he was granted supervised access at his mother's home from 7 a.m. to 9 p.m. daily. In addition, specified access outside of the home was permitted, which was intended to provide respite to Mrs. M.

[13] The Respondents initiated a fourth change in access in the summer of 2013. On July 15, 2013, Ms. L contacted the Agency to advise that she was no longer staying with Mrs. M. Ms. L confirmed that she had returned to live at Mr. M's home. Mr. M was now living at his parents' home.

[14] On July 16, 2013, the Agency determined that Ja and Ab were to be taken into care. The current order was no longer safe.

[15] After the children were placed in Agency care, Ms. L, Mr. M, and Mrs. M were granted supervised access. The Respondents were not satisfied with the access arrangements. Ms. L and Mr. M sought to increase the frequency and length of their visits, and to change the access venue. A contested access motion was heard in early 2014. After hearing the evidence, the court refused the motion by oral decision dated February 3, 2014.

[16] The Agency filed a new plan of care. The Minister sought an order for permanent care and custody. The Respondents objected to the Agency's plan. A contested hearing was scheduled for February 17, 19, 20, and 21, 2014. The following people testified at the hearing: Joey Gareri, Nicole Sheppard, Nadine Marr, Constable Wade Lavin, Constable Tony Melski, Constable Mark Myler, Constable Terry Pearcey, Constable Charlotte Price, Constable Kenneth Estwick, Alanna Brown, André Campbell, Nadine Sampson, Joanne MacCormack, Judy Petite, Donna Mikkleson, and WM. NL elected not to testify. Transcripts from past proceedings were also introduced as evidence pursuant to s.96 of the *Children and Family Services Act*.

[17] The Respondents provided oral submissions. The Agency requested an opportunity to provide written submissions. These submissions were received on March 18, 2014. The Respondents were given an opportunity to augment their oral submissions with written submissions. Neither Respondent elected to do so.

[18] The court rendered its oral decision on May 28, 2014, while reserving the right to make changes to the written version to be produced. The court is not *functus* until the order issues: **McMullin-Mullin v. Henley**, 2013 NSCA 85. The court also noted that the delay in producing the decision was due to a temporary lack of administrative support, which was outside the control of the court.

[19] **Trial Evidence**

[20] *Joey Gareri, M.Sc.*

[21] Mr. Gareri was qualified to give opinion evidence in the field of analytical toxicology. Mr. Gareri described the results of the testing that was conducted at the Motherisk Laboratory during the course of this proceeding. I accept the evidence of Mr. Gareri. He was both credible and reliable. His evidence was independent. He had no vested interest in the outcome. He answered questions in a professional and thoughtful manner. He was not evasive. Mr. Gareri was well-informed and knowledgeable about the subject matter.

[22] The first test completed was the meconium analysis. Meconium forms in a baby's intestine during the last two trimesters prior to birth. Meconium is evacuated from the baby's system within the first few days of birth. In this case, the meconium sample that was taken from Ja was not of a sufficient quantity to perform all of the requested tests. Therefore, the sample was only tested for alcohol, and not drugs, because of the laboratory's prioritization policy.

[23] Mr. Gareri did not detect any Fatty Acid Ethyl Esters (FAEE) in Ja's meconium. FAEE is a metabolite of alcohol. As a result, there was no direct evidence of prenatal exposure to alcohol. The lack of FAEE, however, does not rule out alcohol exposure for two reasons. First, clinical studies confirm a false negative rate of about 20%. Second, the test only measures alcohol consumption above the level of social drinking. Test results should not be interpreted in a vacuum, but rather, the court must also look to other indicators, such as firsthand accounts of alcohol consumption.

[24] Mr. Gareri also testified about the hair follicle samples taken from Mr. M. The first sample represented the period from early November to early December 2012. Mr. M's hair was too short to perform testing for an earlier period. Cocaine, benzoylecgonine, norcocaine, and cocaethylene were all present in the hair sample. Their presence confirms active, intensive, and frequent cocaine use, in combination with some alcohol use. It is improbable that an individual using .5 to 1 gram of cocaine once, every one to three months, would produce these results. Further, the results confirm ingestion of cocaine, and not trafficking because of the presence of all three metabolites. In addition, the test results showed the use of benzodiazepines, which are a class of anti-anxiety medications with sedating properties. Their presence could be explained by way of prescription.

[25] The next sample taken from Mr. M represented the period from late April to late August 2013. The test results from this sample are open to one of three possible interpretations in relation to cocaine, as follows:

- Isolated or infrequent use of cocaine on as little as one occasion from late April to late August, 2013.
- Frequent and intensive use of cocaine in the recent past, within two months of late April 2013.
- Frequent passive exposure to cocaine in the environment through the presence of cocaine smoke, or through the handling of cocaine, or by direct physical contact with a heavy cocaine user.

[26] The testing for the period between late April to late August 2013 did not produce evidence of alcohol use. The test only measures excessive alcohol use. The test cannot be used to establish the absence of social drinking or infrequent binge drinking.

[27] The final hair sample taken from Mr. M represented the period between early September and early December 2013. There was no cocaine use during this time. Trace amounts of codeine and benzodiazepines were found, which could be explained by prescription. The test confirmed no excessive alcohol use or excessive binge drinking. This was Mr. M's first clean test.

[28] Ms. L also provided hair samples for testing. The first segment represented the period from early August to early November 2012. The results were positive for cocaine and benzoylecgonine, and, given the amounts, proved active cocaine use. Because alcohol testing cannot be measured past three months, Mr. Gareri was unable to provide any interpretation for Ms. L's alcohol consumption during this time period.

[29] For the period between early November 2012 and early February 2013, Ms. L tested negative for drugs. The alcohol testing was not conclusive. The results showed a FAEE concentration of .48ng/mg. The cutoff for positivity is .5ng/mg. Mr. Gareri was unable to conclude that there was clear evidence of frequent alcohol use between early November 2012 and early February 2013 because the target had not been produced. This result does not rule out social alcohol use or infrequent binge drinking.

[30] For the periods between late February and late May 2013, and late May to late August 2013, Ms. L tested positive for cocaine. Given the amounts produced, and the absence of benzoylecgonine, the test proved one of two possible interpretations, as follows:

- Isolated or infrequent use of cocaine on as little as one occasion for the period tested.
- Frequent passive exposure to cocaine in the environment through the presence of cocaine smoke, or through the handling of cocaine, or by direct physical contact with a heavy cocaine user.

[31] There was no evidence of excessive alcohol use. Mr. Gareri cautioned that the test did not establish the absence of social drinking or infrequent binge drinking.

[32] For the period between mid September and mid December 2013, Ms. L tested positive for cocaine. Given the amounts produced, and the absence of benzoylecgonine, the test proved one of two possible interpretations, as follows:

- Isolated or infrequent use of cocaine on as little as one occasion for the period tested.
- Frequent passive exposure to cocaine in the environment through the presence of cocaine smoke, or through the handling of cocaine, or by direct physical contact with a heavy cocaine user.

[33] Mr. Gareri stated that in addition to the presence of cocaine, this hair sample also tested positive for FAEE at .67ng/mg. This result is suggestive of frequent and heavy alcohol use between mid September and mid December 2013, although given the EtG-negative result, 100% certainty could not be stated. Mr. Gareri noted that in some laboratories only FAEE is used as a biomarker validation for alcohol usage. Mr. Gareri stated that there are different opinions in the hair testing community, and some professionals are comfortable confirming alcohol use based upon FAEE readings alone which are between .2 and .5ng/mg. Mr. Gareri was not; he prefers 100% certainty.

[34] When cross examined, Mr. Gareri conceded that the FAEE positive is objective evidence suggesting frequent heavy alcohol use. He said, based on a balance of probabilities, it is more probable than not, that there was frequent and heavy alcohol consumption during this time period. Mr. Gareri also noted that hair dyes, hair products containing alcohol, and hair washing can deteriorate and lower the concentration of substances found in hair, but will never increase concentration levels.

[35] *Nicole Sheppard*

[36] Ms. Sheppard was the long term protection worker for the Respondents at various times between April 2011 and July 2013. In addition to her oral testimony, Ms. Sheppard's affidavits, filed in other proceedings and motions, were also introduced as exhibits. I accept the evidence of Ms. Sheppard. She was objective and professional in her accounts.

[37] Ms. Sheppard's first involvement arose in April 2011 when the Respondents' daughter, Ab, was placed in the temporary care of the Agency, and Ms. L's daughter, Je, was in supervised care. Ms. L's child, Mo, and Mr. M's daughter, MK, were also subject to Agency intervention during this time.

[38] Ms. Sheppard stated that the services offered to the Respondents were designed to alleviate protection concerns associated with domestic violence and substance abuse. Although the domestic violence issues were eventually resolved, substance abuse concerns were not.

[39] Ultimately, the Agency determined that a permanent care and custody order was the only available option for Ab in the circumstances. The Agency reversed this decision after Mrs. M put forth a safe, stable plan of care. In January 2012, the Agency terminated its involvement with Ab when the court issued an order providing Mrs. M with sole custody and the Respondents with supervised access. Further, the supervision order involving Je was terminated once the statutory time lines were exhausted on March 27, 2012.

[40] During her testimony, Ms. Sheppard reviewed the various referrals the Agency received in 2012 and her subsequent contact with the Respondents to address them, including the concern that the Respondents were having unsupervised access to Ab, contrary to the court order.

[41] Ms. Sheppard described the Agency's involvement once the Minister was informed of Ms. L's pregnancy. Ms. Sheppard encouraged Ms. L to reengage with Addiction Services before the baby's birth. Ms. Sheppard reviewed the factors, which resulted in the Agency's decision to take Ja into care upon his birth, followed by the decision to allow a family placement, with an evolving expansion of access for both Respondents.

[42] Ms. Sheppard also noted that in April 2013, Ms. L advised of a number of concerns. Ms. L said that she was going to get her own apartment because she wanted her children back. Ms. L complained that Mr. M was not participating in services. She also stated that she and Mr. M had an argument after she discovered that his roommate was selling drugs.

[43] On May 28, 2013, Ms. L informed Ms. Sheppard that she drank a small glass of wine at a cosmetic launch.

[44] On July 15, 2013, Ms. L told Ms. Sheppard that she had moved back to Mr. M's home to be with Je, and that Mr. M was now living with his mother. She also confirmed that she was drug and alcohol free. She denied any cravings.

[45] On July 15, 2013, Ms. Sheppard spoke to Mrs. M to underscore the importance of following the court order. She confirmed that Mr. M was not permitted in her home between the hours of 9:00 p.m. and 7:00 a.m. When Ms. Sheppard called back at about 9:25 p.m., Mr. M answered the phone. He was in breach of the court order.

[46] On July 16, 2013, after convening a risk conference, the Agency determined that Ja would be taken into care. The parties were served with a Notice of Taking. Ms. Sheppard observed Mr. M's black eye when the Agency arrived to collect the children.

[47] On July 18, 2013, Ms. Sheppard became aware of the physical altercation, which took place at Mr. M's home and which involved Mrs. M and Ms. L. Ja and Ab were both in the car where the assault took place. Neither Ms. L, nor Mr. M informed the Agency of the violence.

[48] *Nadine Marr*

[49] Ms. Marr, the long term protection worker, testified as to events which occurred after she assumed carriage of the file on July 26, 2013. The affidavits which she filed in support of previous motions were also entered as exhibits. I accept the evidence of Ms. Marr. She was objective and professional.

[50] The first meeting between Ms. Marr and the Respondents occurred after court on August 1, 2013. Both confirmed their plan to abstain from drugs and alcohol.

[51] Because Ms. L was unable to attend the next scheduled meeting, only Mr. M, supervisor Virick, and Ms. Marr were present on August 20, 2013. In addition to reviewing the Agency's access policy, concerns, and plan, the physical altercation of July 16, 2013, was discussed. Mr. M said that the Agency misinterpreted what his mother had reported. He minimized the physical altercation by saying it was a power struggle between his mother and Ms. L. He opined that the altercation was none of his business. Mr. M also mentioned that he would be applying for custody.

[52] Ms. Marr's third meeting with the Respondents occurred on August 26, 2013, at Mr. M's home. The home was found to be appropriate. Mr. M was not present for part of the meeting. Ms. L discussed her inability to maintain sobriety. She identified Mr. M as being part of the problem because Mr. M continued to use alcohol, and bring it into the home. Ms. L also confirmed that she was willing to sign anything to have her children returned. She said if the Agency returned her children, she would never drink again, and would sign the children over to the Minister if she violated that commitment. She stated she had not consumed alcohol or drugs since July 16, 2013.

[53] The relationship issue was also canvassed during the August 26th meeting. Ms. L stated that she intended to move out of Mr. M's home because Je and Mr. M did not get along. Despite this plan, Ms. L confirmed that she and Mr. M had not ended their relationship. They remained a couple.

[54] Ms. Marr reviewed the Agency's plan of care, dated September 17, 2013 that had been developed following the risk conference convened on August 28, 2013. The Agency determined that the Minister would pursue a plan for permanent care and custody. The Agency noted Ja's inability to self-protect, and the Respondents' failure to effect lasting lifestyle changes despite years of remedial services, as pivotal reasons in support of their decision.

[55] In October 2013, Ms. Marr had discussions with Ms. L regarding Ms. L's nephew who was missing after being placed in Agency care. Ms. L agreed to contact the Agency should her nephew make contact. Ms. L did not. The nephew was eventually found outside Ms. L's apartment. Ms. L denied any knowledge of her nephew's presence at her apartment.

[56] Ms. Marr had ongoing telephone contact with the Respondents, during which they discussed a multitude of issues, including those related to access. The Agency did not approve Mrs. M to attend planned events for Ja and Ab, except on one occasion. Despite the Agency's directions, and contrary to the provisions of the court order, Mr. M invited Mrs. M to attend special occasion access.

[57] On November 13, 2012, the Agency convened another Risk Conference. At that time, the Agency discussed issues surrounding Ja and Ab. The Agency did not change its position. Ms. Marr conveyed the Agency's position to Ms. L and Mr. M.

[58] During the February hearing, Mr. M presented his plan to parent Ja alone. Ms. L's counsel gave voice to her support of this plan. This was the Agency's first formal notice that the Respondents' joint plan was abandoned.

[59] On February 18, 2014, Ms. Marr met with Ms. L to discuss the new plan. During these discussions, Ms. L retracted previous comments wherein she blamed her addiction issues on Mr. M. Ms. L stated that she frequently blamed others for her own problems, rather than assuming personal responsibility. Ms. L also stated that she and Mr. M were "willing to no longer be in a relationship for the time being". In response to a question about long term plans, Ms. L stated that she and Mr. M were "going to support each other" and that they would "always be connected in some way".

[60] On February 18, 2014, Ms. Marr also met with Mr. M to discuss the new plan. Mr. M stated that he would supervise Ms. L's access to Ja. He noted that if protection issues developed, he would contact the police. In discussing addiction issues, Mr. M stated that he could not recall the last time he used cocaine. He

denied using alcohol after October 2013, but did acknowledge having a beer with his brother at Christmas. Further, when discussing relationship issues, Mr. M noted that he and Ms. L “care for each other”, that “they have two children together”, and that “they will always be in a relationship together”.

[61] The risk conference meeting held following these discussions did not result in the Agency changing its decision to seek permanent care and custody.

[62] Throughout these proceedings, the Respondents presented with communication challenges. On December 13, 2013, Ms. L advised that she was only willing to communicate via email correspondence. Ms. Marr reported that Mr. M frequently became agitated and confrontational when dealing with her. Ms. Marr was quick to note, however, that these communication issues were not viewed by the Agency as protection concerns.

[63] *Constables Wade Lavin and Tony Melski*

[64] Constables Lavin and Melski described the incident of February 28, 2012, which happened at approximately 9:00 a.m. to 9:45 a.m. I accept their evidence. They were objective and professional.

[65] The police arrived at Ms. L’s home in response to a 911 call. Ms. L, Je, and an adult male were present in the home. Ms. L and the male were highly intoxicated. Ms. L was challenging, confrontational, and argumentative. The male was in breach of a provincial court order. The police arrested the man, which ignited an angry and volatile response from Ms. L. Ms. L was angry that Je had contacted the police.

[66] The police left, but quickly returned after they heard screams. Ms. L had assaulted Je. Ms. L grabbed Je’s face and squeezed it. Ms. L was arrested. She admitted to hitting Je, and told Constable Melski that she “did nothing that my mom didn’t do to me”.

[67] *Constables Terry Pearcey, Charlotte Price, and Mark Myler*

[68] Constables Pearcey, Price, and Myler described the incident of June 8, 2012, wherein the police responded to a complaint. I accept their evidence. They were objective and professional.

[69] Mr. M asked for police assistance because Ms. L was smashing windows in his home. When questioned as to whether or not Ms. L was drinking, Mr. M said, “What do you think?” The police eventually located Ms. L hiding in a closet in the upstairs level of the home. She was cooperative and placed under arrest. The police did *not* note any signs of intoxication, although Ms. L possessed a half empty bottle of vodka.

[70] Mr. M refused to give a formal statement to the police. Although Ms. L was charged, the charges were dropped because Mr. M was not cooperative. Mr. M told Constable Myler that he damaged the door to get a child out, although he did not name the child. Constable Myler said that Mr. M asked him to “keep that statement between the two of us”. Constable Myler reported the incident to the Minister.

[71] *Constable Kenneth Estwick*

[72] Constable Estwick described the incident of June 16, 2013 which commenced at approximately 2:30 a.m. I accept his evidence. He was objective and professional.

[73] The police were investigating an accident involving an impaired driver. Ms. L was a passenger in the vehicle. Ms. L was unstable, explosive, and intoxicated. Ms. L was so combative that Constable Estwick had to tackle her and use wrist locks. She was charged with public intoxication, assaulting a police officer, and causing a disturbance. Ms. L continued to be angry and disrespectful in the morning, after she had sobered up.

[74] *Alanna Brown*

[75] Ms. Brown, an addictions counsellor, reviewed Mr. M's therapeutic progress. I accept her evidence. She was objective and professional.

[76] An intake meeting was held on May 1, 2013. The assessment was conducted over two days, on May 17, and June 14, 2013. In-person therapy sessions were held on July 24 and August 30, 2013. A 30 minute phone counselling session was held on October 4, 2013. The addictions' file was closed on October 18, 2013. Ms. Brown was transferring to another job; Mr. M did not want to re-establish a relationship with a new therapist. Mr. M was not reporting any substance abuse difficulties when the file concluded. Ms. Brown spent five hours and forty-five minutes, in total, with Mr. M.

[77] During the intake session, Mr. M denied an addictions problem. He reported being a casual user of cocaine, typically using .5 to 1 gram, once every one to three months. Mr. M also noted that he drank alcohol casually, typically three to four beers while watching a hockey game with his brother. He described his involvement with the Agency as “torture”. He indicated a willingness to abstain from cocaine, but that he would continue to drink alcohol responsibly. Mr. M suggested touching anything, such as a public bathroom door, would account for the hair follicle test results. Mr. M stated that he last used cocaine and alcohol about two weeks before intake. This would place his last use at mid April 2013. Although Mr. M denied addiction issues, he nonetheless acknowledged that his use caused concerns for the Agency and was willing to cooperate with services.

[78] On May 17, 2013, Mr. M reported using cocaine on a single occasion approximately one and a half weeks earlier, together with two episodes of alcohol consumption since the last meeting. Stress associated with the protection proceedings and the permanent loss of his daughter, Jo, to adoption triggered his cocaine use. He reiterated his commitment to abstinence from cocaine and responsible alcohol use.

[79] The assessment on June 14, 2013, focused on details surrounding Mr. M's family of origin, medical history, strengths and supports, and mental status. Treatment goals were also established. Mr. M reported strong supports from his parents, Ms. L, a brother and a close friend. Hobbies included yard work, gardening and relaxing. He also noted that, on a few occasions, drinking beer helped him deal with the stress and anxiety in his life.

[80] During the July 24, 2013, session, Mr. M stated that he was now motivated to stop his social use of alcohol because of a comment made to him by one of his children. He wanted to have his family reunited. Mr. M stated he had not used cocaine and was clean from substances for about two months. He focused on gardening, yard work, and household projects as a means of coping.

[81] On August 30, 2013, Mr. M reviewed his abstinence progress. He continued to abstain from cocaine, but had consumed three beers while painting a friend's house. Mr. M did not view his alcohol consumption as problematic. Mr. M also reported that he and Ms. L had resumed cohabitation and that there was no tension or conflict.

[82] During their October 4, 2013, telephone call, Mr. M confirmed his ongoing abstinence from cocaine and his continued use of alcohol, approximately two to three beers, one time per week. Mr. M reiterated that he did not want to take advantage of other services once Ms. Brown assumed her new employment position.

[83] On October 18, 2014, Mr. M's file was closed. The treatment goals had been completed, which included education on stress management, communication, healthy relationships, and leisure. He continued to report abstinence from cocaine and responsible alcohol consumption.

[84] *André Campbell*

[85] Ms. Campbell is a clinical therapist employed with Addiction Services. She was Ms. L's therapist over the course of several years from February 2011 until May 2013, with a gap occurring in 2012 when Ms. L felt the service was unnecessary. Ms. Campbell was currently on medical leave. I accept her evidence. She was objective and professional.

[86] During her testimony, Ms. Campbell reviewed Ms. L's progress. Ms. Campbell discussed the role that honesty assumed in the treatment program. 100% honesty will yield the best treatment results because the therapist can use the client's history to identify warning signs and high risk behaviors. This knowledge will enable the therapist and client to develop a plan for future avoidance based upon a reduction in the level of risk.

[87] Ms. Campbell also relayed Ms. L's disclosure that Mr. M advised against being forthcoming given what was at stake. This sentiment was also expressed directly to Ms. Campbell by Mr. M during a joint session when Mr. M said that it was not always good to be honest because the children may not be returned if the Agency acquired certain information.

[88] In addition, Ms. Campbell commented on Ms. L's high level of commitment, intelligence, and insight. She noted, however, that Ms. L struggles with integration. Ms. L understands that unhealthy relationships negatively impact her well-being. Despite this knowledge, Ms. L is unable to extract herself from the unhealthy relationship which she has with Mr. M. Ms. L has an idealistic view that a family should comprise a mother and a father. Further, Mr. M affords her with financial security.

[89] Ms. Campbell noted that Ms. L discussed the unhealthy aspects of her relationship with Mr. M over their various sessions. Ms. L advised that Mr. M was not supportive, but rather, continually blamed her for losing the children. Mr. M did not accept any personal responsibility. Ms. Campbell also experienced Mr. M's lack of cooperation and collaboration during joint sessions. During these joint sessions, Mr. M focused on Ms. L's shortcomings. No personal growth was possible.

[90] Further, Ms. L commented on Mr. M's lack of support in her quest for sobriety. She said that Mr. M continued to bring alcohol into the home, which frequently caused Ms. L's relapses. For example, Ms. L reported that on January 23, 2012, Mr. M brought home alcohol, which culminated in Ms. L being incarcerated.

[91] Ms. Campbell advised that intellectually Ms. L knows what is required. Ms. L researches the topic; she is able to articulate the principles; she is nurturing and loving. Despite these positives, Ms. L relapses. Ms. Campbell stated that Ms. L uses alcohol to cope, although she might not be an alcoholic.

[92] *Nadine Sampson*

[93] Nadine Sampson is an outreach worker with Addiction Services. I accept her evidence. She was objective and professional.

[94] Ms. Sampson described her involvement with Ms. L after Ms. Campbell went on medical leave. Because Ms. Sampson is not trained as a clinical therapist, her involvement was somewhat limited.

[95] Ms. Sampson met with Ms. L on eight occasions. She reviewed the content of the meetings. On July 30, 2013, Ms. L explained that she was attempting to determine why she regresses after maintaining sobriety for long stretches of time. On August 20, 2013, Ms. L confirmed that she had been abstinent from drugs and alcohol. On August 29, 2013, Ms. L advised that she had left her relationship with Mr. M and had secured her own apartment. She again stated that she wanted to discover why she sabotages herself by relapsing.

[96] On October 4, 2013, Ms. L asked Ms. Sampson to convene a case conference. She confirmed that she remained substance free and was hoping to be reunited with her children. On October 16, 2013, the CAS worker was unable to attend the scheduled case conference, so Ms. L met with Ms. Sampson and discussed agency expectations. On December 5, 2013, Ms. L said that she was sober for close to a year, was looking to update her resume, and was doing well.

[97] On January 15, 2014, Ms. L discussed the court proceedings and the changes taking place in her life. On January 30, 2014, Ms. L raised concerns about access cancellations. She maintained that she did not use alcohol or drugs.

[98] *Joanne MacCormack*

[99] Ms. MacCormack facilitated access between Ja and the Respondents. I accept her evidence. She was objective and professional.

[100] Access visits were typically positive, however a problem with Mrs. M's unapproved attendance on two occasions was noted. Mrs. M, and her husband, attended the December 2, 2013, birthday party when they were not approved to do so. They were present for about thirty minutes. Mrs. M also attended a February 5, 2014 visit, for about five minutes, when she was not approved to do so. She left after Ms. MacCormack and Mr. M told her that she was not approved. The Agency had never approved her attendance on this occasion. Any mix-up was not caused by the Agency.

[101] *Judy Petite*

[102] Ms. Petite also facilitated access between Ja and the Respondents. I accept her evidence. She was objective and professional. She confirmed that Mrs. M attempted to attend Ab's third birthday on September [...], 2013. Mrs. M gave Ab a hug and left. She noted that access visits were typically positive.

[103] *Donna Mikkleson*

[104] Ms. Mikkleson is the child in care worker for Ja. I accept her evidence. She was objective and professional. She stated that Ja was doing well. He had no special needs, and was on par with his peers developmentally. Ms. Mikkleson works with the adoption team. She said that Ja's adoption prospects were high. She noted that the granting of access in an order for permanent care and custody would impede adoption.

[105] *WM*

[106] Mr. M reviewed his personal circumstances while testifying. He indicated his love and commitment to all of his children. He talked about his deep regret when he learned that Jo was adopted. He said that the loss of Jo was like a death sentence.

[107] In acknowledging his substance abuse history, Mr. M said that he started using cocaine in his 30s; he is now 48 years old. He stated that he last used cocaine in March 2013 when he came home from working out west. When confronted with his addiction records, Mr. M said that he had difficulty recalling dates. He confirmed that he will not use cocaine again because he learned better coping skills. He said that his priority is his children. Cocaine is no longer a risk that he is willing to assume. He noted that he was able to abstain when he was at work. He said that all employees had to be drug and alcohol free, or their job would be terminated.

[108] Mr. M also described his relationship with Ms. L. He said that Ms. L was the mother of his children. He will always support Ms. L. He wants Ms. L to be in the children's lives, although he recognizes that Ms. L requires help. He said that he will comply with all access restrictions imposed by the court.

[109] Mr. M stated that if Ms. L attempted to breach any of the terms of the court order, he would immediately report her attempts to the Agency and police. He will fully cooperate with all authorities to ensure Ms. L complies with the terms of court orders.

[110] In explaining his black eye, Mr. M stated that he had a run in with an old friend based upon a past disagreement. He said no charges were filed in relation to the assault. He acknowledged that no one had reported the incident to the police.

[111] Mr. M reviewed his plan of care. If Ja was returned to him, Mr. M would only work out west if he was able to secure appropriate childcare. He would forgo work, if it meant keeping Ja. Mr. M said that he would rely upon his brother, father, and mother for child care and for support.

[112] Mr. M also reviewed his frustration with the protection process. He reiterated his love for his children, his commitment to sobriety, and his priority to the health and safety of Ja and Ab. He said that children should be raised by family.

[113] Mr. M's evidence must be treated with caution. He was evasive, vague, and at times provided contradictory evidence. Mr. M did not place any emphasis on his obligation to tell the truth.

[114] **Issues**

[115] ***Should an order for permanent care and custody be granted when legislative time lines have not been exhausted?***

[116] *Position of the Minister*

[117] The Minister states that an order for permanent care and custody meets the legislative provisions, the case law authorities, and is in the best interests of Ja for a number of reasons including the following:

- The Respondents have a long history of child welfare involvement including protection concerns stemming from substance abuse and violence. The fact that Mr. M provided one clean drug test does not resolve the long standing protection concerns.
- Mr. M lacks insight into the protection concerns and risks. The lack of insight means that the protection problems have not been satisfactorily addressed. Any abstinence which was created will be short lived.
- Mr. M's assurance that he will no longer violate court orders lacks credibility. Mr. M has consistently breached court orders. No epiphany moment was identified to explain Mr. M's alleged enlightenment.
- Mr. M does not recognize the outstanding protection issue related to violence. Mr. M did not protect Ja and Ab during the July 2013 physical altercation between his mother and Ms. L.
- The children of Ms. L and Mr. M have either been placed in the Agency's care at one time or another, or have been placed in the care of other adults because of protection concerns. The only child who was returned to Ms. L, following the termination of a permanent care order, was Je. The relationship between Je and Ms. L is unhealthy and at times is violent. Mr. M was not at any time a primary caregiver to his own children.

- Ja was taken into care after his birth in December 2012. At no point did either Mr. M or Ms. L ever gain care and custody of Ja.
- Neither Mr. M, nor Ms. L, was able to effect positive and lasting changes to their lifestyle.
- The assertion that Mr. M and Ms. L are no longer in a relationship is not credible.
- No other family member, relative, neighbour, or other member of the child's community or extended family has sought placement.
- Ja has experienced significant disruption in his young life. It is in his best interests to be settled in a stable home. The stable home cannot be found with either Ms. L or Mr. M, individually or jointly.

[118] *Position of Mr. M and Ms. L*

[119] The Respondents state that a permanent care and custody order is not appropriate at this time for a number of reasons including the following:

- The access facilitators confirm that access is a positive experience for Ja. Mr. M is nurturing, loving and appropriate in his care of Ja. Ja responds well to Mr. M. The same comments ring true for Ms. L. Both Respondents have an ability to parent. Parenting capacity is not an issue.
- Mr. M is not violent and does not have an addiction problem. Past use of drugs and alcohol was recreational. Mr. M has since participated in Addiction Services and has been drug and alcohol free. He appreciates the risks that are associated with drugs and alcohol and will abide by all court orders.
- Although Ms. L continues to struggle with addictions, Mr. M does not. Further, Mr. M was not present during any of the more recent occasions when Ms. L was both intoxicated and violent.
- Mr. M will protect Ja from Ms. L. He will call police, as he had in the past, should any problems arise. Ja is his primary concern.
- Ja deserves the opportunity to be raised by his own family and surrounded by people who love him.
- The legislation focuses on the best interests of children, but in the context of families. This stated objective displaces the granting of a permanent care and custody order when statutory time lines have not expired.

- The only child of Mr. M who was placed in the permanent care of the Agency was Jo. It should be noted, however, that Mr. M did not participate in that proceeding. Mr. M was, and is, a loving father.
- Mr. M effected the positive lifestyle changes necessary to care for Ja, or will do so within the legislative time lines. He is no longer in a relationship with Ms. L. Ms. L is the parent who continues to test positive for substance abuse. Ms. L is the parent who continues to engage in violence. Mr. M no longer abuses drugs. He is not violent. Therefore, sufficient time remains, before the statutory deadline expires, to complete remaining services so that all protection concerns can be alleviated. The Agency's request for a permanent care and custody order must be denied.

[120] *Legislation and Case Law*

[121] Before commenting on substantive issues, I will address the burden and standard of proof. In this application, the Agency bears the burden of proof. It is the civil burden of proof, based on the balance of probabilities. The Agency must prove its case on a balance of probabilities by providing the court with "clear, convincing, and cogent evidence": **C. (R.) v. McDougall**, 2008 SCC 53 (S.C.C.). The Agency must prove why it is in the best interests of Ja to be placed in the permanent care and custody of the Agency, according to the legislative requirements, and at this time.

[122] In making my decision, I am mindful of the threefold legislative purpose, which is to promote the integrity of the family, protect children from harm, and ensure the best interests of children. The overriding consideration remains, however, the best interests of the child as stated in s. 2(2) of the *Act*.

[123] The *Act* must be interpreted according to a child centered approach, in keeping with the best interests' principle as defined in s. 3(2) of the *Act*. This definition is multifaceted. It directs the court to consider various factors unique to each child, including those associated with the child's emotional, physical, cultural, and social development needs, and those associated with risk of harm.

[124] In addition, s. 42(2) of the *Act* states that the court is not to remove a child from the care of parents, unless less intrusive alternatives have been attempted and have failed, or have been refused by the parent, or would be inadequate to protect the children. Section 42(2) states as follows:

42(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 Section 13,

- (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.

[125] When a court conducts a disposition review, the court assumes that the orders previously made were correct, based upon the circumstances existing at the time. At a review hearing, the court must determine whether the circumstances, which resulted in the original order, still exist or whether there have been changes such that the children are no longer children in need of protective services: s. 46 of the *Act*; and **Catholic Children's Aid Society of Metropolitan Toronto v. M. (C.)**, [1994] 2 S.C.R. 165 (S.C.C.).

[126] During a review hearing, past parenting history is admissible and relevant. Past parenting can be used to assess present circumstances. The court is concerned with probabilities, not possibilities. Therefore, where past history aids in the determination of future probabilities, it is admissible, germane, and relevant: **Nova Scotia (Minister of Community Services) v. Z. (S.)**, 1999 NSCA 155 (N.S.C.A.) at para. 13; **Nova Scotia (Minister of Community Services) v. R. (G.)**, 2011 NSSC 88 (N.S.S.C.), para. 22, as affirmed at **Nova Scotia (Minister of Community Services) v. R. (G.)**, 2011 NSCA 61 (N.S.C.A.).

[127] Section 42(4) of the *Act* authorizes the court to make a permanent care order, even when the legislative time lines have not expired, if circumstances are unlikely to change within a reasonably foreseeable time. There is no presumption that parents will be afforded the maximum time frame under the *Act* to remedy the concerns of the Agency: **P.H. v. Minister of Community Services and R.W.**, 2013 NSCA 83, per Farrar, J.A. at para 90.

[128] Section 42(4) of the *Act* states as follows:

42(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. 1990, c. 5, s. 42.

[129] Section 46(6) of the *Act*, notes a similar provision. Section 46(6) states as follows:

46 (6) Where the court reviews an order for temporary care and custody, the court may make a further order for temporary care and custody unless the court is satisfied that the circumstances justifying the earlier order for temporary care and custody are unlikely to change within a reasonably foreseeable time not exceeding the remainder of the applicable maximum time period pursuant to subsection (1) of Section 45, so that the child can be returned to the parent or guardian. 1990, c. 5, s. 46.

[130] These sections were reviewed in **Mi'Kmaq Family and Children Services v. D. (K.)** 2012 NSSC 379 wherein this court states at paras. 26 to 28 as follows:

26 Although discretionary, secs. 42(4) and 46(6) of the *Act* do not provide the court with unlimited jurisdiction. All discretionary authority must be exercised judicially, and in accordance with rules of reason and justice, not arbitrarily and based upon a rational and solid evidentiary foundation: **Maclsaac v. Maclsaac** (1996), 150 N.S.R. (2d) 321 (N.S. C.A.). This requirement is heightened when the meaning of "reasonably" and "foreseeable" are examined.

27 "Reasonably foreseeable" is not defined in the legislation. In *Words & Phrases: Judicially Defined in Canadian Courts and Tribunal* vol, 7. (Toronto: Carswell, 1993) (June 2012 supplement) at p. 7-36, s.v., "reasonably" is defined as follows:

...the definition of "reasonably" in Webster's Third International Dictionary [is as follows:]:

1. in a reasonable manner (acted quite...)
2. to a fairly sufficient extent (a book that is good). What is "reasonable" is not the subjective view of either the respondent or appellant but the view of an objective observer with knowledge of all the pertinent facts.

The Shorter Oxford English Dictionary on Historical Principles refers to "reasonably" as an adverb meaning "in a reasonable manner; sufficiently; fairly". (Income Tax) **Bailey v. Minister of National Revenue**, [1989] 2 C.T.C. 2177 at 2182, 2183, 89 D.T.C. 416 (T.C.C.) Rip T.C.J.

28 "Foreseeable" is defined in the Judy Pearsall, ed, *The New Oxford Dictionary of English*, 9th ed (New York: Oxford University Press, 1999) at p. 718, s. v., as follows:

Foreseeable - adjective able to be foreseen or predicted ...

[131] In **Mi'Kmaq Family and Children Services v. D. (K.)**, *supra*, this court also summarized factors to be considered when determining if the circumstances justifying the order are unlikely to change within a reasonably foreseeable time, at para. 29 as follows:

- Whether other children have been placed in the permanent care and custody of the Agency, or in the permanent custody of other adults.
- Whether the children have a lengthy history of being in the temporary care of the Agency.
- Whether the parent lacked meaningful insight into the issues that gave rise to the protection finding.
- Whether the parent exercised access.

- Whether the parent lacked basic parenting and housekeeping skills.
- Whether an expert provided opinion evidence confirming an inability to parent.
- Whether the parent effected positive lifestyle changes.

[132] I will now apply this law to the totality of the extensive evidence that was presented during the contested hearing, while being mindful of the burden of proof and the legislative purpose and approach, and the submissions of counsel.

[133] *Decision*

[134] I am granting the permanent care and custody order. Ja continues to be a child in need of protective services because of issues related to the Respondents' relationship, violence, and substance abuse. Mr. M's relationship with Ms. L continues to be problematic because of Ms. L's violence and substance abuse. Likewise, Mr. M's addiction issues continue to be challenging. In addition, Mr. M failed to develop an acceptable safety plan that would protect the children. To the contrary, Mr. M did not protect Ja and Ab during the assault of July 2013, and will likely, on a balance of probabilities, fail to protect Ja in the future.

[135] Additionally, I find that less intrusive alternatives, including services to promote the integrity of the family, have been attempted and have failed, or would be inadequate to protect Ja. The Agency has invested years of remedial services to assist Mr. M and Ms. L, with little return. Services have included individual and couples' counselling, addictions counselling and therapy, parenting courses, anger management, domestic violence education, and family support services. Although the parties are intelligent and have the capacity to parent, they have yet to integrate the acquired knowledge into their lives. They have not sustained long term lifestyle changes that are necessary to eliminate or reduce the identified protection risks.

[136] Finally, I find that the circumstances are unlikely to change within a reasonably foreseeable time, and in particular, within the maximum time period allocated within the *Act*.

[137] I reach these conclusions for the reasons which I will now address.

[138] *Relationship Issues*

[139] Mr. M's statement that he is no longer in a relationship with Ms. L is not credible. Historically, these parties have ended their relationship during the course of protection proceedings, and then reunited after the proceedings concluded. The past is likely, on a balance of probabilities, to be repeated. The Respondents' alleged break-up was a strategic decision, made in a bid to prevent a permanent care order from issuing. This strategy did not succeed in the face of the evidence.

[140] The fact that the parties will likely maintain their relationship is apparent for several reasons, including the following:

- Ms. L told Ms. Marr that she and Mr. M intended to remain apart for “the time being.” There is nothing definite in this response.
- The parties maintained joint access once Ja was taken into care.
- Mr. M continues to be heavily invested in his relationship with Ms. L. Mr. M stated that he will always support Ms. L because she is the mother of his children. Mr. M stated that he wants Ms. L involved in the lives of the children, although he would honour any restrictions placed within a court order. Mr. M identified Ms. L as a support person for himself to his addictions counsellor, Ms. Brown.
- Mr. M described the continued frequent contact that he and Ms. L enjoy. He advised that Ms. L was “around a lot”; they talk and communicate.

[141] The relationship between the parties is an ongoing one, even if the sexual dimension is absent. This relationship poses ongoing protection concerns because of Ms. L’s explosive acts of violence, both when sober and intoxicated, as will be explored in greater detail later in this decision. Had Mr. M truly appreciated the nature of harm implicit in their relationship, Mr. M would have terminated all contact with Ms. L. He did not do so because their toxic relationship takes priority over Ja’s needs.

[142] *Violence*

[143] This court, in a prior decision, determined that domestic violence issues had been resolved. Although there is no evidence of domestic violence, trial evidence nonetheless confirms that third party violence remains an operative part of the Respondent’s lives. Such violence has and will create protection risks. The Respondents lack insight as to the protection concerns associated with violence.

[144] The evidence overwhelmingly proves that Ms. L is out of control, usually when under the influence, but on occasion when sober. For example, the property damage caused when Ms. L smashed the windows of Mr. M’s house on June 8, 2012 was done when the police detected no signs of intoxication, despite Ms. L having a half empty bottle of vodka. Mr. M refused to cooperate with the police after Ms. L was arrested and so the charges did not proceed. Mr. M asked the police to keep the incident secret.

[145] A second example of violence, when not intoxicated, is found in the evidence of Constable Estwick. He said that Ms. L continued to respond angrily and disrespectfully to him after she had sobered up following the incident on June 16, 2013. The Respondents did not report this incident to the Agency.

[146] Further, Ms. L and Mrs. M were involved in an assault, which occurred in front of Ab and Ja, while both adults were allegedly sober, sometime in July 2013. Neither Respondent reported this assault to the Agency, nor to the police. Mr. M minimized this assault when confronted by Ms. Sheppard and during the trial before this court.

[147] Ms. L's propensity to violence when intoxicated is seen in Ms. L's assault of Je on the morning of February 28, 2012. The incident came to light because police responded to a 911 call initiated by Je. Upon arrival, the police were confronted with a dangerous situation. Ms. L was intoxicated, challenging and aggressive. After arresting another intoxicated adult male in the home, the police exited, only to quickly return to respond to another situation. Ms. L had assaulted Je because she was angry that Je called police. In response to a comment made by the police, Ms. L minimized her actions by stating that she had not done anything worse than what she experienced as a child from her mother. Ms. L did not report this assault to the Agency.

[148] Another example of violence is found in the incident of June 16, 2013. Ms. L was unstable, explosive and intoxicated. Her conduct was so extreme that the police had to tackle her and use wrist locks in order to complete the arrest. The Agency was not advised of this incident by the Respondents.

[149] For his part, and although Mr. M denies violent tendencies, the evidence discloses that Mr. M is not without blemish. Ms. Sheppard observed Mr. M's black eye on July 16, 2013 when she was taking the children into Agency care. Mr. M minimized the black eye. His explanation for the black eye was vague. More importantly, Mr. M neither reported the assault to the police, nor to the Agency.

[150] Violence creates a serious child protection risk. Mr. M does not appreciate this protection concern as seen by his minimization and attempts to hide the violence, and in his continuation of his relationship with Ms. L. His lack of insight is most troubling given the many services and programs he has undertaken during the course of the various child protection proceedings over many years.

[151] *Substance Abuse*

[152] Neither Respondent reduced the risk stemming from their long standing addictions. The most significant reason for their failure to do so is their lack of insight into the nature and extent of their addictions. Neither was truthful with their addictions counsellor. As noted by Ms. Campbell, effective treatment requires honesty. Lack of honesty impairs the delivery of treatment.

[153] Mr. M's lack of honesty is found in his denial of the extent of his cocaine consumption, even in the face of the hair follicle test results for the period encompassing early November to early December 2012. This result confirmed

active, intensive, and frequent cocaine use, in combination with alcohol consumption. Yet, Mr. M steadfastly repeated that his use was limited to .5 to 1 gram, once every one to three months. His explanation for the test result was that he touched a public washroom door. Mr. Gareri, whose evidence I accept, stated that such a transfer would not produce the results that had been elicited during testing.

[154] Mr. M's lack of insight is also found in his failure to testify honestly before the court. He gave contradictory evidence as to his last use. He was adamant that he last used cocaine in March 2013, until confronted with his addiction records. These records disclose that he last used cocaine in May 2013. The hair follicle test results are consistent with cocaine ingestion during the month of May 2013.

[155] Further, Mr. M regularly drank alcohol notwithstanding the court order, which required abstinence. Mr. M unilaterally decided that he could consume alcohol, even though he knew that the children would not be returned to his care. His July 24, 2013, commitment to Ms. Brown to be alcohol free was short lived. During the following sessions, Mr. M continued to report alcohol use.

[156] Mr. M knowingly consumed alcohol and drugs, despite the child protection proceedings, and while recognizing that his children would not be returned to his care unless he was abstinent. Ironically, Mr. M had no difficulty discontinuing alcohol and drug use while employed because it was "written in the contract". Mr. M's lack of insight and commitment to do the same when it involved his children and protection proceedings is most troubling. Mr. M lacks insight into the nature and extent of his addictions to alcohol and cocaine. Five hours and forty-five minutes of addiction services does not illustrate insight. Neither does one clean drug test. Mr. M's substance abuse continues to loom and creates protection risks.

[157] Ms. L also withheld information from her addictions counsellor. At times, Ms. L stated she was clean and sober when she was not, as evidenced by the hair follicle test results and the police evidence. Ms. L's battle with alcohol and cocaine is ongoing. Protection concerns have not been alleviated or reduced to an acceptable level. Ms. L does not appreciate the protection risks which arise when she is under the influence.

[158] *Agency Involvement with Other Children*

[159] Ms. L and Mr. M have an extensive history with the Agency, Ms. L's dating back to 1997, and Mr. M to 2004. Protection concerns related to violence, addictions, and relationship issues. Over the years, the protection concerns were so pronounced, that every child in the care of the Respondents were subject to Agency intervention.

[160] All of Ms. L's children were involved with the Agency. None are in Ms. L's care, with the exception of 17 year old Je. Je, too, was at one time placed in the permanent care of the Agency, and later returned to the care of Ms. L. Je and Ms. L have an unstable and dysfunctional relationship.

[161] Ms. L's daughter, Mo, was placed in the custody of her father. In 2011, Mo's father was involved in a serious car accident and was unable to parent. Once Mo moved in with Ms. L, the Agency sought and received a supervision order. Eventually Mo returned to the custody of her father and paternal grandmother. Agency involvement was then terminated.

[162] Ms. L's daughter, Gl, was placed in the permanent care of the Agency in 2008, and was later placed in the custody of her father in British Columbia.

[163] Jo, the daughter of both Respondents, was placed in the permanent care and custody of the Agency in 2008 and has since been adopted.

[164] Ab, the daughter of both Respondents, was taken into care upon birth in September 2010. In January 2012, the court granted Mrs. M custody of Ab, with supervised access to the Respondents. Ab remained in the care of Mrs. M until July 2013, when she was once again taken into care. Ab has remained in the care and custody of the Minister ever since.

[165] Mr. M's daughter, MK, moved in with Mr. M and Ms. L in 2011. The Agency sought and received a supervision order until MK returned to live with her paternal grandparents.

[166] Mr. M's other children were never in his custody.

[167] *Agency Involvement with Ja*

[168] Ja was apprehended at birth and then placed in the supervised care of his paternal grandmother until July 16, 2013. He has been in the care of the Agency since that time. At no point was Ja placed in the custody of either Respondent.

[169] Mr. M has been exercising supervised access. Ms. L was granted periods of unsupervised access, but because of protection concerns, has now reverted to the status of supervised access.

[170] *Lifestyle Changes*

[171] Neither party made the lasting life style changes that would satisfactorily address the protection concerns. Both continue to struggle with addiction issues. Neither Mr. M, nor Ms. L, is able to effect lasting lifestyle

changes, primarily because they fail to accept responsibility for their own choices. Instead, they minimize their conduct, blame the Agency, and fail to engage in a meaningful way with remedial services.

[172] The failure to make positive lifestyle changes is further found in their acceptance of violence. Ms. L is violent when she is intoxicated and when she is not. Mr. M sustained a black eye in a fight and did not report the assault to the police or to the Agency. Protection concerns are not alleviated when parents engage in violence.

[173] Further proof of a failure to effect positive life style changes, is found in the inability of Mr. M and Ms. L to obey court orders. They both consumed alcohol and drugs when such was forbidden. Mr. M also invited his mother to attend access visits when he was not authorized to do so. Mr. M is content to disobey a prohibition when he feels that the prohibition is not appropriate.

[174] *Mr. M's Assurances*

[175] Mr. M's assurances that he has learned from his past mistakes, and that he will follow all court orders in the future, ring hollow given the context of this proceeding. Mr. M made similar assurances during past proceedings. His assurances were broken in the past and will likely be breached in the future because Mr. M lacks insight and has not made the necessary changes to his lifestyle.

[176] *Summary of First Issue*

[177] Ja continues to be a child in need of protective services. Less intrusive alternatives, including services to promote the integrity of the family, have been attempted and have failed, or would be inadequate to protect Ja. The circumstances are unlikely to change within a reasonably foreseeable time, and in particular, within the maximum time period allocated within the *Act*. In the context of this proceeding, it is not reasonably foreseeable that Mr. M, or Ms. L, individually or jointly, will make the necessary lifestyle changes to address the protection concerns by the time the statutory dead lines expire. One clean drug test, to use the words of the Minister, "is too little, too late."

[178] This finding is made despite the positives that are also apparent on the record. The Respondents consistently attend access. They are engaged and nurturing during access. They have the capacity to parent. These positives, however, are insufficient to address the ongoing and deep seated protection concerns.

[179] Ja has experienced a great deal of disruption in his young life. He requires stability. This stability evades Mr. M and Ms. L in the face of their denials, minimizations, and lack of insight. The permanent care order is granted.

[180] **Should access be granted?**

[181] The Minister is proposing adoption and thus no access. Ms. Mikkelson states that Ja is highly adoptable. The Respondents do not favour adoption.

[182] Section 47(1) of the *Act* states that once an order for permanent care and custody issues, the Agency becomes the legal guardian of the child, and has all the rights, powers and responsibilities of a parent for a child's care and custody. Section 47(2) of the *Act* provides the Court with the authority to make an order for access in limited circumstances: **Children and Family Services of Colchester (County) v. T (K.)** 2010 NSCA 72 at paras. 40-42.

[183] In **Nova Scotia (Minister of Community Services) v. H. (T.)** 2010 NSCA 63, Ficaud, J.A. states that after a permanent care order has issued, there is a de-emphasis on family contact and instead priority is assigned to a long term stable placement. In **PH v. Minister of Community Services in R.(W.)** 2013 NSCA 83, Farrar, J.A. reaffirmed the court's earlier decisions, and once again emphasized the shift that occurs once a decision for permanent care and custody is made. In such decisions, the best interests of the child are always pivotal and must be considered, but in the context of permanency planning.

[184] I have determined that it is in Ja's best interests to be placed in the permanent care and custody of the Agency with no provision for access. Access will negatively impact on Ja's chances for adoption. Ja deserves an opportunity to live with a stable, safe, and loving family. Access will prevent this from occurring.

[185] **Conclusion**

[186] The Agency met its burden. It is in Ja's best interests to be placed in permanent care and custody of the Minister. It is in Ja's best interests to be adopted and therefore there will be no provision for access.

[187] Ms. MacSween is directed to draft and circulate the order.

Forgeron, J.