FAMILY COURT OF NOVA SCOTIA

Citation: Mi'Kmaw Family and Children's Services of Nova Scotia *v. A.K.*, 2022 NSFC 2

Date: 20220328
Docket: FBWCFSA No. 116927
Registry: Bridgewater

Between:

Mi'Kmaw Family and Children's Services of Nova Scotia

Applicant

v.

A.K. and N.K.

Respondents

Restriction on Publication: Pursuant to subsection 10(2) of the *Family Court Act,* the judge is required to as far as possible guard against any publicity in proceedings in the Court. Information that would identify the parties, witnesses or children in this proceeding has been anonymized so that this decision can be published.

Judge:	The Honourable Judge Marci Lin Melvin
Heard	March 28, 2022, in Bridgewater, Nova Scotia
Counsel:	Katelyn Morton, for the Applicant Noel Fellows, for the Respondent, A.K. Nicholaus Fitch & Nick Darbyshire, for the Respondent, N.K.

By the Court:

Introduction

[1] The matter before the Court is an application for the permanent care of the four oldest children of the Respondents: MK born January 2015, EK born June 2016, MYK born July 2017, and DK born July 2018. In AK's affidavit received December 17, 2021, and sworn on March 16, 2022, she states: ***"We are all of Mi'kmaw decent."***

[2] DK is three (3) years (and eight (8) months) old and has been in customary care or temporary care for two (2) years (and three (3) months) of his life and in the care of the Respondents for one (1) year (and four (4) months). MYK is four (4) years (and eight (8) months) old and has been in customary care or temporary care for three (3) years (and three (3) months) of her life and in the care of her parents for one (1) year (and three (3) months). EK is five (5) years (and nine (9) months) old and has been in customary care or temporary care for four (4) years (and two (2) months) of her life and in the care of her parents for one (1) year (and seven (7) months). MK is seven years old and has been in customary care or temporary care for four (4) years (and three (3) months) of her life and in the care of her parents approximately three (3) years.

[3] There is a concurrent child protection application involving a fifth child, Baby AK, born April, 2021, who was taken into care at birth, made subsequent to these proceedings being commenced.

[4] The Applicant seeks permanent care of these four (4) older children and their plan was filed with the Court on March 24, 2021.

[5] The Respondents had a joint plan of care seeking the return of the four (4) children to their care but have recently separated.

[6] AK does not have housing, is not in a position to put a plan forward for the care of the children, and is adamantly opposed to the children being placed in NK's care.

[7] In response to the recent separation, counsel for NK argued that NK's parenting plan has not changed significantly. Given an impending criminal trial regarding AK and possible incarceration, NK had prepared for parenting the children without AK should that have been necessary.

[8] NK seeks the children be returned to him on a full-time basis and the application dismissed.

[9] This matter commenced *pro forma* by consent on June 3, 2021.

[10] Due to the unavailability of one of the Respondent's previous counsel, and Covid-19 restrictions, the hearing dates were set in January and February 2022.

[11] Although the matter had been set for a lengthy hearing, Settlement Conference Justice, Associate Chief Justice O'Neil confirmed the time would not be required and instead the evidence would be admitted by consent and cross-examination would be waived.

[12] The parties confirmed there would be no oral submissions rather argument by way of a written brief.

[13] Documents were to be filed in hardcopy and/or electronically with the expectation they would be properly before the court.

[14] Orders were granted on consent pursuant to section 96 [1] [a] of the **Children and Family Services Act**, (hereinafter referred to as the CFSA), R.N.S. ch 5, to ensure that the evidence, of all four (4) prior proceedings as well as a sixth (6th) subsequent proceeding involving Baby AK, born after this proceeding was commenced, was properly before the court.

[15] This decision relates to the fifth (5th) application by the Applicant with respect to these Respondents and children.

[16] Counsel for the Applicant noted in her brief that she has filed with the court well over 1000 pages of evidence from previous, current, and subsequent proceedings, which have been admitted into evidence in this proceeding.

[17] The Court has considered and reviewed all of the evidence, the CFSA and the **First Nations Inuit Metis Children, Youth and Families Act**, (hereinafter referred to as the FNIM), and the jurisprudence in relation to this matter.

[18] The Court has considered the best interests of these children based on all of the evidence before it.

[19] Given the almost two decades of Applicant involvement with one or both of the Respondents, the Court will set out the evidence chronologically for ease of reference.

Evidence

[20] Counsel for NK notes in their written submissions: ***"Although some facts specific to the truth of their content are in dispute, the facts surrounding Mi'kmaw Family and Children's Services' … involvement in the Respondent's life are set out in their Brief from pages 2-36."***

[21] The Court also notes that counsel for NK argued that from 2004 to 2014, the alleged historic conduct attributed to NK is denied by NK to have ever taken place.

[22] They argue**: *"Even if they had taken place in exactly the way the Applicant sets out, we respectfully submit that the Applicant clearly did not view these incidents of worthy of seeking permanent care in and of themselves. NK's children were returned to him on numerous occasions despite the Applicant's continued position that these events took place."***

[23] The Court will rule on the significance of historic conduct in this decision. It is suffice to note at this point that the concerns from 2004 until 2014 provide at the very least an historic backdrop to these proceedings.

[24] In 2004, the Respondent NK, 22 years old at the time, was charged with sexual assault of a 12-year-old-girl. NK touched the girl's buttocks, put his head on her shoulder and tried to look down her shirt. When this was subsequently addressed by a social worker, NK indicated he had been intoxicated, was young and stupid, and would not happen again. Also in 2004, the Department of Community Services substantiated concerns of NK physically assaulting an ex-partner's child who was two years old at the time. The child sustained injuries

consistent with choking. NK was charged but not convicted. The Applicant and Respondents entered into an Early Intervention Agreement to address the issue of NK's anger management.

[25] In 2008, NK, his ex-partner, and the Applicant entered into another Early Intervention Agreement to participate in counseling, anger management, and family support.

[26] In 2009, NK and his ex-partner broke up and NK requested to continue services. He admitted to a social worker that prior to having a child they smoked crack together but it was no longer a concern. The Applicant's involvement with NK continued until May 2013 as he had a shared custody arrangement regarding his son and ex-partner. The Applicant closed the file at that time as NK's ex-partner moved out of the province and NK did not have day-to-day care of the child.

[27] In 2012 NK found out that he was the father of another child from a prior relationship.

[28] In 2013, that child was placed in NK's care for a brief period from November 2013 until January 2014. By that time, NK and AK were in a relationship.

[29] In January 2014, the child was taken into care and out of NK's house due to emotional harm as a result of the Respondent AK's interactions with the child. NK was given the option to have AK leave the home but NK chose for the child to leave. The evidence notes NK said couldn't do it without AK being with him. On this point, counsel for NK argued: ***"NK has demonstrated an ability to recognize when he is not able to care for his children on his own."***

[30] In 2015, the Respondents had their first child, MK. The Applicant received a referral from the RCMP of a domestic disturbance between the Respondents. During the investigation, the Respondents denied physical violence, although both acknowledged it had happened in the past. Concerns were noted regarding the Respondents' relationship and AK's mental health. The Applicant and Respondents entered into an Early Intervention Agreement to provide counseling, family support, women's outreach, and family group counselling.

[31] In January 2016, the Respondents were expecting their second child. They did not want to renew the Early Intervention Agreement as they believed they had addressed all concerns through counselling and that their relationship was more stable. Their second child EK was born in June 2016. In September 2016, the Applicant received a referral that the children were dirty and smelled of urine. Furthermore, the house was dirty and smelled of animal urine and feces

as they had several pets. When an Applicant worker arrived to investigate, AK was across the street at a neighbor's home with the oldest child MK, while the three (3)-month-old infant, EK, had been left in the Respondent's home unattended. The squalor in the home was substantiated.

[32] It should be noted that the Respondents had been together since AK was sixteen (16) and NK was twenty-eight (28). By the time AK was twenty (20) years old, she had two (2) babies to care for, was responsible for the housework, and she had a job at night as a cleaner. AK's Parenting Capacity Assessment states: ***"During the day she would take care of the two children as [NK] was not helping out. According to [AK] he thought parenting the children was [AK]'s responsibility."***

[33] While investigating the September 2016 referral, it was noted that there was a pile of items three (3) to four (4) feet high in which the Applicant discovered five (5) rifles. Due to the unfit living conditions, AK was asked to make appropriate family arrangements and a safety plan for the children. AK suggested the children go with her grandmother. AK subsequently raised concerns that the grandmother had tried to drown her in a sink when she was younger. During the time that the two children were with the grandmother, MK received an injury to her head from falling onto a concrete floor.

[34] MK and EK were taken into care on October 5, 2016, and the Applicant commenced their first child protection proceedings in relation to these Respondents. AK advised that NK had hit her once or twice and she had hit him back, noting it was done before they had children. Collateral contacts with family members confirmed concerns that the Respondents had been involved in domestic altercations since having children and family members had to intervene. When the children were removed from AK's grandmother, AK went to the Millbrook Healing Centre with the children and the children were returned to her care under a Supervision Order on the condition that the Respondents not reside together. AK was not to facilitate NK's parenting time with the children.

[35] Shortly thereafter on a referral, the Applicant made an unannounced visit to NK's home where entry was initially denied. AK was in the home with the two children and attempting to hide them from the Applicant. The children were removed from her care and placed in the customary care of NK's sister. The Respondents participated in individual counseling, couples counseling, family support work, men's and women's outreach, and family group conferencing.

[36] In April 2017, the children were returned to the Respondents' care under a Supervision Order. In July 2017, AK gave birth to their third child, MYK. AK

left the hospital on the same day of the birth of the child against medical advice. Pursuant to the **CFSA**, the Applicant made a second application to the Court for the third child due to AK not making child-centric decisions, not being willing to work with the Applicant, and reported ongoing relationship concerns between the couple. Once the concerns were addressed to the Applicant's satisfaction, the Respondents were cooperating, and there had been no recent referrals, the Applicant made the decision to request termination of both court proceedings and file yet another Early Intervention Agreement to continue the Respondents' participation in therapy and family support work.

[37] Three days after the first and second child protection proceedings terminated, RCMP contacted the Applicant and advised that on September 28, 2017, they had been called to the Respondents' home for a domestic violence incident that involved NK being charged with assault. All three children were present during this physical altercation.

[38] The Applicant initiated the third child protection proceeding with respect to the Respondents on October 6, 2017. The Respondents contested the matter at the 30-day stage and it was heard by this Court on October 30, 2017. In the published decision (**Mi'kmaw Family and Children's Services v. NK**, 2017 NSFC 27) the Court stated:

> ***Three days after the terminations, a referral was received by the emergency duty worker from an RCMP officer in the Chester detachment. The RCMP attended the home of the Respondent Parents on that date for a domestic violence incident after being contacted by the Respondent Mother.***
>
> ***According to the Respondent Father, the Respondent Mother had hit him while he was holding one of the children. All three children were present for the altercation. The Respondent Mother confirmed that an altercation had taken place but her evidence was she did not hit the Respondent Father while he was holding one of the children but the children were present.***
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> ***On September 29, 2017, the Agency worker spoke with a family member who advised the worker that she had heard about the fight the Respondents had had the night before. She further advised that two weeks previous she had been told that the Respondent Mother had pushed or shoved the Respondent Father while he was holding the child and knocked the child out of his arms.***
>
> ***This is disturbing as this happened just prior to the matter being terminated by the Court. In the latest altercation, the Respondent Father was alleging that the Respondent Mother hit him twice in the face and then she bit him.***
>
> ***In the Respondent Mother's affidavit she says that they weren't having a fight. She goes on to say that the Respondent Father was holding her in a headlock, and she bit him so he would let go of her, she was afraid and needed to be out of the headlock to attend to her children and leave the home.***
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> ***It is disturbing to the Court that the Respondent Mother would say that they were not having a fight. What other word would describe what happened? This lack of ability to accept responsibility, or call an egg an egg, is troubling. There is also evidence in the Respondent Mother's affidavit that the parties had been fighting over jealousy issues. (paragraphs 8 to 18.)***

[39] At that time, the two eldest children were placed in a customary care and custody arrangement with NK's sister. The baby, MYK, was placed in the temporary care of the Applicant. AK advised that NK had accused her of cheating, they started arguing, he put her in a headlock, she bit him and he bit her back. There were serious concerns noted with respect to the parenting of the children.

[40] By December 2017, concerns had continued to escalate. During the access visits, the youngest child almost fell off the table while in her car seat, the Respondents argued, one of the children picked up animal feces, and the youngest child was being fed inadequately. More services were put in place: anger management therapy for NK, therapy for AK to address healthy relationships, stress management, and self-care and attachment. Co-parenting therapy and family support to address healthy relationships and parenting deficits were also added.

[41] In 2018, the Applicant noted that the Respondents were not initially engaged in these services. By May 2018, the concerns from the access reports escalated even further concerning excessive discipline and punitive approaches taken in regard to the child EK, who was still under two years of age. EK was subjected to 45 minute timeouts and being restrained in her highchair. She was being left alone on a sofa while the Respondents were across the room. She was being corrected constantly and not receiving incentive stickers while the oldest child was getting plenty of incentive stickers and prizes. There were concerns of favoritism which was denied by the Respondents.

[42] Although the cleanliness of the home seemed to have improved, the SPCA became involved during this proceeding due to treatment of six (6) dogs that were in the Respondents' care.

[43] In July 2018, a fourth child, DK, was born to the Respondents. The Applicant commenced a fourth Application under the **CFSA** with respect to DK and the Respondents.

[44] At this point, AK refused to have another family support worker in their home to provide intensive family support work. In August 2018, MK and EK's customary care placement broke down and the children were taken into the temporary care and custody of the Applicant. The Applicant subsequently decided that the child protection concerns relating to the two (2) youngest children were being addressed and the Applicant decided to return these two (2) children to the Respondents care under Supervision Order and the two (2) oldest children would begin overnight access with their Respondents. The Respondents agreed to start intensive family support work, doing individual therapy, couple therapy, and family support work.

[45] The Applicant noted that the behaviors of the two oldest children regressed after having access with the Respondents. It was noted by the family support

worker that AK continued to treat the two oldest children differently. In October 2018, the Applicant noted the Respondents screaming, swearing, and name calling at each other when the children were present. They further noticed the excessive correction and discipline AK used towards EK. It was noted that NK did not speak to EK in this manner. The family support worker noted that the Respondents would not take responsibility for the situation and put blame on the foster parents, family support workers, the Applicant, and sometimes the children for their behaviors and regressions.

[46] In November 2018, numerous difficulties were noted with respect to the way the children were treated during the access visits. Early intervention services noted potential delays with the two (2) oldest children. NK's therapist noted that NK was doing well and becoming more of a peacemaker.

[47] In 2019, the Respondents began participating more in the case-plan and the Applicant moved towards transitioning the oldest children back to the Respondents care under a Supervision Order, which was granted January 2019. However, in January 2019, AK had moved EK to the spare room, turned the crib upside down over her, and had duct taped her pajamas to her. The child, MK, was allowed to sleep in her parent's bed, but according to the evidence,

EK spent her nights alone trapped under a crib, waking up every hour screaming.

[48] The Applicant continued to note concerns from January 2019, however, by June 2019, the Applicant believed the Respondents had made enough progress. As the statutory timeline for the third proceeding expired in August of 2019, the Applicant requested a termination of both proceedings and that yet another Early Invention Agreement be put in place. The third and fourth proceedings terminated on July 2, 2019.

[49] Three (3) months after the Respondents' third and fourth child protection proceedings terminated, RCMP reported concerns pertaining to the welfare of the children, as well as animals residing in the Respondents' home, which was characterized as unsafe and unsanitary. The RCMP and the SPCA attended the home and seized eight (8) dogs. Some of the dogs were doubled up in crates in which they could not sit down or turn in, and there were concerns about whether adequate food and water was left for the animals. When asked about the eight (8) dogs, AK stated they were her children's therapy dogs. The RCMP officer who attended the home noted the house smelled strongly of animal urine and feces. Further, RCMP had been recently called because a four (4)-year-old

was on the road by herself walking only in a diaper and AK had no idea her child was missing.

[50] AK's sister advised the Applicant in January 2020 that she had moved AK into this home in July 2019 following AK being assaulted by NK, which resulted in AK suffering a concussion. AK's sister advised that during another visit in September 2019, she arrived and AK, AK's boyfriend, and MK were upstairs in the master bedroom. DK was alone in a playpen facing the TV. The floors were covered in dog urine and feces. There were mouldy dishes and a sink full of stagnant, dirty water. Her sister advised she had to clean the stairway to get upstairs. She found EK and MYK in their bedroom, which was blacked out with curtains with a television turned on. There was no door and there was a baby gate blocking the doorway.

[51] According to AK's sister, EK's crib was upright, but the mattress was dropped so the child was unable to climb out, while MYK's crib was upside down over her like a cage. EK and MYK's diapers had "exploded", they were both soaked in urine, and EK was covered in feces as well. The skin on their bums was raw and peeling.

[52] Counsel for NK noted these incidents were not in their client's control as the children were with AK at this time.

[53] On October 28, 2019, a second referral was received that AK had relocated and was residing with NK and their children. The Applicant was concerned given the incidents of family violence and that when the prior child protection proceedings terminated in July 2019, the Respondents' plan was that a family member would support/supervise their joint access to reduce the risk to the children. That family member later confirmed the Respondents had not cooperated with that plan.

[54] On November 1, 2019, RCMP advised there were pending charges against NK for assault and uttering threats towards AK and her sister from a July 2019 incident. Both Respondents blamed AK's sister for the incident of family violence and claimed she had made it up. Also on November 1, 2019, AK told an Applicant social worker she could not tell NK about her boyfriend without fear of NK reacting.

[55] On November 6, 2019, a referral was received that AK had been in a head-on collision that resulted in the death of another motorist. The RCMP advised that officers on the scene observed drug paraphernalia in AK's car and charged

AK with several criminal code offences, including criminal negligence causing death. In the Parenting Capacity Assessment Report for AK by Monique Simonse, in the Background Information section, it was noted that AK told the RCMP that she was five (5) months pregnant with twins at the time. The assessment also noted that ***"[AK] explained that she smokes weed on a daily basis and that it was likely still in her system as she'd not smoked that day because she was pregnant with twins."***

[56] The Court has been unable to find any other reference in the evidence to this pregnancy or the twins, except in NK's assessment. Other evidence noted that AK was uncooperative with the Applicant's investigation into these referrals, was verbally aggressive with the social workers, and failed to show any insight into the child protection concerns.

[57] The Applicant initiated the fifth court application (this current proceeding) in December 2019. The children were placed in the care and custody of third parties and a family member.

[58] In January 2020, an Applicant worker observed that EK's and MYK's struggles seemed to lie with emotional development and attachment. The

Applicant arranged therapy for EK and MYK for trauma, aggression, and sexualized behaviours in EK.

[59] During a home visit by the Applicant in January 2020, the Applicant noted NK discussed a domestic incident that occurred in July 2019 where he 'beat the shit out of' AK and asked AK if she wanted to go through that again. NK's counsel argued that NK denied ever having claimed to 'beat the shit out of her.' His counsel continued: ***"The incidents being discussed involved a conflict from many years ago, as opposed to conduct relating to the past summer."***

[60] In February 2020, NK indicated there were times when he could feel the anger/frustration he experienced in the past and wanted to find more appropriate means of coping, noting he did not want to be in the same space he was when he physically assaulted AK the previous summer. EK and MYK's customary placement with a family member broke down and they were taken into the temporary care and custody of the Applicant.

[61] In March 2020, the Court made the protection finding, finding the children were in need of protective services pursuant to section 40 and subsections 22(2)(b), (g), and (k) of the **CFSA**. In April 2020, AK confirmed Therapist Trevor Moores was in contact with both Respondents to begin individual

counselling services. MK's caregiver advised she was obsessed with private parts. MK was seeing First Nations Clinical Therapist Bryn Davies on this issue.

[62] Affidavit evidence of Sylvia Martin, a woman's outreach worker with the Mi'kmaw Family Healing Centre, filed by counsel for AK, noted she first met with AK in February 2020 and had been working with her since that time. Ms. Martin's evidence was that AK had changed a lot I the time she worked with her, the last time being August 4, 2021. Ms. Martin noted AK had ***"…modified her attitude a lot and is now always forthcoming and eager to do the programming and learn."***

[63] In May 2020, the Respondents continued to refuse urine collections for random drug and alcohol testing, citing concerns with people entering their home during the Covid-19 pandemic.

[64] On June 4, 2020, the Court made the initial disposition finding. MK's caregiver advised they were working on strategies (to deal with MK's challenging behaviours) given to them by MK's therapist and they appeared to be working. AK believed MK's behaviours were due to the numerous upheavals in her life and exacerbated due to changes in her caregiver's home.

AK confirmed she had been having regular contact with her therapist and her Women's Outreach Worker.

[65] MK's caregiver noted MK randomly said that her parents were fighting one time and her dad pushed on her mom's throat and when he stopped, her mom pushed her dad against a wall. When the social worker met with MK and EK, EK said she saw her dad push her mom against the wall and choke her and demonstrated by wrapping one of her hands around her throat. MK said that was not what happened, and her mom pushed her dad against the wall and choked him. MK said it only happened once and it was "funny" because her dad was trying to talk and couldn't. MK couldn't say when it happened. NK denied having choked AK in front of the children.

[66] In July 2020, a Family Support Worker noted sessions were focused on managing emotions. The Respondents were noted to be cooperative despite not seeing their children for in-person access (only virtual) due to Covid-19. The Family Support worker noted AK was engaged and appeared knowledgeable on childhood injuries and childproofing. The Respondents continued with their therapist and resumed random drug testing in July. By August the therapist noted the Respondents seemed to be making some progress.

[67] By October 2020, small improvements were noted by Applicant workers. The home was tidy and both Respondents were fully engaged in their Substance Use Assessments. Their therapist noted conflict between the Respondents during couples counselling.

[68] MK and EK scored mild and moderate severe respectively on a test for PTSD. At one point while discussing family violence, MK put her hands on her own throat and said she saw her mom choke her dad. The therapist, Ms. Davies, offered to meet with the Respondents in their home to teach them the necessary skills to ensure consistency in relation to addressing the girls' behaviours.

[69] Ms. Davies reported having made several attempts to contact the Respondents. The Respondents wanted confirmation of Ms. Davies identity and it was confirmed. However, despite significant effort by Ms. Davies to assist the Respondents, the Respondents refused to cooperate, finally saying in February 2021, they had not had the children in their care enough to have any impact on the children's behaviours.

[70] The Applicant raised concerns with the Respondents based on their fully-supervised access visits with the children. These concerns included AK refusing to close the front door despite the children saying they were cold (AK said she

was hot), the Respondents not having any clothes for DK to change into after his pants got wet, the children getting flea bites and children getting bitten on multiple occasions by the rabbits.

[71] In AK's affidavit aforementioned, she states: ***"We have 5 dogs, 5 cats and 5 rabbits and the animals are well behaved … The animals are not aggressive …."***

[72] The Applicant advised the Respondents it was looking to implement individual access for each parent to assess their ability to parent their children separately, which would be important should AK be incarcerated. The Respondents refused, saying they would ***"never not parent together".*** The Respondents reported there is a possibility of AK being incarcerated but said the Applicant's involvement would be over by that time, so the Applicant did not need to prepare for that possibility. The Applicant noted that while there had been some improvement with the Respondents' engagement with the Applicant compared to previous proceedings, there remained significant challenges and barriers to the Respondents' progress. The Applicant believed that while the Respondents were engaged in services they continued to demonstrate limited insight into child-centric decision making. The

Respondents were given a copy of the Applicant case plan and asked to review it before the next home visit.

[73] During the next home visit in December 2020, when asked if they had reviewed their case plan, they said no, and AK replied: ***"Do you know how busy we are?"*** The Applicant raised concerns with the Respondents about them showing favouritism of their other children over EK. NK acknowledged the Applicant had concerns in the past about this. When asked if EK's behaviours affected their perception of her, the Respondents said they can separate a child from the behaviours. The Respondents said EK knew how to be hurtful and would intentionally try to hurt them and provided the example of EK telling them they were no longer her parents. The social worker explained this behaviour was likely EK's own pain response.

[74] In February 2021, the Applicant received the Parental Capacity Assessments from Registered Psychologist Monique Simonse for both Respondents.

[75] The evidence is clear that AK's life from an early age was difficult and challenging.

[76] As noted above, the Assessment made reference that AK became involved with NK when she was sixteen (16) years old and he was twenty-eight (28)

years old. Even in those early days, NK was aggressive and physically assaulted AK, described in the report as: ***"beat her up."*** AK was only nineteen (19) when their first child was born, and twenty (20) when she had the second, and the weight of childcare and house work fell squarely on AK's shoulders.

[77] According to Ms. Simonse, the assessment results indicated AK had good parenting abilities, but the problems in her relationship with NK, her personality profile, childhood experiences, and history had become a barrier in providing adequate care for her children. She noted information from collateral sources, indicating that AK required a supportive network, and practical and emotional support to parent all four children by herself.

[78] In a Parental Capacity Assessment prepared by Monique Simonse for NK, dated January 23, 2021, she states:

> ***"[NK] shared that his two uncles (his father's brothers) and his grandfather were alcoholics. He grew up in an environment where heavy drinking and fighting was normal. [NK] started drinking at a very young age, because his family members would offer him beer."***

[79] The Parental Assessment Report seems to contain a thorough accounting of NK's life. When the Applicant took their first two children into care the report noted:

> ***"[NK] explained that he did not help [AK] at all with running the household and taking care of the children. [AK] did everything for the first two years. As a result, the house was a mess and the dogs were pooping in the basement. [NK] and [AK] were fighting about household chores. The children were gone for about eighteen months, according to [NK]. He and [AK] got involved in services and started counselling. After they were returned, [AK] was pregnant with [MYK]. When [MYK] was born the children were taken into care again."***

[80] Annie Knockwood, a Family Support Worker with Mi'kmaw Family and Children's Services had worked with the Respondents for four years when interviewed for the Parental Capacity Assessment in November 2020. The report stated*: **"Annie feels that [NK] and [AK] would parent better if their relationship was more stable. She noticed that [NK] is helping out more as he has been cleaning the house, mopping the floors and cooking meals."***

[81] Ms. Simonse conducted a number of psychological tests on NK. On one particular test, she noted: "***[NK]'s overall AX Index score fell in the moderate range, indicating that when he is angry or furious, he likely tries to keep calm, be relaxed and cool, be patient, tolerant and understanding of others. Like most people, he may not always be successful in doing this, but he might be aware of his anger."***

[82] Ms. Simonse continued:

> ***"From the information gathered, it seems that [NK] is invested in and committed to providing care for his children, but he is experiencing barriers as a result of his emotion-regulation problems, early childhood***

> ***experiences, communications problems, attachment issues and possibly as a result of his cognitive challenges. Results of this assessment suggest that [NK] was not strongly involved in the parenting of the children in the past … He showed a strong motivation to be more involved and to learn more about parenting."***

[83] She concluded:

> ***"During the assessment appointments it as noticed that [NK] seems to lack insight in his own functioning and how this might impact his parenting and his relationship with [AK]. He mainly talked about how the fact that the children were taken into care have affected their behavior, but contributed this more to other caretakers being involved and them not parenting the same as [NK] and [AK] had done. He did not contribute the children's change in behavior to the fact that the children being removed out of his and [AK]'s care and then witnessing domestic violence and the impact on their sense of security and their attachment. In conclusion, assessment results indicated that he had some parenting abilities, but the problems in his relationship with AK, his personality profile, childhood experiences, and history had become barriers in providing adequate care for his children."***

[84] She also noted information from collateral sources and NK's score on the cognitive ability and achievement tests indicate that he needed support to parent all four (4) children by himself.

[85] The Applicant received subsequent correspondence from Ms. Simonse regarding the Respondents' Parental Capacity Assessments, noting the children may have developed attachment problems and trauma as a result of their placements outside of the family and as a result of witnessing family violence and noted the Respondents would benefit from specific parenting support services. Ms. Simonse noted that if similar services have been offered and

completed a number of times and no progress is noticed, it is likely that the services offered are not a good match or that the barriers for the Respondents to benefit from the program are too high.

[86] In late February 2021, the social worker, Respondents, and Ms. Simonse met and specific programs were recommended to look at the Respondents' own experiences of trauma/attachment and how they manifest those into their own parenting.

[87] AK said the children's apparent attachment issues were from them frequently being removed from the home. Ms. Simonse noted the children's trauma was reinforced with each taking into care and that each time the children's maladaptive attachments were reinforced, those behaviours became deeper entrenched, more difficult for each child to process, and more difficult for supportive services to address. AK said they worked hard to address problematic behavioural patterns of the past and their current Applicant involvement had no merit and was from a malicious referral from her sister.

[88] The Applicant spoke of concerns regarding the stability of the Respondents' relationship, noting the Applicant just completed involvement in July 2019 and then their relationship broke down. It was noted that AK said it was the removal

of their children in the fall of 2019 that destabilized their relationship. Ms. Simonse discussed their therapy, noting sessions with NK went well, but when the therapist would challenge AK to dig deeper into her trauma and its impact on their current situation, AK's entrenched responses prevented them from moving forward in those sessions. Ms. Simonse noted that when that was explained to AK, she became defensive. AK said NK was the one who needed to work through his past, not her.

[89] The Applicant noted concerns with the Respondents redirecting the identified child protection concerns by placing blame on others. When asked about this, the Respondents said they understood how it could appear that way but insisted they had done nothing wrong that required the Applicant's current involvement, noting it is due to a malicious referral. Later in February, MK and EK's therapist, Ms. Davies, confirmed the children required consistent parenting and supports and she had seen great improvement in both girls since being with their current caregiver.

[90] The Applicant advised that it was during this time they made a decision to begin permanency planning and would encourage the Respondents to identify long-term caregivers for the children.

[91] The Applicant argued a lengthy involvement with the Respondents, that the Respondents had been offered supportive services multiple times, and even with all of that, the Respondents' had been unable to demonstrate or maintain the necessary changes that would provide a stable, nurturing, and consistent home environment that supported the children's healthy mental, physical, social, and emotional development.

[92] NK said he did not understand the decision, noting the referrals made by AK's sister were malicious.

[93] On March 11, 2021, the Applicant formally decided to seek permanent care and custody of the four older children. Evidence of child therapist, Bryn Davies, highlighted her concerns about MK's vivid recollection of events and fear pertaining to AK's fatal motor vehicle collision, despite MK not being present at the time.

[94] The Applicant's evidence also noted concerns with the Respondents' inappropriate information-sharing and exposing young children to adult issues. Further, as has been noted throughout the evidence, the Applicant had concerns from access where the Respondents' differential treatment between the children seemed to be increasing.

[95] The Access Facilitator noted AK seemed to be blaming EK for everything during a particular visit, and when EK felt she was being blamed, she would shut down, not say anything, go under a table, and hide her face. AK would then get mad at EK for being upset for "not getting her way". Family Support Worker Laura Winters evidence was that she had completed a two and a-half (2 and ½) hour session with the Respondents and they did not cover any programming as the Respondents wanted to use the time to fill her in on their perspective of the Applicant's involvement. The Applicant arranged for EK to begin participating in Rowan's Room Development Centre to work on attachment, routine development, and emotional regulation skills using a trauma-informed approach.

[96] AK told the social worker that she and NK accepted their roles in their previous Agency involvements and their history of family violence. The Applicant advised AK that they did not believe the Respondents had adequately addressed the child protection concerns of this involvement, and raised the concern of unfit living conditions. AK denied this concern.

[97] The Respondents were noted once again to have said the children's problematic behaviours and attachment were a result of having been removed from the Respondents' care. The Applicant's evidence is that they believe the

Respondents continue to blame the Applicant for the removal of their children, rather than accepting responsibility for having their children removed.

[98] On April 2, 2021, AK gave birth to the Respondents' fifth child, Baby AK, and the Applicant initiated the sixth child protection proceeding. As previously mentioned, pursuant to a motion granted under subsection 96(1)(a) of the **CFSA**, the evidence under Baby AK's proceeding has been admitted as evidence under this proceeding. Baby AK was taken into the temporary care and custody of the Applicant upon birth. There were significant concerns reported by the nurses while Baby AK was in the hospital with the Respondents during the first few days postpartum, and indeed the evidence shows these concerns continued. Baby AK remains in the care of the Applicant.

[99] However, this matter involves Baby AK's older siblings and the Court will focus for the most part on that.

[100] In April 2021, AK and NK's individual therapist, Trevor Moores, noted the Respondents requested two sessions per week. Mr. Moores stated he wished they had been willing to put in this level of work a long time ago, noting the Respondents' claim is in line with his observations of the Respondents being

presented information one way, and then spinning it another way to their advantage.

[101] Mr. Moores noted the Respondents appeared to hear only what is perceived by them to be advantageous, and his role continued to be supportive rather than therapeutic as the Respondents had not used their time with him to address the identified issues, but instead, to complain about the Applicant and the Applicant's involvement.

[102] Further, Mr. Moores noted that during one of their sessions, AK told him that her lawyer (former Counsel) was present. Mr. Moores noted this took place without his consent or knowledge and as such, he no longer felt telephone sessions were appropriate and would no longer offer his therapeutic sessions to the Respondents via telephone. Mr. Moores noted Cognitive Processing Therapy (CPT) needed to be done individually.

[103] The Respondents refused CPT noting they were too busy to take on any other services, and accused the Applicant of trying to overwhelm them. By May 2021, the Respondents were willing to try CPT. AK advised NK was not finding therapy with Mr. Moores useful and the quest for a new therapist for NK began.

[104] Also at that time, Psychiatrist, Iftikhar Hussain noted EK appeared to have traumatic childhood experiences, neglect, and attachment difficulties, and this was exhibited by her behaviour and emotions. He recommended a stable placement and consistent environment to address EK potentially suffering from an attachment disorder.

[105] During a Risk Management Conference held on May 18, 2021, the Applicant's evidence is that they shared concerns that the Respondents did not appear to recognize their children's response to their situation and that the children were expressing their own emotional/psychological needs. The takeaway was the Respondents appeared to ignore these needs, blaming the children's caregivers for allowing the children to ***"get away with acting like this"*** or stating ***"they need to be back home where they belong so they can be taught this doesn't get them want they want"***, all within earshot of the children. During an access visit, DK found Febreeze, sprayed it, and it just missed his face/eyes and the Access Facilitator had to intervene.

[106] NK's affidavit evidence was that he acknowledged this happened and it was a lapse of judgement in his part in failing to put the Febreeze away prior to the access visit.

[107] During the same visit, EK found nail clippers, tried to use them on DK, and the Access Facilitator had to intercede again. The Applicant noted circumstances justifying a request for permanent care and custody had not changed and are unlikely to change before the statutory timeline expiring on June 4, 2021.

[108] The Permanent Care and Custody Trial commenced *pro forma* on June 3, 2021 before the timeline expired. In July 2021, trial dates were scheduled for January 2022 for reasons previously noted.

[109] Although the Respondents had told the Applicant a 'hard no' to the possibility of NK's sister being a permanent placement for EK in mid-May 2021 as AK said she believed EK's behaviours began when EK was placed with NK's sister in the past, in June, AK changed her mind. EK had already begun transitioning to NK's sister's care as a foster kinship placement. NK's sister advised she was leaning towards the plan of permanent care and custody for EK while continuing to be EK's foster kinship placement.

[110] On June 22, 2021, NK's sister advised she was unable to continue being EK's placement due to EK's behaviours as she had to protect her own child,

who began hiding in her room and when she came out, EK verbally attacked her.

[111] In June 2021, the Respondents indicated they were supporting NK's parents taking the other three children. On June 3, 2021, the Applicant decided to explore and assess this proposed plan and implement access between the three (3) children and their paternal grandparents. The three (3) children were to be fully transitioned on July 1, 2021. On June 27, 2021, the children's transition to the paternal grandparents' long-term care broke down due to the grandparents' inability to care for all three (3) children.

[112] In June 2021, Therapist Joan Reeves advised she arranged with AK for in-person sessions every week starting June 16, 2021. On July 24, 2021, Ms. Reeves' report noted that although AK was referred to her counselling services in May, she was unable to reach AK to schedule an appointment until mid-June due to difficulties with AK's cell phone service. Ms. Reeves noted AK had attended six (6) sessions since mid-June and had not missed any appointments. Ms. Reeves noted AK said the Applicant's current child protection proceeding was ***"based on a lie"***. Ms. Reeves noted AK was not in agreement with addressing her trauma during these six (6) appointments and therefore Cognitive Processing Therapy was not attempted.

[113] Ms. Reeves noted AK frequently shared her belief that the circumstances she faced were the fault of others and became defensive if another perspective was offered. In September 2021, Ms. Reeves questioned whether AK was able to start Cognitive Processing Therapy, as she thought AK's regulation skills needed to improve before they risked going into further detailed historical trauma. Ms. Reeves noted that she and AK spoke about AK's need to cope with what was happening in her life currently with her criminal case and child protection involvement.

[114] Throughout the summer of 2021, the Applicant continued to note multiple concerns with the Respondents parenting abilities during their access to the children.

[115] In September, MYK's Therapist, Bryn Davies, indicated MYK talked a lot about penises, was good at drawing penises, drew a monster with a penis, and dropped her pants and showed the therapist her new underwear during session. Ms. Davies wanted the Applicant to be aware of MYK's sexualized behaviours. Further incidents of sexualized behaviours between two of the children were noted during an access visit later in September.

[116] The Access Facilitator noted the Respondents seemed to be fighting a lot and there was tension between them during access.

[117] The Applicant noted that NK informed Family Support Worker, Laura Winters, he was not sure how much more he could take. AK denied there was tension between them during access, advising the Applicant was just nit-picking. The Access Facilitator noted one (1) of the children picked up rabbit feces from the floor and was prepared to eat it and AK took the feces away and threw it back onto the floor. AK's affidavit evidence was that she then swept the floor.

[118] The Applicant participated in a scheduled phone consult with EK's pediatrician, Dr. Crouse. Dr. Crouse noted EK required routine, structure, and security to stabilize.

[119] On October 4, 2021, Developmental Paediatrician Dr. Jillian MacCuspie advised the Applicant that EK needed therapy for her history of complex trauma, attachment difficulties, and challenges with emotional regulation.

[120] On October 4, 2021, the Court made the protection finding that Baby AK was in need of protection services pursuant to sections 40 and 22(2)(b) and (g) of the **CFSA**.

[121] AK's Therapist provided a subsequent progress report, noting AK engaged and participated in sessions and showed progress in establishing a therapeutic rapport. She noted that starting Cognitive Processing Therapy at this time was inappropriate given AK's current stressors and her report that she felt significant distress in doing so.

[122] A report of Clinical Social Worker Ian "Tay" Landry with Sweetgrass and Sage Counselling and Therapeutic Services dated October 31, 2021, was filed with the Court, respecting his involvement with NK. Mr. Landry spoke well of NK's progress:

> ***NK "… has participated fully in the counselling process. He was open and candid about the reasons for he and his partner's involvelment with Mi'kmaw Family, including a history of poly-substance abuse, intimate partner violence and inappropriate parenting …. [He] expressed pride in the significant changes he has achieved in his ability to control his mood, as well as his behavior. He noted that when he now feels stressed, frustrated or angry he will spend time in the woods, chop wood, draw or spend time by himself by a fire…. [NK] stated he has also learned to express his feelings, concerns and frustrations, including discussing them with his partner, instead of bottling them up and eventually feeling overwhelmed and becoming emotionally dysregulated."***
>
> ***He "… describes himself as being in a committed relationship with his partner, as well as being a father to his children. He expressed significant insight into, and regret for, how he and his partner's problematic behavior traumatized their children while they were previously in their care. He expressed significant concern that their children are now being further traumatized remaining in care…. [NK] described a significant improvement in his relationship with his partner. He expressed pride in the work they have done to achieve this. He noted they now communicate better and have fewer periods of heightened agitation and have had no incidents of intimate partner violence."***

[123] Mr. Landry noted NK believed the Applicant was punishing the Respondents for their past behaviours instead of acknowledging the positive changes they had made.

[124] NK advised the social worker he accepted responsibility for AK leaving their home with their four eldest children in 2019, noting he had not been supportive in co-parenting. The Respondents stated they had completed everything that has been asked of them multiple times. The Applicant agreed, explaining the Respondents had taken every program the Applicant had to offer numerous times. However, the Respondents had yet to adequately accept responsibility for the Applicant's current involvement, the children being removed from their care, and the children's resulting trauma. The Applicant's evidence is that NK became escalated. The Applicant worker attempted to explain the ongoing issues, lack of insight demonstrated, and the ongoing relationship/co-parenting issues apparent in the access reports. NK blamed the Applicant for creating the tensions in their relationship.

[125] At the same time, the Applicant received communication from therapist, Bryn Davies respecting her work with all four children. Ms. Davies noted that DK's behaviours were fairly normal and although there were ADHD concerns, he was too young to be assessed. MYK had started trauma-focused cognitive

behavioural therapy, was progressing well, and very receptive and engaged. MK's sessions were stalled due to the lack of engagement from the caregiver, NK's mother. Ms. Davies could not proceed without engagement from the parent figure, so instead Ms. Davies reviewed coping, communication and relaxation skills with MK whom she said was always engaged and happy to connect. EK seemed much happier and grounded when she saw her in-session with her foster parent, and EK is keen to learn and engaged.

[126] Dr. Hussain's evidence was that due to MYK's background history of trauma and emotional abuse in her childhood, she had apparent attachment difficulties. His management plan was to continue MYK's trauma focused-CBT play therapy with Bryn Davies and that a permanent placement of the child would be of great help so that she could have a secure base.

[127] The Respondent's case worker of twenty-two (22) months discussed the Applicant's decision to seek permanent care and custody of the four older children. When the case worker added there had been little progress in that time, the Respondents suggested it was due to the case worker's ineptitude. Numerous issues were discussed, including the possibility of AK's imprisonment; however, the Respondents maintained this was not open to discussion.

[128] In November 2021, Family Support Worker Laura Winters advised that while the Respondents were engaging in family support work and AK seemed to be able to ***"repeat back"*** what she was supposed to do, it was evident that AK was unable to apply the learning. Ms. Winters' evidence was she believed she was wasting her time and resources with weekly family support work as it was mostly a "complaint session" and AK did not accept any direction Ms. Winters offered, as AK felt she ***"…always knows best."***

[129] AK's affidavit evidence was that the Respondents have had some relationship issues in the past, however, they had made progress and the main stressor in the relationship is the involvement of the Applicant. AK noted they had both learned coping strategies during therapy, which has helped deal with their issues. AK noted when they had an argument, NK would disengage and leave the area and she had noticed a significant change.

[130] In NK's affidavit of December 17, 2021 he states:

> ***"One of the agency concerns involves the potential of domestic violence. I have been in counselling as directed by the MFCS and continue to be. I am currently seeing Tay Landry and we have a great relationship in therapy. I have been taught strategies by previous and current therapists. If AK and I have an argument, I will disengage, leave the area, take a couple of deep breaths and go outside for a few moments and then***

refocus and return. I have shown this method successfully working. I acknowledge I have previously had anger issues but I have been successful in therapy and my approach has changed. There have been no concerns about my anger in relation to domestic violence in the current proceeding."

[131] In January 2022, the Applicant received a subsequent Progress Report, dated December 31, 2021, for NK's individual therapy with Ian Landry. NK expressed similar things and Mr. Landry's clinical impression was noted to be unchanged since the previous report.

[132] On February 2, 2022, Social Worker Sarah Elson received a message to call NK. When she called NK, he advised that he and AK were no longer together. He said he was trying to talk to AK about getting the kids back, AK being out of his life so this could happen, and that he had to work on himself. He became upset and tried to get AK to leave the home and an argument and altercation ensued. He was charged with assault with a weapon.

[133] On the same day the Applicant worker received a message to call AK who confirmed an incident of domestic violence had taken place. She said she was packing to move out but had twenty (20) pets and she was not leaving them there.

[134] On February 3, 2022, Ms. Elson called AK to confirm she was still at NK's home and she said she was. AK told Ms. Elson that her bong was on the table, and she was not putting it away as she was packing. Ms. Elson said she would be over shortly. She noted the house was untidy, but AK was packing. She was greeted by multiple cats and dogs who appeared very friendly. AK said that NK also threatened to kill her, tie her up, and beat her until she wasn't recognizable and when she came to, he would beat her again. AK discussed further particulars and told Ms. Elson that there is a No Contact Order in place as the RCMP charged NK with assault with a weapon.

[135] On February 3, 2022, Agency worker, Ms. Elson met with NK. Ms. Elson confirmed with NK that what he reported yesterday was still correct. He told Ms. Elson that AK wouldn't leave after he'd asked her to, that AK had been stealing from him and going out with her sister to find men in the evening, that AK had been cheating on him, he pushed her/hockey-checked her to get out of the house. NK said that she told the RCMP he beat/punched her. He said this was not true.

[136] NK told Ms. Elson that he wanted to focus on himself and the children. He told her that he had a lot of supports to help him. He said that he has wanted AK gone for a while now but knew it would all blow up when he told her to leave,

that all her animals are a problem because she just kept getting more and not caring for them, and that the Band told him that AK had to be out by end of day.

[137] In Sarah Elson's affidavit filed on February 7, 2022, Ms. Elson stated she spoke with NK's sister, as a collateral contact. NK's sister told Ms. Elson that AK is not a good mom. She said that AK needed help. She said that AK had never done anything for the kids. NK's sister told Ms. Elson that NK had family for supports and help, but that AK would never let him access them. NK's sister confirmed that she is a support for her brother and will help him any way she could and that AK is a cheater and she stole from NK. The evidence of NK's sister is not formally before the Court and although it has not been objected to in any filed documents, the Court has afforded this evidence the appropriate weight.

[138] As AK had advised the Applicant she was on a video chat with her aunt at the time of the alleged incident, the worker contacted AK's aunt for confirmation. It was confirmed that the aunt was video chatting with AK during the incident yesterday. According to the Applicant's evidence, NK started to have a "shitty attitude "calling AK names, said she was a "whore", and was cheating on him. She reported NK stated he would like to slice AK's throat. He

said he would tie her up in the basement and beat her until she was unrecognizable. The aunt then reported that he then started hitting AK with a broom and said she was trying to remain neutral. Again, the evidence of AK's aunt is not formally before the Court and the Court affords it the appropriate weight.

[139] AK's affidavit of February 22, 2022, paragraphs 8-18, states:

> ***"On February 2, 2022, we woke up four hour access visit at 8:03 a.m., [NK] started calling me a 'Child fucker' and punched me in the arm and leg. At 8:45 a.m., he hit me with a broom handle and told me he 'wanted to tie me to the pole in the basement, beat me unconscious and then when I came to, he was going to beat me again.' Attached as exhibit a are pictures of bruises I sustained. He also told me he 'doesn't like anyone' and he does not 'like the children because he sees me in them.' I began to Facebook video with my aunt … so she could hear what was being said and she called the police. The police arrived and arrested [NK]. He was charged with assault, assault with a weapon and uttering threats. I suffered bruises to my arms and legs which was documented by the police …. I finally had [NK] charged because I had enough with his abusive behavior I needed to free myself from the physically, emotionally, and verbally abusive situation. I am deeply saddened by the fact that I did not have housing and I am unable to offer a plan of care for my children, I am unable to change the situation between now and the completion of the trial."***

[140] NK's affidavit filed February 22, 2022, stated: ***"Regarding the incident on February 2, 2022, the incident did not take place as described by AK. Additionally, the children were not present at the time of the alleged incident."***

[141] As noted above, charges have been laid and there is a no contact order between the Respondents.

The Law

[142] The law involving child welfare proceedings is complex. In the matter before the Court, the Court must weigh the evidence while considering the burden and civil standard of proof, past parenting, prior proceedings, the legal issues pursuant to the relevant sections of the **CFSA** and the Act respecting **FNIM**, whether the children remain in need of protection, the statutory timelines, credibility and most importantly, the best interests of the children.

[143] As in all child protection proceedings in Canada the burden of proof is on a balance of probabilities.

[144] There is only one civil standard of proof in Canada. In **FH v. McDougall**, 2008 SCC 53, the Supreme Court of Canada stated at paragraph 49:

> ***I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.***

[145] Quoting the above in **Nova Scotia (Community Services) v C.K.Z**, 2016 NSCA 61, the Court continued at paragraph 53:

> ***We think it appropriate to refer to the approach taken by the trial judge in Minister of Community Services v. M.P., 2014 NSSC 80. It articulates, more fully, the correct burden: [112] A proceeding pursuant to the Children and Family Services Act is a civil proceeding. NS (MCS) v. DJM [2002] N.S.J. No. 368 (NSCS).***
>
> ***[113] The burden of proof is on a balance of probabilities, which is not heightened or raised because of the nature of the proceeding. F.H. v. McDougall 2008 SCC 53 (CanLII), [2008] 3 S.C.R. 41, the Supreme Court of Canada held at paragraph 40:***
>
> ***Like the House of Lords, I think it is time to say, once and for all in Canada there is only one civil standard of proof at common law and that is proof on a balance of probabilities. Of course, context is all important and a judge should not be unmindful, where appropriate, of inherent probabilities or improbabilities or the seriousness of the allegations or consequences. However, these considerations do not change the standard of proof.***
>
> ***And further at paragraphs 45 and 46:***
>
> ***To suggest that depending upon the seriousness, the evidence in the civil case must be scrutinized with greater care implies that in less serious cases the evidence need not be scrutinized with such care. I think it is inappropriate to say that there are legally recognized different levels of scrutiny of the evidence depending on the seriousness of the case. There is only one legal rule and that is that in all cases, evidence must be scrutinized with care by the trial judge.***

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

[146] This is a difficult concept for most people to understand, so for the benefit of the Respondents who will read this:

[147] Picture the scales of justice with both sides of the scales equally balanced with credible evidence to support the positions of Party "A" and Party "B". As the matter continues, Party "A" puts a bit more evidence in their side of the scale. Party "B" has no more evidence to put in it. The scales are no longer balanced equally, but one side weighs heavier, the balance of probabilities weighing in Party "A"'s favour. The Court must weigh the evidence applying the civil standard to determine this matter on a balance of probabilities. The burden of proof sits squarely on the Applicant's shoulders. Is the evidence sufficiently clear, convincing and cogent for the Court to be satisfied on the balance of probabilities test as stated above?

[148] A first step in determining the answer to that question is to review past parenting and prior proceedings.

[149] In **Minister of Social Services v. Richardson and Richardson** (1980), 44 N.S.R. (2d) 493; (NSFC), Niedermayer, F.C.J., states at paragraph 74:

> ***The past events, looked at in a series of frequency and degree, determine what is probable in the future […] the probability of events reoccurring are part of the circumstances to be examined. If there is likelihood with a degree of probability, as opposed to possibility, that the circumstances will continue, then in my opinion, if they are unfit or improper a decision has to be made finding the child in need of protection. […] The conditions that have existed will, in my opinion, continue to exist and they are unfit and improper for an infant. […] If the child is placed back into the Richardson home and survives it will become a most abused, confused and bruised person.***

[150] More recently, in **Nova Scotia (Community Services) v. G.R.** 2011 NSSC 88 (affirmed at the Court of Appeal) , Forgeron, J., held at paragraph 22:

> ***Past parenting history is also relevant. Past parenting history may be used in assessing present circumstances. An examination of past circumstances helps the court determine the probability of the event reoccurring. The court is concerned with probabilities, not possibilities. Therefore, where past history aids in the determination of future probabilities, it is admissible, germane, and relevant. […]***

[151] In M. (K.L.) v. Nova Scotia (Minister of Community Services) 2007 NSCA 100, the Court of Appeal stated: ***" … evidence of past parenting practices is highly relevant where current child welfare proceedings overlap the former."***

[152] As noted by this Court in **Nova Scotia (Community Services) v. K.S**., 2016 NSFC at page 7 of the decision:

> ***Having considered the above, this court has concluded that contextually "overlap" does not of necessity refer to chronology, but rather when the circumstances in a child welfare proceeding mirror those of a previous proceeding involving the same parties and the risk and concerns remain essentially the same. Then previous evidence should and can have significant weight.***

[153] Of note, given a physical hearing was not conducted and cross-examination was waived, is whether the evidence of previous proceedings can also be utilized to determine the "believability" of the evidence.

[154] The Applicant submitted that a Permanent Care and Custody hearing is technically a "Review Hearing" held under section 46 of the **CFSA**. Subsection 46(4) of the **CFSA**, provides the following direction:

> ***46 (4) Before making an order pursuant to subsection (5), the court shall consider***
> ***(a) whether the circumstances have changed since the previous disposition order was made;***
> ***(b) whether the plan for the child's care that the court applied in its decision is being carried out;***
> ***(c) what is the least intrusive alternative that is in the child's best interests; and***
> ***(d) whether the requirements of subsection (6) have been met.***

[155] The Applicant argued:

> ***The examination that must be undertaken on a status review is a two-fold examination. The first one is concerned with whether the child continues to be in need of protection and, as a consequence, requires a court order for his or her protection. The second is a consideration of the best interests of the child, an important and, in the final analysis, a determining element of the decision as to the need of protection. The need for continued protection may arise from the existence or the***

> ***absence of the circumstances that triggered the first order for protection or from circumstances which have arisen since that time.***

[156] *Do the children remain in need of protective services?*

[157] In March 2020, the Court determined the children were in need of protective services under section 40 subsections 22(2)(b), (g), and (k) of the **CFSA**.

[158] The Applicant's position is that the children remain in need of protective services under these grounds.

[159] Respondent NK's position is the Application should be dismissed and the children returned to him thereby no longer being in need of protective services. NK further argued the main reason the children were in need of protective services was because of AK's actions not his. NK argued in his brief: ***"NK submits that the Agency became involved with respect to this proceeding primarily due to an incident involving the children when they were staying with AK. As mentioned, it was impossible for NK to take steps to alleviate the conduct of AK. It is our respectful submission that the vast majority of alleged conduct in the Applicant's brief relates to AK (including before 2019.)"***

[160] Subsection 22(2)(b) of the **CFSA** states: ***"there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (a)" and clause (a) states: "the child has suffered physical harm, inflicted by a***

parent or guardian of the child or caused by the failure of a parent or guardian to supervise and protect the child adequately".

[161] Subsection 22(2)(g) of the **CFSA** states: ***"there is substantial risk that the child will suffer emotional abuse and the parent or guardian does not provide, refuses or is unavailable or unable to consent to, or fails to co-operate with the provision of, services or treatment to remedy or alleviate the abuse".***

[162] "Emotional abuse" is defined in subsection 3(1)(a) of the **CFSA** as acts that seriously interfere with a child's healthy development, emotional functioning and attachment to others such as:

> ***(i) rejection,***
> ***(ii) isolation, including depriving the child from normal social interactions,***
> ***(iii) deprivation of affection or cognitive stimulation,***
> ***(iv) inappropriate criticism, humiliation or expectations of or threats or accusations toward the child, or***
> ***(v) any other similar acts;***

[163] Subsection 22(2)(k) of the **CFSA** states: ***"there is a substantial risk that the child will experience neglect by a parent or guardian of the child, and the parent or guardian does not provide, refuses or is unavailable or unable to consent to, or fails to co-operate with the provision of, services or treatment to remedy or alleviate the harm".***

[164] The definition of substantial risk as defined in section 22 (1) of the **CFSA**, means a real chance of danger that is apparent on the evidence.

[165] The Applicant submits there are substantial risks that the children will suffer physical harm, emotional abuse, and experience neglect in care of either or both of the Respondents.

[166] There is also evidence that the children have been made aware of violence by or towards their parents, and pursuant to subsection 22(2)(i) of the **CFSA**, the Respondents have failed to remedy or alleviate the violence.

[167] The Applicant argued it is only a ***"real chance of danger that is apparent on the evidence"*** that must be established to meet the civil standard:

> ***The Act defines "substantial risk" to mean a real chance of danger that is apparent on the evidence (s. 22(1)). In the context here, it is the real chance of sexual abuse that must be proved to the civil standard. That future sexual abuse will actually occur need not be established on a balance of probabilities (B.S. v. British Columbia (Director of Child, Family and Community Services) 1998 CanLII 5958 (BC CA).***

[168] Although AK's counsel does not specifically address the issue of substantial risk, he does state in his brief: ***"AK adamantly opposes that the children be returned to NK's care and it is in her submission that it is not in the children's best interest to be placed in [NK]'s care."***

[169] In her affidavit sworn on March 16, 2022, AK states at paragraph 17: ***"I finally had [NK] charged because I had enough with his abusive behavior and needed to free myself from the physically, emotionally and verbally abusive situation."***

[170] Based on the above, the Court finds that AK confirmed there is substantial risk, a real chance of danger that is apparent on the evidence.

[171] NK submitted that there is not a real chance of danger apparent on the evidence. The Court takes note of the affidavit evidence of NK filed on December 17, 2021 and that of AK filed two (2) months later on February 23, 2022. In NK's affidavit of December 17, 2021, he unequivocally stated although he previously had anger issues of concern to the Applicant regarding the potential for violence, he had been successful in therapy and his approach had changed. His evidence is: ***"There have been no concerns about my anger in relation to domestic violence in the current proceeding."*** AK's affidavit of February 22, 2022, tells of an incident of extreme domestic violence which if accurate shows a side of NK that completely lost control. NK does not refute that an incident occurred. His evidence is that it did not occur exactly as noted by AK.

[172] This evidence in and of itself is evidence of substantial risk.

[173] The Applicant further argued that the history of services provided, their results, and evidence of their application (or misapplication) by a parent are all relevant to the issue of ongoing need of protective services.

[174] In **Nova Scotia (Community Services) v. K.S.,** 2016 NSFC 2 at page 7, the Court found:

> ***If a Court is satisfied on the evidence that services provided by the Applicant were not successful in addressing current or historical protection concerns, then the Court must find that the child protection concerns that existed at the time of taking the children into care still exist at this time. In this case, the Respondent father maintains he found some of his own services and availed himself of them. This factor gives significantly more weight to whether existing protection concerns have been effectively addressed. The dedication and commitment it takes to finding one's own service providers and getting treatment is a powerful testament to the Respondent father's will to better himself. That even these services failed him is an equally powerful testament to the fact that the protection concerns still exist.***

[175] The Court must also consider the best interests of the children. Is it better to return the children to a parent with known deficiencies and a propensity towards violence or better to subject them to the uncertainties of foster care?

[176] ***"In all proceedings and matters pursuant to this Act, the paramount consideration is the best interests of the child".*** (Section 2(2) **CFSA**). Section

3(2) of the **CFSA** enumerates a non-exhaustive list of a factors for the Court to consider when determining a child's best interests.

[177] **FNIM Act** came into effect on January 1, 2020. It is not stand-alone legislation and does not replace the **CFSA**, as the law in Nova Scotia. Section 4 of **FNIM** states: ***"For greater certainty, nothing in this Act affects the application of a provision of a provincial Act or regulation to the extent that the provision does not conflict with, or not inconsistent with, the provision of this Act".***

[178] The legislation is clear that **FNIM** does not replace the **CFSA**.

[179] **FNIM**, section 9(1) clearly sets out: ***"This Act is to be interpreted and administered in accordance with the principle of the best interests of the child."*** And further, Section 10(1) the **FNIM** states:

> ***"The best interests of the child must be a primary consideration in the making of decisions or the taking of actions in the context of the provision of child and family services in relation to an Indigenous child and, in the case of decisions or actions related to child apprehension, the best interests of the child must be the paramount consideration."***

[180] The Applicant argued that **FNIM** enhances the **CFSA**, and creates minimum standards for child protection in Indigenous communities.

[181] While the Court must interpret and administer the **CFSA** keeping in mind the purpose of the **CFSA** is to protect all children from harm, promote the integrity of the family, and assure the best interests of children, the Court must also balance this by interpreting and administering the **FNIM** in accordance with the principle of the best interests of Indigenous children as set out in section 10(3) of the Act.

[182] The primary consideration in the **FNIM** is as follows:

> ***10 (2) When the factors referred to in subsection (3) are being considered, primary consideration must be given to the child's physical, emotional and psychological safety, security and well-being, as well as to the importance, for that child, of having an ongoing relationship with his or her family and with the Indigenous group, community or people to which he or she belongs and of preserving the child's connections to his or her culture.***

[183] The factors a Court must consider when determining the best interests of an Indigenous child are set out in section 10(3) of the **FNIM**:

> ***(3) To determine the best interests of an Indigenous child, all factors related to the circumstances of the child must be considered, including***
> ***(a) the child's cultural, linguistic, religious and spiritual upbringing and heritage;***
> ***(b) the child's needs, given the child's age and stage of development, such as the child's need for stability;***
> ***(c) the nature and strength of the child's relationship with his or her parent, the care provider and any member of his or her family who plays an important role in his or her life;***
> ***(d) the importance to the child of preserving the child's cultural identity and connections to the language and territory of the Indigenous group, community or people to which the child belongs;***

> ***(e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;***
> ***(f) any plans for the child's care, including care in accordance with the customs or traditions of the Indigenous group, community or people to which the child belongs;***
> ***(g) any family violence and its impact on the child, including whether the child is directly or indirectly exposed to the family violence as well as the physical, emotional and psychological harm or risk of harm to the child; and***
> ***(h) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.***

[184] The Court has taken all of these factors into account while reviewing the evidence and is especially cognizant of section 10(3)(g) as it pertains to the Respondent's relationship, and the large body of evidence concerning the psychological and emotional challenges faced by these children.

[185] In the **Children's Aid of Halifax v. L. F.**, [1999] N.S.J. No. 134 [NSFC], Judge Buchan noted: ***"The intention of the Children and Family Services Act is to protect children, societies innocents, from harm. Albeit that the integrity of the family is to be promoted and also protected, the best interest of the child overrides all other issues..."***

[186] And as noted by Justice Jesudason in **Nova Scotia (Minister of Community Services) v. A.L.**, 2019 NSSC 236, at paragraphs 67 and 68:

> ***Again, child protection proceedings are not about punishing parents or the Minister. Rather, they are about taking positive steps to ensure that children are protected from harm and addressing any child protection concerns so that children can hopefully be safely returned to their parents care in a manner consistent with a child's best interest, indeed,***

> ***as … stated by Justice Abella in the Supreme Court of Canada in AC v. Manitoba [Director of Child and Family Services], 2009 SCC 191, the general purpose of the best interest standards is to provide judges with a focus and perspective through which to act on behalf of those who are vulnerable: paragraph 81.***
>
> ***Here, it is the children who are the most vulnerable. They are the ones who have been the most impacted by what has happened.***

[187] The Court also has a duty to adhere to strict statutory timelines.

[188] Given the ages of the children, and pursuant to section 43(4) and section 45(2) of the **CFSA**, the total duration for all Disposition Orders in this proceeding was twelve months. This expired on June 4, 2021. The Hearing for Permanent Care commenced pro forma on June 3, 2021.

[189] The principle underlying the statutory time limit can be found in the preamble to the **CFSA**: ***"… children have a sense of time that is different from that of adults and services provided pursuant to this Act and proceedings taken pursuant to it must respect the child's sense of time".***

[190] This proceeding involves the lives of four (4) young, Indigenous children.

[191] The Court takes note that as of April 1, 2022, these young children will all have spent the majority of their lives in the care of someone other than their parents, due to the Respondents' inability to adequately address the protection concerns.

[192] As previously noted in the introduction, as of April 1, 2022:

[193] DK is three (3) years (and eight (8) months) old and has been in customary care or temporary care for two (2) years (and three (3) months) of his life and in the care of the Respondents for one (1) year (and four (4) months).

[194] MYK is four (4) years (and eight (8) months) old and has been in customary care or temporary care for three (3) years (and three (3) months) of her life and in the care of her parents for one (1) year (and three (3) months).

[195] EK is five (5) years (and nine (9) months) old and has been in customary care or temporary care for four (4) years (and two (2) months) of her life and in the care of her parents for one (1) year (and seven (7) months).

[196] MK is seven (7) years old and has been in customary care or temporary care for four (4) years (and three (3) months) of her life and in the care of her parents approximately three (3) years.

[197] At this juncture, given the time lines in this matter have been stretched to the breaking point the Court has but two choices: dismiss the matter or make an order for permanent care.

[198] The Court has reviewed sections 42(2), 42(3), 42(4), and 46(6) of the **CFSA**, and finds they have been satisfied by the actions of the Applicant.

[199] Section 42(2) of the **CFSA** provides:

> ***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 protect 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.***

[200] The above-listed subsections (a), (b), and (c) are disjunctive, not cumulative: the Applicant need not prove all three, only that any of the subsections apply on the facts of the case. **Children's Aid Society of Halifax v. L.A.G.**, 2005 NSCA 163 at para. 20.

[201] The Nova Scotia Court of Appeal explained the significance of this provision as follows:

> ***The goal of "services" is not to address the Respondents' deficiencies in isolation, but to serve the children's needs by equipping the Respondents to fulfil their role in order that the family remain intact. Any service-based measure intended to preserve or reunite the family unit, must be one which can effect acceptable change within the limited time permitted by the Act.***

[202] The pleadings of the Respondents make it clear AK has no plan other than to adamantly argue that NK should not have the children. NK seeks a dismissal of

the child protection proceeding as a "less intrusive alternative". The Applicant cites **Syl Apps Secure Treatment Centre v. B.D.**, 2007 SCC 38 at paras.1-2.

> ***Families are the core social unit. At their best, they offer guidance, nurture, and protection, especially for their most vulnerable members — children. When they cannot, and the child is at serious risk, the law gives the state the right, in appropriate circumstances, to remove a child from the rest of the family for his or her own protection. The significance and complexity of this statutorily assigned responsibility explain the requirement for ongoing judicial oversight.***
>
> ***This is the child protection context, and it is, not surprisingly, a highly adversarial one. While it recognizes that the family is the most private of institutions, it also recognizes that the entitlement to be free from state intrusion does not make the family immune from the state's overriding duty to ensure that children are protected from undue harm, including harm from the family. Evidence of danger to the child will always attract the state's attention and, occasionally, involve ordering that the child be placed for his or her own protection in the care of someone other than the family. The question in this case is whether, a treatment centre and its employee into whose care a child has been placed, owe a hitherto unrecognized legal duty of care to the family of a child they have been ordered to protect.***

[203] The Court is satisfied that pursuant to section 42(2) of the **CFSA** and having reviewed all of the evidence that less intrusive measures have been attempted many times and have failed.

[204] The Court is further satisfied that services have on occasion been refused by the Respondents, and finally in spite of the heft the Applicant has put into supplying multiple and numerous services to the Respondents, they would be inadequate to protect the children.

[205] Once the Court determines it is necessary to remove children from their parents, and before making an order for permanent care as sought by the Applicant the Court must review section 42(3) of the **CFSA** and consider whether:

> ***(a) it is possible to place the child with a relative, neighbour or other member of the child's community or extended family with whom the child at the time of being taken into care had a meaningful relationship pursuant to clause (c) of subsection (1), with the consent of the relative or other person; and***
>
> ***(b) where the child is or is entitled to be an aboriginal child, it is possible to place the child within the child's community.***

[206] The evidence is that the Respondents had proposed alternative placements for EK to be placed with her paternal aunt (NK's sister) and for the three older children to be placed with their paternal grandparents. The Applicant formulated transition plans to assess the reasonableness of these proposed alternative plans, which broke down, and the respective family members were no longer agreeable to continuing proposing themselves as alternative plans.

[207] In the **Children's Aid Society of Halifax v. T.B.** [2001] N.S.J., 255 (C.A.), the Court noted: ***"The onus of presenting such a reasonable alternative must surely be upon the person or party seeking to have it considered."***

[208] The Applicant argued it has continuously advised the Respondents it will continue to investigate any reasonable, alternative plan(s) put forth by the Respondents. The Court finds there are no viable alternative plans before the Court.

[209] Section 16(1) of the **FNIM** sets out:

> ***The placement of an Indigenous child in the context of providing child and family services in relation to the child, to the extent that it is consistent with the best interests of the child, is to occur in the following order of priority:***
> ***(a) with one of the child's parents;***
> ***(b) with another adult member of the child's family;***
> ***(c) with an adult who belongs to the same Indigenous group, community or people as the child;***
> ***(d) with an adult who belongs to an Indigenous group, community or people other than the one to which the child belongs; or***
> ***(e) with any other adult.***

[210] The Applicant noted in her submissions that although there are no proposed alternative plans before the Court, it is noteworthy, especially when considering the placement of an Indigenous Child under section 16 of **FNIM**, that MK is placed in a kinship foster home with her paternal grandparents, EK is placed in a kinship foster home with a member of the Acadia First Nation, MYK is placed in a kinship foster home with her maternal aunt, and DK is placed in a customary care home with a member of the Annapolis Valley First Nation.

[211] The Court finds that the placements of the children by the Applicant reflect the spirit of section 16 of the **FNIM**.

[212] The Court is also cognizant that it shall not make an order for permanent care and custody unless satisfied that the circumstances justifying the order are unlikely to change within a reasonably foreseeable time pursuant to section 42(4) of the **CFSA**.

[213] Section 42(4) of the **CFSA** states:

> ***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.***

[214] Section 46(6) of the **CFSA** states:

> ***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.***

[215] The Court is satisfied given the services the Respondents have engaged in over a significant period of time and the continued child protection concerns, the circumstances that placed the children in need of protective services while

they were in the Respondents' care did not change before the statutory time limit expired and are unlikely to change within a reasonably foreseeable time.

[216] And finally, although the issue of credibility was not argued by the parties, the Court would be remiss if the topic was not given consideration. As previously noted, all parties consented to the matter proceeding by way of filed affidavits, reports of various types and a plethora of written material as a result of orders pursuant to s. 96 of the **CFSA** regarding the previous involvement of the Respondents. The parties waived their right to cross-examination on the record before Settlement Conference Justice, Associate Chief Justice O'Neil.

[217] A hearing usually involves a Court hearing evidence from the parties and their witnesses and noting their demeanor on the stand. Their tone of voice, sincerity or lack thereof, eye-contact, body language, everything, right down to the sweat on their brow is observed by the Judge and then the Judge formulates an opinion as to credibility. Assessments as to credibility reflect the life experience of judges and their perceptions.

[218] ***"Credibility assessments are also grounded in numerous, often unstated, considerations which only the trial judge can appreciate and calibrate."*** ***Waxman v. Waxman***, 2004 CanLII 39040 (ON CA) at paragraph 359.

[219] In **J.L.T. v. Nova Scotia (Community Services)**, 2017 NSCA 68, the Court wrote:

> ***"I found helpful the comments of Cromwell, J.A. (as he then was) in MacNeil v. Chisholm, 2000 NSCA 31:***
> ***[9] The judge, as the trier of fact, must sort through the whole of the evidence and decide which to accept and which to reject so as to piece together the more plausible view of the facts. Many considerations properly influence this decision, including the nature of any unreliability found in a witness's testimony, its relationship to the significant parts of the evidence, the likely explanation for the apparent unreliability and so forth. The trial judge may find that some apparent errors of a witness have little or no adverse impact on that witness's credibility. Equally, the judge may conclude that other apparent errors so completely erode the judge's confidence in the witness's evidence that it is given no weight.***
>
> ***[10] Making these judgments is the job of the trial judge and the Court of Appeal generally should not substitute its own judgment on these matters. An appellant alleging an error of fact must show that the trial judge's finding is clearly wrong. Not every error in findings of fact permits appellate intervention. As Lamer, C.J.C. said in Delgamuukw, supra at para 88:***
> ***...it is important to understand that even when a trial judge has erred in making a finding of fact, appellate intervention does not proceed automatically. The error must be sufficiently serious that it was 'overriding and determinative in the assessment of the balance of probabilities with respect to that factual issue'.***
> ***Where credibility is in issue, only errors that fundamentally shake the appeal court's confidence in the trial judge's findings of fact justify appellate intervention.*** *(Emphasis added)****"***

[220] In **R. v. G.F**, 2021 SCC 20, at paragraph 81, the Court states:

> ***" … a trial judge's findings of credibility deserve particular deference. While the law requires some articulation of the reasons for those findings, it also recognizes that in our system of justice the trial judge is the fact finder and has the benefit of the intangible impact of conducting the trial. Sometimes, credibility findings are made simpler by, for example, objective, independent evidence … as this Court stated in Gagnon,[] at para.20:***

> ***'Assessing credibility is not a science. It is very difficult for a trial judge to articulate with precision the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events.'"***

[221] The Court differentiates between reliability and credibility at paragraph 82:

> ***"Credibility findings must also be assessed in light of the presumption of the correct application of the law, particularly regarding the relationship between reliability and credibility. The jurisprudence often stresses the distinction between reliability and credibility, equating reliability with the witness' ability to observe, recall, and recount events accurately, and referring to credibility as the witness' sincerity or honesty … However, under a functional and contextual reading of trial reasons, appellate courts should consider not whether the trial judge specifically used the words "credibility" and "reliability" but whether the trial judge turned their mind to the relevant factors that go to the believability of the evidence in the factual context of the case, including truthfulness and accuracy concerns."***

[222] This Court is not privy as to the reasons the parties chose to proceed with a permanent care hearing without having an actual hearing or being subject to cross-examination. This Court can only speculate that counsel for the parties, specifically the Respondents, determined it was in the best interests of their clients to proceed in this manner.

[223] The Court can, however, make some findings with respect to believability of the evidence as noted in the SCC case of **R. v. G.F**., *supra*., turning ones mind to the relevant factors that go into the believability of the evidence.

[224] The factors include evidence of past proceedings and the evidence of the matter presently before the court. Many incidents and concerns in the past proceedings are accurately mirrored in the incidents involving the current matter. Based on the chronicity of the proceedings and the repetition of the concerns the Applicant has had since 2015, the Court finds it believable that NK has a temper, and the therapy he has had to assist with his temper did not prevent him from becoming involved in the domestic dispute in February 2022. The Court finds as a fact that there have been numerous incidents of domestic violence between the Respondents, and the Court finds based on the evidence that both Respondents participated in acts of domestic violence. The Court finds as a fact that the children have been exposed to this violence. The Court finds that both Respondents lack the ability to raise these children taking into account their best interests. The Court makes these findings based on the believability of the evidence before it, not because a witness sat in the stand exhibiting symptoms of physical stress.

[225] Perhaps the issue of the credibility of witnesses, or in this case the ‘believability of the evidence”, need not have been addressed, but given the magnitude of the decision the Court believed the subject required some

comment. No matter how a matter proceeds, credibility or "believability of the evidence" cannot be relegated to a sidebar.

Analysis

[226] Affidavit evidence was filed on behalf of all parties, as well as numerous assessments, reports, and case notes.

[227] Over the almost two decades these Respondents (separately and together) have been subject to child welfare investigations and proceedings, involving seven (7) children. There have been six (6) child protection applications.

[228] There have been at least five (5) Early Intervention Agreements involving, first NK and later NK and AK. This began in 2004 and 2008 with a continuation into 2009, 2015, with a renewal in 2016, 2017, and 2019. Lastly, there was an extension when the third and fourth proceedings terminated.

[229] To show the extent of the Applicant's concerns and the vast array of the services offered, the Court has chosen to simply craft these two long paragraphs without break:

[230] Since the Respondents have had their own children, the concerns of the Applicant have included domestic violence spilling over into the Provincial

Court as a result of assault charges, mental health issues, anger management, violent physical altercations in front of the children, child abuse including neglect, emotional and psychological abuse (for example taping their pajamas on with duct tape and turning their cribs upside down over them effectively making it a cage), excessive discipline and punitive approaches towards the child EK in particular, lack of engagement with support workers, not making child-centric decisions, unwillingness to work with the Applicant, ongoing relationship concerns between the Respondents, and consistent household squalor. This included animal feces, which one of the children picked up and tried to eat, permeation of the smell of animal urine, abuse of animals with the SPCA becoming involved, lack of routine in the home, inappropriate care of the children while with the Respondents from not giving them enough food to the children getting bitten by fleas and bitten multiple times by the rabbits kept in the house, the children being soaked in feces and urine, the skin on the children's bottoms being raw and peeling as a result of urine soaked diapers, knowledge as to ages and stages of a child's development being unrealistic, a four year old walking on the road by herself wearing only a diaper, AK's charges including criminal negligence causing death involving a head on collision resulting in the death of another motorist and the discovery of drug

paraphernalia in the car at that time, AK being uncooperative and verbally aggressive with the Applicant and refusing to acknowledge child welfare concerns, complex trauma, attachment difficulties and emotional regulation with the children, and AK's ongoing minimization of the trauma and her rigidity in her parenting skills. This list is extensive but not exhaustive.

[231] The services offered and provided by the Applicant have included anger management, counselling, family support work, assistance with safety plans, couples counselling, women's outreach for AK which included workshops on 'Skills for Families, Skills for Life', with topics on: ***"… child supervision, communication, community safety, housing, formal/informal support, managing stress and time management, medical and mental health needs, money management, nutrition, preventing abuse in a relationship,"*** with Sylvia Martin, as well as a Mi'kmaw language program, a workshop called 'Little Eyes, Little Ears' which relates to how violence towards mothers shape children as they grow, and a workshop for raising children in First Nations families and communities called: Taking Care of our Children. Further services offered include outreach for NK, customary care and custody arrangements with family members, therapy for healthy relationships, stress management counselling, self-care counselling, counselling for attachment, co-parenting

therapy, family support to address healthy relationships, intensive family support to address parenting deficits, family group conferencing, play therapy for the children, early intervention services, therapy for the children for trauma, aggression and sexualized behaviors, random urine and drug testing for the Respondents, the children having witnessed physical violence between the Respondents discussing it, sessions for the Respondents for managing emotions, sessions on child safety and supervision, skills to ensure consistency when addressing the children' behaviors, behavioral intervention therapy for the children, the preparation of Parental Capacity Assessments for both AK and NK, the "Nobody's Perfect" program, occupational therapy for the children, Cognitive Processing Therapy, therapy for AK for post-partum depression, a child psychiatrist, plans for numerous family placements which either didn't materialize or didn't work out, Cognitive Behavioral therapy, pediatricians for the children, and a developmental pediatrician. Again, this list is extensive but not exhaustive.

[232] The Minister noted that in November 2021 the Applicant held a Risk Management Case Conference to specifically review the fie of the youngest child of the Respondents. The Court has been clear that if is not focusing on the youngest child who is subject to her own proceedings.

[233] However the comments made certainly relate to the case presently before the Court involving the four oldest children subject to this Application:

> ***"… the Applicant has had a lengthy involvement with the parents … the parents have been offered supportive services multiple times, and are unable to demonstrate or maintain the necessary insight and changes that would provide a stable, nurturing and consistent home environment that supports their children's healthy mental, physical, social and emotional development … the Applicant does not believe circumstances justifying a request for permanent care and custody are likely to change within a reasonably foreseeable time."***

[234] The Court finds this comment involving the services offered and provided by the Applicant to the Respondents is woefully understated. The evidence clearly shows that the Applicants have provided copious and varied services to these Respondents over and over again, adding anything that could possibly help these parents parent their children. And although the children were returned numerous times either under a Supervision Order or upon termination of the proceedings, none of the services seemed to make very much difference.

[235] The evidence contains various instances where the Respondents have voiced concerns that the Applicant is punishing them by making them complete these services, and whatever they do won't ever be enough. The Court finds this is simply not true. This is the fifth application before the Court. It is the first time the Applicant has pursued permanent care. In spite of all of the deficiencies the Respondents had as parents, the children were always returned. Until this time.

[236] Although NK seemed to make some progress and show an understanding of what was expected of him, the culmination of all of the services to assist the Respondents proved to be for naught as noted in the affidavit of the Applicant of February 7, 2022, and affidavits of AK filed February 22, 2022, and the affidavit of NK filed February 23, 2022.

[237] As noted in the affidavits of the Applicant and AK, an incident of family violence occurred between the Respondents resulting in NK being charged with assault and assault with a weapon. As a result, the Respondents are subject to a no contact provision. In his affidavit, NK denies that this incident of alleged family violence was as reported by AK, and denies every other incident of family violence in evidence before the Court ever took place between himself and AK. The Court finds this is simply not believable. The children themselves have reported incidents of family violence to various assessors, and the history of the various proceedings involving the factual assertions has become repetitious.

[238] The latest episode of alleged family violence culminated in AK having to leave the family home, and the Respondents abandoning their plan to jointly parent their children, and AK abandoning any plan for the children although she adamantly opposes NK having care of them.

[239] The Respondents have required the services and intervention of the Applicant when they only had one child in their care, and when they had several. Based on the evidence, the Court finds that neither AK nor NK are able to parent even one child without incident involving child welfare authorities.

[240] The evidence in the Parental Capacity Assessments noted potential reasons for this. Both Respondents have had difficult and challenging lives from the time they were very young. AK had endured family of origin trauma and abuse. She had learned few skills that would allow her to become an effective parent. NK's past was also traumatic and difficult. He had limited, if any, understanding of what being a parent involved. Their life together was also challenging, especially after the children were born.

[241] The evidence of the Applicant is that although the Respondents have acknowledged the children's experiences of trauma, they have continued to blame the Applicant (for having removed the children from the Respondents' care on multiple occasions), have continued to deny identified child protection concerns, blame the children's respective caregivers for the children's psychologically driven behaviors, and are dismissive of the children's behavioral and emotional needs. On the evidence, the Court finds this to be

true. However, the Court also finds that the Respondents worked to the best of their abilities to do what was asked of them with some positive result.

[242] The Applicant argued the Respondents have often blamed the Applicant for the children's behaviours and lack of attachment with their parents which reflects the Respondents' lack of insight and impedes their ability to change and develop alternate parenting strategies.

[243] The evidence clearly shows the Respondents have maladaptive parenting skills, such as favouritism, lack of developmentally- appropriate parenting, and have struggled to create (let alone maintain) a safe and healthy environment for children's development. Again however, this is not surprising given the lack of foundation either of the Respondents had when they were growing up.

[244] In spite of the wealth of resources the Applicant provided to the Respondents, it was perhaps impossible for the Respondents to build good parenting structures when they lacked a foundation.

[245] The Applicant argued the Respondents recently made a statement to their social worker that they do not have time to follow the learned lessons, which confirmed the Applicant's belief that they cannot adequately parent their children.

[246] And while it may be argued that this matter has taken far too long to get to this point from the perspective of the children who need to know what their lives will be, it gave the parents almost an extra year to be seen as able to parent these children. The Court notes that although the Applicant filed a Plan of Care on March 24, 2021, seeking permanent care of all four (4) children, and although the proceeding commenced *pro forma* on June 3, 2021, and the matter only concluded late February 2022, the Respondents knowing they were down to the wire were still unable to understand and evolve into parents who could safely and humanely raise their children.

[247] The evidence is clear that the children, while in the care of the Respondents (separately or together), lacked both emotional and physical stability. Children need stability.

[248] A decision for permanent care and custody is one of the most serious decisions a Court can make. If it is at all possible taking into account the best interests of the children the Court tries to keep families together.

[249] As previously noted, the Applicant seeks permanent care, and AK as a result of her current circumstances has no plan to submit. Based on all of the evidence, even if AK had sought custody of the children, the Court finds AK

has not shown she has the ability to effectively parent a child. With the greatest deference to AK and the overwhelming history of trauma that has gotten her to where she is now, in spite of all the therapy, courses, and assistance she has received from the Applicant, and as much as she may love her children and want to be a good mother to them, the Court finds she was and remains unable to care for them.

[250] NK seeks care and custody of the children. There are some bright spots in NK's progress, especially his counselling with Ian "Tay" Landry. However, while the Court acknowledges that NK wishes to parent the children on his own the Court has to reflect on previous evidence.

[251] When NK had the option to raise a child of a previous relationship or be in a relationship with AK, he chose AK. The evidence is he couldn't do it without her.

[252] The parties have been separated before under Court orders not to be together in the presence of the children. These Court orders were breached.

[253] In the October 30, 2017 decision of this Court involving the Respondents, the Court stated:

> ***"Based on the affidavit evidence of both the Applicant, and the Respondent Mother, it is clear to the Court and the Court so finds that these parents were involved in a violent physical fight with one another. The Court finds that the children were exposed to this fight. The Court finds that whether or not the child was in the Respondent Father's arms, or playing on the floor as suggested in the Respondent Mother's affidavit, given the sheer degree of physical violence, there is a substantial risk that any of the children could have suffered physical harm. The Court finds that these parents who are only just released from court proceedings involving the Applicant, should have known better than to allow their anger and jealousy and whatever else that triggered this physical display of violence, to get the better of them. They should have put their children's best interests first. They did not."***

[254] The Court continued:

> ***"These parents had only had the children with them for three or four days. These children were supposed to be the star on their Christmas tree. And yet, these parents could not control their tempers. For these parents to have a consent termination of not one but two applications under the Children and Family Services Act was a gift. They got their children back. The Court finds that these parents squandered that gift. The Court is not convinced based on the evidence that these parents can stay away from one another and not put their children at risk."***

[255] Since that time the evidence is that NK has had anger management and other therapies to help control his temper. On February 2, 2022, the Court finds there was an incident of domestic violence between AK and NK in their home. Counsel for NK argues this incident did not take place in the manner as described by AK and further any incident that did occur was not in the presence of the children. The Court finds on a balance of probabilities that it is more probable than not that there was an incident of domestic violence between the Respondents. The Court finds NK still has trouble controlling his temper.

[256] And finally, the evidence shows - the previous decision of this Court involving the Respondents noted that as well - the Respondents are inextricably drawn to one another. Time and again there is evidence of domestic violence, the parties separate and then reconcile. The Respondents suffer a toxic and violent bond. If the Court were considering placing the children with NK, it would not, simply because of the history of the parties reconciling and the consideration this might happen again. These very young children have already suffered far too much.

[257] The Court stated in the 2017 Decision involving the Respondents:

> ***"If the Court had found a way to return these children to the Respondent Mother, the Court would have. For now, it is the Court's view that the parents need to show that they can be away from one another, because clearly they do not function well when they are together and their horribly dysfunctional relationship is what has caused the lives of these children to be thrown into disarray."***

[258] It is almost five (5) years later and the Court now finds based on the evidence and with the great deference to AK's troubled past, that AK is not capable of parenting these children. She has had chance after chance to show that she could and she has not.

[259] And with great deference to NK's past, he has been within the purview of the Applicant long before AK entered his life.

[260] Counsel for NK argued:

> ***"NK has an extensive history with the Agency as has been noted. Much of their concerns stem from issues surrounding AK, although it is accepted by NK that some of their concerns have regarded his own behaviour. Regarding the Agency's involvement prior to 2015, NK submits that this evidence ought to be afforded little if any weight … Despite the Agency's extraordinarily long involvement with NK, they have never substantiated nor even raised a concern beyond 2004 that NK has been involved in an assault involving a child."***

[261] The Court finds it unacceptable for NK to blame AK for the manner in which all proceedings in evidence have unfolded. If a parent is aware – in this case through the Applicant's almost constant involvement since the birth of their first child in 2015 – that his or her children are at risk, not thriving, being neglected and abused by the other parent, that parent has an obligation to remove her/himself and the children from the other parent and the abusive environment. Neither parent can sit idly by and witness abuse or neglect for seven (7) years and then say: 'I should have the children because I didn't do anything wrong, it was the other person's fault.' That does not work.

[262] Every parent has an absolute duty and obligation to ensure their child is not harmed. In this case NK stayed. Even when they were separated and he would have had an opportunity to make an application in his own right under the **Parenting and Support Act**, he did not.

[263] Even if he were faultless in all other ways – and the Court finds unequivocally he was not – he stayed and this makes him every bit as responsible for this situation as AK. He knew exactly what was going on. This is the fifth of six proceedings involving the Respondent's children. He has had legal representation. He cannot blame AK.

[264] Should the Court however accept NK's argument to give scant consideration to past evidence?

[265] As noted by this Court in **Nova Scotia (Community Services) v. K.S**., 2016 NSFC, ***"… when the circumstances in a child welfare proceeding mirror those of a previous proceeding involving the same parties and the risk and concerns remain essentially the same … then previous evidence should and can have significant weight."***

[266] The Court finds that the circumstances in these child welfare proceedings involving the same Respondents as well as the risk and concerns remain essentially the same and therefore, the evidence pursuant to the section 96 orders should be given significant weight.

[267] As argued by the Applicant:

> ***"… there is extensive and troubling evidence before this Honourable Court, which has been admitted by consent and cross-examination waived. The gaps in the Applicant's involvement are so small in timeframe that there has been almost continuous Applicant (and Court) involvement since 2015. The Respondents have not had care or custody of any of their children since this proceeding was initiated over two years ago in December 2019 and have only had fully-supervised access, where child protection concerns/issues have continued to exist/arise."***

[268] The goal is progress, not perfection. Have the Respondents made any significant progress in their parenting abilities even since this latest Application? The Applicant argued that the Respondents completed similar services with each proceeding, and the Applicant had not seen any significant progress in the Respondents' abilities to adequately protect and parent the children. The Court has combed through the evidence hoping to find enough to allow these children to be returned to the only parent who has a plan, NK. Being in foster care is certainly less than ideal for any child. Regretfully, the Court finds that the Respondents, for as much effort as they have put into attending services, have made little progress.

[269] Having thoroughly reviewed the evidence, and even noting the bright spots in NK's interaction with his children the Court has no confidence in his ability to parent them. The conversations he has had with his counsellor and others as to how he has changed and no longer reacts in anger or with violence become disingenuous after the episode of domestic violence on February 2, 2022.

[270] This incident and the aftermath has confirmed this finding. AK is adamantly opposed to NK having the care of these children because of this last incident of domestic violence between them. She is aware, therefore, that the only other option is permanent care. The fact that she is completely unable to present a plan and may possibly be imprisoned after a criminal trial but would rather have her four children all under the age of eight (8) in the permanent care of the Applicant rather than with NK is a sad testament to the time and effort that has gone into keeping this family together.

Conclusion

[271] The Court has reviewed and considered the evidence in detail. The Court has considered the best interests of these children, applying a child-centric approach, and as well, applied the civil standard being a burden of proof based on a balance of probabilities, the **CFSA** and the **FNIM**, and relevant jurisprudence.

[272] Children come into this world not knowing who they are. They learn who they are from the people around them. As a result of being born to the Respondents, these four children have learned things they should never have

known. Things they can hopefully one day un-learn. These children are fragile and require significant gentle attention and care.

[273] This Court has been involved in a number of the Applications involving the Respondents. As much as the Court wanted the Respondents to have evolved into parents capable of loving and caring for their children, being child-centric, sharing the wealth of their Indigenous heritage with them, treating all four with fairness and dignity, keeping them safe from harm, helping them navigate the trauma that has already unfolded in their young lives, this did not happen.

[274] In spite of the time the Respondents had to do this, they did not. Even though the Plan for Permanent Care was made known to the Respondents almost twelve (12) months ago, the Respondents still did not advance and progress as all had hoped is a tragic statement as to their abilities.

[275] The Court has weighed the evidence applying the civil standard to determine this matter on a balance of probabilities. The evidence is sufficiently clear, convincing, and cogent. The Court is satisfied on the balance of probabilities that the evidence of the Applicant concerning the chronicity of identified child protection concerns and the almost continuous Agency and Court involvement since 2015, is more probable than not.

[276] The definition of substantial risk pursuant to section 22 (1) of the **CFSA** has been met. Should the children be returned to either of the Respondents, there is a real chance of danger that is apparent on the evidence.

[277] Further, the Court finds that the evidence of past parenting practices was highly relevant in this matter. The circumstances in this present child welfare proceeding mirror those of previous proceedings involving the same Respondents and the risks and concerns remain essentially the same. While the Court has afforded the previous evidence significant weight, the evidence pertinent to the present Application has been the final weighted straw.

[278] The Court finds as well that the Applicant has ensured the children meet the provisions of the **FNIM**.

[279] On having reviewed the extensive evidence, the Court finds that the Respondents are not able to raise and care for their children, neither together nor on their own. The children remain in need of protective services.

[280] And finally, the Court finds that the Applicant has done everything within their mandate possible to keep this family together since 2015. The services offered were overwhelming, generous and clearly formulated to preserve this

family unit. The Respondents for reasons both known and unknown to the Court were unable to avail themselves of this largesse.

[281] As noted by Ms. Simonse in her Parental Capacity Assessments of the Respondents: ***"… if similar services have been offered and completed a number of times and no progress is noticed, it is likely that the services offered are not a good match or that the barriers for the Respondents to benefit from the program are too high."***

[282] It is never a pleasure to grant an order for permanent care. It is always the fervent hope of all involved that the integrity of the family unit could have been healed.

[283] The Court grants an Order for Permanent Care and Custody in the best interests of these children pursuant to the **CFSA** and the **FNIM**, and orders MK, EK, MYK, and DK into the care of the Applicant.

Marci Lin Melvin, JFC