

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Chisholm

IN THE MATTER OF the *Child and Family Services Act*, R.S.Y. 2008, c. 1,
and M.K., H.K., M.K., and J.K.;

Publication of the name of a child, the child's parent or identifying information about the child is prohibited by section 173(2) of the *Children's Law Act* or section 162(2) of the *Child and Family Services Act*.

Appearances:

Tara Grandy

Counsel for the Director of Family
and Children's Services

Malcolm E.J. Campbell

Norah Mooney

Counsel for the Applicant
Counsel for the Children

REASONS FOR JUDGMENT

Overview

[1] The Director of Family and Children's Services (the 'Director') applies for a continuing custody order in relation to four children namely M.K., H.K., M.H.K. and J.K. (the 'children'). This application is brought pursuant to section 57(3)(d) of the *Child and Family Services Act*, R.S.Y. 2008, c.1 (the 'Act').

[2] C.S., the legal guardian of the children, opposes the Director's application, asks that it be dismissed, and seeks the return of the children to her care.

[3] The hearing in this matter was lengthy, consisting of nine days of testimony.

[4] The children are represented by a Child Advocate. The children are members of a Yukon First Nation. This First Nation was added as a party to the proceeding, on a limited standing basis.

History of Child Protection proceedings

[5] M.K. is seven years of age; H.K. is five years of age; M.H.K. and J.K. are four year old twins. M.H.K. and J.K. are children with special needs.

[6] The Director has been involved in the lives of these children for a substantial period of time. Child protection concerns arose with respect to the risk of physical and emotional harm to the children due to: the longstanding substance abuse issues of the children's biological parents, which interfered with their ability to parent the children; domestic violence between the biological parents in the presence of the children; and medical neglect of the children.

[7] Interventions by the Director began with respect to M.K. soon after her birth. The Director continued to be involved with M.K., and subsequently with H.K., M.H.K. and J.K. The Director filed an application for a continuing custody order with respect to M.K. and H.K. on February 18, 2011. The Director filed an application for a continuing custody order with respect to J.K. and M.H.K. on May 17, 2011. Pre-dating the Director's applications for continuing custody orders in 2011, the children had been placed on a number of occasions by way of voluntary and temporary care agreements.

[8] The children were subject to an unstable environment when in the custody of their biological parents. The biological father was frequently incarcerated and his

relationship with the biological mother was marred by alcohol abuse and violence. The biological parents of the children have had little recent involvement in their lives.

[9] C.S., a cousin of the biological father of the children, became involved with the children in the fall of 2011. She agreed to become the legal guardian of the children and a transition process was put in place. C.S. was granted custody of M.H.K. and J.K. on March 1, 2012 and of M.K. and H.K. on May 7, 2012.

[10] As a result of an incident involving M.H.K. on November 5, 2012, the Director opened a child protection file, however subsequent to an investigation of the incident, the file was closed. As the result of an incident involving J.K. on February 17, 2014, the children were removed from C.S.'s care. The children were placed with either relatives or friends of C.S. between February 18 and May 21, 2014. C.S had supervised contact with the children from March 26 to May 21, 2014.

[11] Access by C.S. to the children was suspended on May 21, 2014 as the result of an incident involving J.K. and M.H.K. The Director brought the children into care on June 9, 2014 and filed an application for a continuing custody order on June 10, 2014.

[12] An application for access to the children was filed by C.S. on August 26, 2014. A supervised access order was issued on October 2, 2014. That order was suspended soon thereafter, based on additional information put before the Court.

Relevant Evidence

[13] In addition to affidavit evidence, 18 witnesses testified during the course of this hearing. I do not intend to extensively review all of the evidence presented, although I have considered all of it in coming to a decision.

[14] The Director alleges that the children are in need of protective intervention, based, in part, on specific incidents and disclosures.

November 2012 incident

[15] Nine months after C.S. took legal custody of the twin boys, M.H.K. was admitted to the hospital on November 5, 2012. M.H.K. was two and a half at the time. He had sustained a dislocated shoulder, a bruise on his forehead and bruising around the jaw. C.S. stated to authorities that the injuries occurred as a result of her grabbing M.H.K. by the arm to prevent him from falling down a set of stairs.

[16] During C.S.'s testimony before me, she indicated she was at the kitchen sink when she observed M.H.K. following a puppy in the kitchen area. There is a set of stairs leading from the kitchen to the basement. C.S. observed M.H.K. as he was about to fall down the basement stairs. M.H.K. grabbed the railing leading to the basement as he was falling, and C.S. was able to rush to him. Upon reaching him, she grabbed his left arm to prevent his forward momentum and in the process dislocated it.

[17] C.S. testified she did not know how the bruise to M.H.K.'s forehead or the bruise to the jaw occurred.

[18] The incident was investigated by police and a child protection file was opened by the Director. After an investigation by the police, no criminal charges were laid. The child protection file was subsequently closed.

[19] The Director did not lead any medical evidence with respect to this incident at the hearing.

February 17, 2014 incident

[20] The Director received a report on Monday, February 17, 2014 from a daycare staff member who indicated that J.K. had welt-like marks on his back. They were described as 'long and narrow marks that were bright red and blue and slightly raised'. The staff member indicated that the day-care personnel had not observed the marks previously and that the marks looked 'suspicious'.

[21] When C.S.'s son, J.S., attended the daycare to pick up J.K. and M.H.K., the staff member questioned him about the marks. J.S. stated that the marks were from J.K. 'playing on the couch on the weekend'. The staff member did not wish to provide her name, but was content to have the Director's personnel contact the head of the daycare.

[22] A developmental therapist at the Child Development Centre, Marguerite Kuiack, was working with J.K. at the daycare on February 17 and also observed marks on J.K.'s back. She described them as unusual, but did not note that the marks caused J.K. any discomfort.

[23] The Director had J.K. examined by Dr. Grueger, a pediatrician, on February 18, 2014. Dr. Grueger was qualified to provide expert evidence with respect to the nature of physical injuries and the type of objects which may cause injuries.

[24] During the examination, Dr. Grueger observed a number of marks on J.K.'s body, including three linear marks on the right side of J.K.'s back. These linear marks were parallel to each other. Another linear mark was noted to extend from the right shoulder across his shoulder blade. These marks were red and violet in colour, some being relatively intense in colour.

[25] Dr. Grueger also observed two u-shaped marks on his back and one on the back of his right leg. The u-shaped marks were of various dimensions. She additionally noted three or four tiny abrasions on his back. The unusual presentation of these marks prompted Dr. Grueger to immediately take photographs.

[26] Dr. Grueger also noted some bruising and discoloration on J.K.'s right cheek.

[27] The doctor's initial report states that none of the marks were scratch marks nor were they consistent with skin disease. She supplemented the information in the report by testifying that the injuries were not self-inflicted. The marks were not consistent with a common accidental injury. She testified that the marks were injuries inflicted by someone else with an object. She was not certain as to what object would have caused these injuries.

[28] J.K. was not in any real distress as a result of these injuries. Dr. Grueger testified that if the marks had been recently inflicted, she would have expected tenderness.

[29] The doctor testified she believed there was some tenderness in his rib area, but this is not consistent with her written report, wherein she described there being 'no tenderness over the ribs'.

[30] C.S. testified that she had given J.K. a bath on the evening of February 16th and had not noted any marks as described by Dr. Grueger.

[31] C.R., who is a relationship with C.S.'s biological son, also testified to having seen J.K. during his bath time on February 16th and noted no marks on him.

May 21, 2014 incident

[32] A.W., the owner of the daycare where J.K. and M.H.K. attended, made a report to the Director on May 21, 2014 regarding bruising on both boys. A.W. observed a bruise on J.K.'s right cheek and bruising around M.H.K.'s right eye. The respective bruising on each boy became darker over the course of the day.

[33] At the time of this incident, the children were in the care of C.S.'s ex-spouse, P.S. It was he who dropped off the boys at the daycare on the morning the bruises were noted. He did not testify before me. There is hearsay evidence that P.S. advised the R.C.M.P. that he did not know what caused the bruising to either boy. He later stated that one of M.H.K.'s sisters had knocked a clock off the wall at his home on May 19th and injured M.H.K.

[34] C.S. told police that the children were at her house on Monday, May 19th which was a holiday. P.S. was present, as well as two of C.S.'s adult boys and their respective spouses. C.S. was permitted at this time to see the children in the presence of P.S.

[35] C.S. testified that when the children came to her house on May 19th, she observed a bruise on M.H.K.'s right eye and immediately asked what had occurred. Although she had no direct knowledge of what had caused the bruise to M.H.K.'s eye, when asked, M.H.K. indicated that his sister had hurt him.

[36] C.S. testified that later that evening J.K. bruised his cheek when he fell in the bathtub while she bathed him. He slipped while stepping out of the bathtub, and struck his cheek on the bathtub ledge.

Alleged Emotional Abuse of the children

[37] The Director points, as an example, to an incident that occurred on August 27, 2014 where C.S. attended at M.K.'s school. C.S. had just filed an application to have supervised access to the children, although no hearing had taken place. There is evidence that M.K. told a social worker on August 26th that she did not wish to see C.S.

[38] On August 27th one of the workers at the school, V.N., was in the schoolyard overseeing the children playing. V.N. testified that M.K. ran to C.S. when she saw her. C.S. asked M.K. why she was telling people that she did not want to talk to C.S. M.K. put her head down and then departed.

[39] C.S. denies that she said this to M.K. and indicates that she told M.K. that she loved her. C.S. denies ever inflicting emotional abuse on any of the children.

[40] There is evidence that social workers told C.S. on April 30, 2014 that the children were blaming themselves for their removal from C.S.'s care. C.S. responded that the children should feel guilty for what was occurring. C.S. recalls the meeting, but does not remember saying this.

[41] There is evidence C.S. yells at the children. C.S. admits to doing so, but suggests she is loud by nature and only yells to get the children's attention.

Disclosures by H.K. and M.K. (February to October 2014)

[42] H.K. and M.K. were interviewed separately by Cst. Plamondon of the R.C.M.P. on February 19, 2014, following the discovery of unusual marks on their brother's back. During the interview with M.K., she indicated that C.S. spanks her when she is mad. She said that C.S. spanked her with a belt on the back. She indicated that the last time this occurred was when she was being bathed. She drew a picture of a belt, representing the belt with which C.S. spanked her. It was described as black with a yellow buckle.

[43] In the interview with H.K., she indicated that C.S. spanked her on her back with a belt and that she cried. She said that C.S. hit J.K. on the leg and arm with a belt and struck M.H.K. on the arm with a belt. She described it as being brown and black.

[44] The police did not obtain a search warrant for C.S.'s home with respect to the belts alleged to have been used to hit the children. C.S. denies that she has any belts in the house.

[45] D.D., who is the common-law spouse of one of C.S.'s adult sons, testified that she spoke to H.K. and M.K. individually in the latter half of February 2014. When asked whether C.S. hits her, H.K. stated 'yes, with a belt'. When D.D. asked the same question of M.K., she hesitated before proceeding to say that C.S. hits her with her hand.

[46] H.K. told social worker Alla Blysak on August 26, 2014 that she was scared of C.S. 'because she spanked us and hit us; she hit us with a belt'. She referred to 'us' as she and her three siblings. H.K. stated that C.S. had struck her on both the buttocks and the back, but that the marks were no longer there. She indicated this had occurred in her bedroom and described the belt used.

[47] Cst. Plamondon initiated an interview with H.K. on August 27, 2014, at which time she made a similar disclosure. She indicated she had been spanked in the yellow house on four occasions. C.S. testified that she lives in a yellowish coloured house.

[48] M.K. told Cst. Plamondon on August 27th that C.S. had hurt her and described being spanked with a belt on her buttocks. M.K. described an incident where another child was not sharing a toy, and M.K. ended up being spanked with a belt on top of her clothes. She estimated having been spanked with a belt on five occasions. She described the belt as long and black, and as being kept in C.S.'s room under the bed.

[49] M.K. has been in the care of T.M. since September 2014. She had previously offered respite care for M.K. and H.K. until the girls were placed with C.S. The respite care included daily and overnight visits.

[50] T.M. testified that she had a conversation with M.K. in October 2014 about M.K. going to see the child advocate. She wanted M.K. to be relaxed when speaking to the child advocate and advised her that the child advocate was her voice in speaking to other adults who would be making decisions about her. T.M. suggested that M.K. tell the child advocate about what she liked and what she disliked about living with C.S. M.K. immediately stated that C.S. hit her with a belt.

The evidence led by C.S.

[51] C.S. presented a significant amount of evidence, with much of it focusing on her experience raising children (some with disabilities) and her general abilities as a parent.

[52] C.S. spoke to her initial involvement with the children and how she developed a strong relationship with them. She was interested in adopting the children and leading up to February 17, 2014 she had spoken informally to one of the social workers about the possibility.

[53] She described the manners in which she disciplined the children. She denied using physical discipline, except on one occasion when she struck the girls on the buttocks with an open hand over their clothes. She denied that she had any belts in her house. She also categorically denied ever abusing the children emotionally.

[54] C.S. explained her version of what occurred for the various situations that the Director alleges there was either physical or emotional abuse of the children.

[55] C.S. visited her grandchild in late October 2014 at school. She had occasion to see M.K. and H.K. Both appeared happy to see her. C.S.'s daughter-in-law, C.R., confirmed this occurrence.

[56] A number of witnesses were called who portrayed C.S. as a good and caring parent.

[57] Andrew Hyde was the social worker for C.S. during the children's transition period to C.S.'s home up until the apprehension of the children in 2014. He expressed no concerns of her parenting abilities or of his observations of the children in C.S.'s home.

[58] Other witnesses, S.M. and Jean Dacko, described C.S. as a caring mother to the children who offered them structure. They both saw the children being affectionate to C.S. M.H. also described an affectionate relationship between C.S. and the children.

[59] Marguriete Kuiack, the developmental therapist with the Child Development Centre, indicated she has dealt with the children over the course of a number of years. She described C.S. as a good parent who was attentive to the needs of the children and who was very affectionate with the children. The children reciprocated this affection.

Analysis

Legislation

[60] Pursuant to s. 21(1)(a) of the *Act*, a child is in need of protective intervention if the child is, or is likely to be, physically harmed by the child's parent. Section 21(1)(c) of the *Act* states that a child is in need of protective intervention if the child is, or is likely to be, emotionally harmed by the conduct of the child's parent.

[61] Section 57 of the *Act* stipulates the court must be satisfied that a child is in need of protective intervention and if so, has the choice of a number of orders, including that the child be placed in the continuing custody of the director.

[62] The burden of proof in this type of case is the civil standard of a balance of probabilities (see *A.N. (Re)*, 2013 YKTC 44 (paras 50-51); *In the matter of J.L. (Re)*, 2012 YKTC 20 (paras 123-124)).

[63] Pursuant to sections 77 and 78 of the *Act*, hearsay evidence that the court considers reliable may be admitted at a hearing.

Historical involvement with the Director

[64] Evidence was led regarding C.S.'s involvement with the Director when her now adult children were younger. The Director questioned C.S. with respect to various alleged incidents of her inappropriate historical behaviour towards these children. C.S. admits there were incidents of conflict, but denies inappropriate behaviour on her part.

She states that her two adopted sons are FASD, and as children presented as high needs individuals.

[65] The alleged instances occurred long before C.S. was deemed to be a proper guardian for the children. In the Director's view, C.S. had made progress in her abilities to parent and was capable of caring for the children.

[66] The adult children of C.S. were not called to testify. In the circumstances of this case, in my view, it would be inappropriate to consider the historical information alleged by the Director.

[67] I make one exception in this regard. Dr. Grueger testified that she examined one of C.S.'s sons in 2006. He was 15 years of age at the time. C.S. accompanied him to this appointment. She was extremely upset with her son and spoke in a loud and aggressive manner. C.S. spoke to Dr. Grueger in the boy's presence in an inappropriate manner. Dr. Grueger described in a letter she wrote after the appointment being 'shocked' by the way C.S. described her son.

[68] The situation became so intense that Dr. Grueger asked C.S. to leave the examination room. C.S. did so, but slammed the door on her way out. She later returned, but her anger had not diminished. She ended up leaving the doctor's office a second time in a very angry state.

[69] Dr. Grueger considered what she observed between C.S. and her son as very dysfunctional.

[70] C.S. spoke about being extremely stressed raising her two adopted sons, as well as her biological son. She felt that the two adopted boys were a negative influence on her younger son. C.S. considered eight days of respite care per month as insufficient break time.

Alleged Physical Abuse

November 5, 2012 incident

[71] The Director submits that although child abuse was not established at the time of the November 5, 2012 incident, there is now additional information to substantiate abuse. This additional information includes i) subsequent physical abuse investigations by the Director, ii) subsequent disclosure from three of the children of physical abuse and iii) a differing version of the November 2012 events as recounted by C.S. in her testimony before me.

[72] Regarding the first and second points, the allegations of subsequent abuse, even if I accept them, are not similar enough to the November 2012 incident to constitute similar fact evidence.

[73] The differing version of events is with respect to how C.S. discovered that M.H.K.'s arm was dislocated. She indicated to the police the day after the incident that she had discovered the dislocation injury while bathing M.H.K. on November 5, while in her testimony she stated that M.H.K. was screaming in pain which led to her taking him immediately to the hospital.

[74] This is a discrepancy of some significance which goes to the reliability of her evidence, however, it does not convince me on a balance of probabilities that C.S. abused M.H.K.

[75] I am suspicious about this incident, based on the physical layout described and the likelihood C.S. would have been able to close the distance between herself and M.H.K. to prevent his falling. However, looking at the minimal evidence before me with respect to the November 5th incident, I am unable to determine that the incident was one of physical abuse by C.S.

February 17, 2014 incident

[76] The medical evidence with respect to this incident reveals that the marks on J.K.'s back were not self-inflicted, and that at the very least, the u-shaped marks were inflicted with an object.

[77] As noted by a few witnesses, J.K. did not appear to be in discomfort on the day the marks were discovered. Dr. Grueger observed that the marks were not causing J.K. any distress when she examined him on February 18th. She indicated that if the marks had been inflicted recently, she would have expected J.K. to be in discomfort.

[78] This evidence leads me to the conclusion that J.K.'s marks were sustained well before February 17, 2014, when they were first discovered by daycare staff. The medical evidence contradicts the testimony of both C.S. and C.R. who stated that when J.K. was bathed on the evening of February 16th, no marks were present.

[79] I find that C.S. and C.R. are not being truthful in this regard. They must have seen the marks when bathing J.K.

[80] Either C.S. inflicted the marks on J.K.'s back or she was aware that someone else had inflicted the marks, and she was protecting that person.

May 21, 2014 incident

[81] The twins, J.K. and M.H.K., both had facial bruising when they attended daycare on May 21, 2014. The words that they spoke when dropped off at daycare suggest that someone advised them not to speak about the provenance of these injuries. However, the twins were only four years of age and there are indications in the evidence that call into question their reliability as historians.

[82] It is odd that both boys sustained injuries around the same period of time, and yet, despite the fact that C.S. was at that time subject to criminal charges for the February 17, 2014 incident, neither she nor P.S. thought it appropriate to report the injuries incurred by the boys.

[83] Explanations have been proffered as to how the injuries occurred. A number of witnesses testified in this regard. There are some contradictions, but on a balance of probabilities, I am not able to find that C.S. caused the injuries.

Disclosures by H.K. and M.K. (February to October 2014)

[84] Both H.K. and M.K. have made disclosures that C.S. hits them with a belt. These disclosures commenced soon after unusual marks were discovered on J.K.'s back and have continued into the fall of 2014.

[85] C.S. questions the reliability of these disclosures, arguing that the children have been described as being open to accepting suggestions made to them by others. Marguriete Kuiack of the Child Development Centre did indicate that the twins were 'suggestible' in early 2014 and that the Centre has been assisting them in this regard.

[86] There is no information that either H.K. or M.K. is easily influenced by others. In fact, T.M. testified that M.K., for whom she is now providing care, is an honest girl.

[87] T.M. has a wealth of experience looking after children. She has been a foster mother for 20 years and has cared for over 80 children in that period of time.

[88] T.M. has experience with H.K. and M.K., as she provided respite care for them when they were in the care of their biological parents and when they were in the Director's care. She had a greater exposure to M.K. in those years.

[89] T.M. indicated M.K. has always felt comfortable enough with her to disclose what was happening in her life. M.K. would indicate, for example, what type of things her biological parents would say when arguing. The indicia of reliability of what T.M. was being told comes from the fact that the words described were 'language a two year old should not know or be using'.

[90] M.K. never disclosed any physical abuse at the hands of her biological parents, although she spoke of abnormal physical interactions between her parents. Information of physical altercations between her parents is corroborated by a number of individuals.

[91] The first time M.K. mentioned physical abuse at the hands of C.S. to T.M. was in October 2014. It should be noted that M.K. only came back into T.M.'s care in August or September 2014. This was an unprompted disclosure.

[92] In describing M.K.'s honest nature, T.M. was able to provide an example of an argument between T. M.'s 14-year-old FASD child and M.K. T.M. was not present for the incident but when she discussed it individually with the children, they both recounted the same facts.

[93] When considering the allegations of C.S. striking M.K. and H.K. with a belt, I must consider the denials of C.S. regarding these allegations. I look to her credibility as a witness. In my view, her overall credibility is questionable. I will outline a few examples where C.S.'s credibility was brought into question.

[94] The first is with respect to C.S.'s attendance at M.K.'s school on August 27, 2014. As indicated above, M.K. was outside with other children in the playground when C.S. arrived; she ran to C.S. to give her a hug. C.S. denied she ever questioned M.K. as to why she was telling people that she did not want to have contact with C.S.

[95] V.N. is an uninterested party to these proceedings. Her evidence indicates that she was six to ten feet away from C.S. and M.K. when she overheard C.S.'s remarks. Other children were lining up when this brief interaction took place. V.N. acknowledged

she did not hear everything that was said between C.S. and M.K., but she was not shaken on what she did hear. M.K.'s lowering of her head is a reaction consistent with the comment V.N. says she overheard.

[96] V.N. testified that she was concerned enough about what she had heard, that she spoke to other staff as to whether C.S. had the right to have contact with M.K.

[97] I prefer V.N.'s evidence over C.S.'s testimony that all she had said to M.K. was that she loved her.

[98] Another example of her questionable credibility is with respect to her testimony about whether there are belts in her home. Unfortunately, the police did not seek a search warrant for the purpose of locating belts described by M.K. and H.K.

[99] C.S. testified that she does not have any belts in the house, as she does not wear any with her clothing. One of C.S.'s adult sons and his spouse (and at times a second adult son) also reside in the house. I am being asked to accept that none of these individuals possesses a belt.

[100] C.S. testified that there were belts in her home before she moved to her most recent residence. She discarded the belts, along with other possessions, just prior to the move. I have difficulty in accepting the evidence that there are no belts in the home. I find this very unlikely.

[101] The final example I will mention is with respect to evidence introduced in direct examination by C.S. She indicated that her brother stayed with her at times up until October 2013. She stated that he had a belt. On one occasion in August or September

of 2013, he had it in his hands and made a snapping motion, resulting in a loud noise. He did this in jest, but it scared the children who were seated at the kitchen table.

[102] In cross-examination, C.S. stated that she had never held this belt in her hands. She denied ever telling a social worker or a police officer that she had snapped the belt on one occasion in front of the children. When confronted with her statement to police in which she admitted to having done so, she reluctantly agreed that she may have said this. She then suggested that she had meant to say to the police that her brother had snapped the belt in front of the children, but that she had made a mistake. She attributed this mistake to being nervous in talking to police.

[103] I do not accept this evidence and find that she indeed handled the belt, and was not truthful about it in court.

[104] I find that C.S. struck M.K. and H.K. on a number of occasions with a belt. She struck them on both the back and buttocks.

Findings with respect to Physical Harm

[105] I find that C.S. has caused physical harm to the children and there is a likelihood she will do so in the future if the children are returned to her care.

Alleged Emotional Abuse of the children

[106] Section 21(3) of the *Act* defines emotional harm by a parent as conduct that “demonstrates a pattern of behaviour that is detrimental to the child’s emotional or psychological well-being”.

[107] The Director alleges that C.S. emotionally abused the children. C.S. admits to yelling at them, but only to get their attention. D.D., one of C.S.'s daughter-in-laws, told a social worker in 2014 that she was scared of C.S. because of her yelling. D.D. testified that C.S. 'scares you when she yells; she is a loud person'. However, D.D. stated that C.S. only yells to get the children's attention and does not do so in anger. I have difficulty reconciling what D.D. said to the social worker and what she testified to in Court.

[108] In this regard, I also consider the evidence from Dr. Grueger regarding C.S.'s loud, aggressive and angry attitude when attending the doctor's office with her adopted son, J.S., in 2006. She acted in an emotionally abusive manner to her son in front of the doctor.

[109] C.S. was emotionally stressed at that time. Evidence has been led of C.S. being under a great deal of stress looking after the children in the recent past. For example, in late 2013, she spoke of sending the children "back to Welfare" because of J.K.'s excessive crying. Stress may well be a trigger for her abusive actions.

[110] The incident V.N. observed at the school yard between C.S. and M.K. is disconcerting. It is a clear indication that C.S. has difficulty restraining herself when annoyed. In this situation, C.S. displayed an inability to stay within proper parental boundaries when addressing M.K. C.S. should have never spoken with her with respect to the issue of access.

[111] I accept that C.S. indicated to social workers that the children should feel guilty for the fact that the children are no longer in her care. This is an example of her distorted thinking which could lead to emotional harm to the children.

[112] I also consider the physical abuse of the children which I have already described. In *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)* 2004 SCC 4, McLachlin C.J., for the majority, stated:

Based on the evidence currently before the Court, there are significant areas of agreement among the experts on both sides of the issue (trial decision, at para. 17). Corporal punishment of children under two years is harmful to them, and has no corrective value given the cognitive limitations of children under two years of age. Corporal punishment of teenagers is harmful, because it can induce aggressive or antisocial behaviour. **Corporal punishment using objects, such as rulers or belts, is physically and emotionally harmful.** Corporal punishment which involves slaps or blows to the head is harmful. These types of punishment, we may conclude, will not be reasonable. (para 37) (Emphasis added)

[113] Many of the witnesses who testified for C.S. had periodic contact with her and the children. Although they stated they observed no inappropriate behaviour on her behalf towards the children, these visits were limited in terms of number and duration. It would be expected that C.S. acted appropriately when visitors were present.

[114] In terms of the evidence of C.S.'s daughter-in-laws, D.D. and C.R., I have found the credibility of each of these witnesses to be questionable.

Findings with respect to Emotional Harm

[115] I find, on a balance of probabilities, that there is a likelihood that C.S. has caused emotional harm to the children and will continue to do so if they are returned to her care.

Protective Intervention

[116] Based on my findings with respect to physical harm and emotional harm, I find the children to be in need of protective intervention pursuant to s. 57(1) of the *Act*.

Appropriate Orders in these circumstances

Custody

[117] Sections 4(1) and 4(2) of the *Act* set out factors to be considered when assessing the best interests of a child. I have considered these and all other relevant factors.

[118] The children have experienced instability over the years. They have been in and out of the care of their biological parents, and more recently in and out of the care of C.S. They require a stable and safe home.

[119] As a result of my findings with respect to C.S.'s treatment of the children, I find that she is unable, now or in the future, to provide the type of care these children require. To the contrary, the children risk further physical and emotional harm if returned to her care.

[120] I order that the children be placed in the continuing care of the Director, pursuant to s. 57(3)(d) of the *Act*.

[121] The Director will continue to work with the children's First Nation in order to preserve the cultural identity of the children.

Access

[122] There is evidence that shows that C.S. genuinely cares for the children and that the children have in the past reciprocated that feeling.

[123] There is contradictory evidence about the children's present feelings for C.S. There is some evidence to support a continuing attachment between the children and her. On the other hand, the children have more recently expressed an interest in not seeing C.S. As a result of such evidence, in October 2014, Cozens J. suspended the order allowing C.S. supervised access.

[124] Aside from the chance interaction between C.S. and M.K. and H.K. at the girls' school in late October 2014, I have no evidence before me (e.g. a recent expression of interest from any of the children to see C.S.) to deviate from the decision of Cozens J.

[125] If the Director concludes in the future that some form of access (e.g. supervised) by C.S. would be in the best interests of the children, the Director may take the necessary steps to enable this.

CHISHOLM T.C.J.