NOVA SCOTIA COURT OF APPEAL

Citation: *L.L.P. v. Nova Scotia (Community Services* , 2003 NSCA 1

Date: 20030103
Docket: CA 184081
Registry: Halifax

Between:

L.L.P. and R.F.P.

Appellants

v.

Minister of Community Services

Respondent

Restriction on publication: Publication ban pursuant to s. 94(1) of the Children and Family Services Act

Editorial Notice: Identifying information has been removed from this electronic version of the judgment.

Revised decision: The text of the decision has been corrected according to the erratum released January 8, 2003.

Judge(s): Glube, C.J.N.S.; Bateman and Oland, JJ.A.

Appeal Heard: December 6, 2002, in Halifax, Nova Scotia

Held: Appeal dismissed per reasons for judgment of Bateman, J.A.; Glube, C.J.N.S. and Oland, J.A. concurring.

Counsel: Jeanne Desveaux and Jennifer Schofield, for the appellants
Peter McVey, for the respondent

PUBLISHERS OF THIS CASE PLEASE TAKE NOTE THAT s. 94(1) OF THE CHILDREN AND FAMILY SERVICES ACT APPLIES AND MAY REQUIRE EDITING OF THIS JUDGMENT OR ITS HEADING BEFORE PUBLICATION.

SECTION 94(1) PROVIDES:

94(1) No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding pursuant to this Act, or a parent or guardian, a foster parent or a relative of the child.

Reasons for judgment:

[1] This is an appeal by the parents from a permanent care order granted by Justice R. James Williams of the Supreme Court, Family Division. By Order dated December 7, 2002, we dismissed the appeal, with reasons to follow. These are our reasons.

BACKGROUND:

[2] L.L. and R. F. P. ("the parents"), who are married and each 31 years old, have five children. The oldest, G, has always resided with his maternal grandparents. He is not involved in this proceeding. The four younger children, R.G.P. (February ... 1990; H.J.W. (born December ..., 1991); J.B.H.W. (born April..., 1994) ; and D.C.A.W. (born July ..., 1997) (*editorial note- date removed to protect identity*) , now ages 12, 10, 8, and 5, lived with their parents until the intervention by the Department of Community Services ("the Agency").

[3] This proceeding commenced as a result of the children being taken into care on May 9, 2001. The circumstances which led to that event may be summarized as chronic physical, emotional and developmental neglect of the children. The protection application alleged that the children were in need of protective services within the meaning of Section 22(2), paragraphs (f), (g), (h), (j), and (ja) of the **Children and Family Services Act**, S.N.S. 1990, c. 5, as amended ("the **Act**").

[4] This is not the first protection proceeding involving this family. The children were taken into care on September 11, 1998 in circumstances similar to those which prevailed in May of 2001. That proceeding resulted in interim hearings in September and October of 1998. Pursuant to Section 40(3) of the **Act**, L. P. and R. P. admitted that the children suffered from a mental, emotional or developmental condition that, if not remedied, could seriously impair the children's development and that they, as the children's parents, did not provide services or treatment to remedy or alleviate the condition. Accordingly, on December 10, 1998, the children were found to be in need of protective services (s. 22(2)(h) of the **Act**). They remained in their parents' care under a supervision order.

[5] Under the protection order granted December 10, 1998, the children were referred to the Developmental Clinic of the IWK Health Centre for assessment, and the parents were ordered, *inter alia*, to participate in a parental capacity assessment and to access the services of a family skills worker. The latter service was especially to address hygiene, household cleanliness, nutritional counselling, supervision of the children, and coordination of medical care for the children.

[6] On February 1, 1999, Dr. Lowell Blood, a psychologist with Community Mental Health Services of the IWK Health Centre, completed a 'Psychological and Parental Capacity Assessment' respecting this family. In that report Dr. Blood identified concerns about safety and the appropriate supervision of the children; the absence of adequate cognitive stimulation for the children; hygiene and cleanliness in the home; and failure to meet the children's emotional needs. The parents were noted as reluctant to accept responsibility for the children's difficulties and to have some difficulty in giving priority to the children's needs. Dr. Blood concluded that many of the children's problems were "environmentally based". At that time, the parents were found to be providing adequate nutrition and medical care for the children.

[7] In order to address the many concerns raised in Dr. Blood's report, a variety of remedial and supportive services were provided or facilitated by the Agency over the following fifteen months including:

1. parental skills instruction,
2. a referral of the children to the Developmental Clinic of the IWK Health Centre for assessment,
3. a mental health consultation regarding the father, R. P.,
4. pre-school programming for D.W. to ensure appropriate and cognitive stimulation,
5. speech and language assessment and treatment for J. W., and
6. a referral of H.W. to a therapist to address sexualized drawings and behaviour.

[8] On January 5, 2000, the matter being only a few weeks short of the twelve month time limit for a supervisory order (s. 43(4)) and the supervision and services under disposition orders having been in place for fifteen months, an Order was granted terminating the then-existing supervision order. Although applying to

terminate the initial proceeding at the hearing held January 5, 2000, the Agency expressed a number of ongoing concerns, particularly with respect to parental co-operation with services. The Agency Plan for the Children's Care dated December 16, 1999 recommended that, upon termination of the proceeding, the parents continue to access community-based support services and adhere to specific expectations, namely:

1. maintain a clean and safe residence for the children,
2. ensure the children are taken to all medical appointments when scheduled,
3. place basic financial needs ahead of recreational spending, and
4. maintain close contact with the children's school to enhance their educational experience.

[9] While in parental care during the period of time between the two proceedings, the children received extensive supportive services directly from the Halifax Regional School Board. The Agency was again involved with this family beginning on March 12, 2001, when a referral was received from the School Board. In response to this referral, the Agency directed the family to pursue community-based services. A police complaint and further school concerns caused the Agency to intervene again in early May of 2001 when the four children were taken into care. Thus the current proceeding commenced.

[10] At the initial disposition hearing on September 24, 2001, on consent of the parents, the children were again found to be in need of protection. They were taken into the temporary care of the Agency. An updated parental capacity assessment was completed on November 9, 2001, by Dr. Lowell Blood. He recommended that the children be placed in the permanent care of the Agency.

[11] Upon completion of that second assessment by Dr. Blood, the Agency, having concluded that no services would be adequate to protect the children in the care of their parents, recommended to the judge that services to the family be terminated. The trial judge directed that the then existing family skills services continue pending trial, which ultimately took place in March and April of 2002. The children remained in foster care with access by the parents until the final decision of the Court.

[12] On July 4, 2002, Judge Williams rendered his decision, ordering that the children be placed in the permanent care and custody of the Agency without provision for access.

GROUNDS OF APPEAL:

[13] The parents appeal on the following grounds:

a. Was the Honourable Trial Judge biased against the Appellants from the outset of the proceeding and as a result the Appellants did not have the benefit of a fair hearing?

b. Did the Honourable Trial Judge fail to consider the abilities of the Appellants to meet the needs of the children within the maximum time frames and, therefore, did not adequately address Sections 45 and 46 of the *Children and Family Services Act*?

c. Did the Honourable Trial Judge fail to consider that the Minister did not discharge its obligation to provide the Appellants with adequate support to promote reunification of the family pursuant to Section 9 of the *Children and Family Services Act*?

d. Did the Honourable Trial Judge fail to consider alternatives to permanent care for the children considering the preamble and general principles of the *Children and Family Services Act*?

ANALYSIS:

[14] The circumstances of the parents are tragic. Psychological assessment revealed that L. L. P. is in the borderline range of intellectual functioning. She lacks insight into her own behavior and that of others. R. P., although of average intelligence, professes to suffer from anxiety which disables him from employment. Inexplicably, he will not follow through with recommended mental health services which might remedy his condition. Mr. P., therefore, cannot contribute financially to the family and refuses or is unable to attend to the physical care of the children or to their emotional needs.

[15] There was abundant evidence at trial of the deplorable living conditions of these children at the time of the second apprehension and of their failure to meet even modest developmental expectations or the most basic standards of personal hygeine. That evidence came from social workers, doctors and other medical personnel, teachers, indeed, virtually everyone who came in contact with the children. Three of the children suffered from medical conditions requiring

treatment. The parents failed to follow up with medical appointments or to administer medication as directed, or in some cases, at all. Their situation is graphically detailed in the trial judgment reported as **Nova Scotia (Minister of Community Services) v. L.L.P.** at (2002), 206 N.S.R. (2d) 133; N.S.J. No. 324 (Q.L.).

[16] A comprehensive summary of these tragic circumstances is contained in the November 9, 2001 report of Dr. Lowell Blood, who, as set out above, had also assessed this family at the time of the first proceeding. He said in his most recent report:

> R.G.P., H.J.W., J.B.H.W. and D.C.A.W. are boys with multiple difficulties. All four are developmentally delayed, with speech and language being an area of particular concern for each boy. In addition, R.G.P. has kidney problems and demonstrates aggressive behaviour, H.J.W. has vertigo, bowel difficulties and exhibits sexualized behaviour, and J.B.H.W. has vertigo and problems with vision. It appears that these difficulties have been exacerbated with chronic, long-term physical and emotional neglect. Results from the present assessment suggest a deterioration in the care received by these children in the period between the assessment completed in February of 1999 and their apprehension in May of 2001. It appears that their nutritional needs were not being met, that their medical needs were not properly attended to; that they were not receiving cognitive stimulation in their home and that attendance at school was inconsistent. Personal hygiene for the boys and cleanliness in the home was a serious concern. The boys appear to have been socially isolated and to have not had emotional needs met by their parents. It appears that they may have been exposed to violence in the home and possibly to unknown inappropriate sexual experiences. It is telling that both schools attended by the three older boys since the previous assessment felt it necessary to become involved in ensuring their basic needs were met. Once the boys came into care, a dramatic positive change, described by one teacher as "miraculous" was noted.
>
> The care of four children would be a challenge to most parents and these are four children with numerous special needs. Sadly, it appears that their parents, L.L.P. and R.F.A.P., are simply unable to provide even marginally acceptable care for any sustained period. This inability appears related to a number of factors, including intellectual limitation, unaddressed mental health concerns, poor judgement and a resistance to change. During the year that the Agency was previously involved with this family, there were only brief periods when serious concerns were not in evidence. L.L.P. and R.F.A.P. appear unable or unwilling to accept responsibility for the damage that has occurred to the children while in their care, and consequently, had little motivation to alter their stance toward parenting. Rather, the P.s offer excuses. They attempt to minimize and explain away concerns. They

> are resistant to services. They are deceptive and secretive. They place their own needs above those of their children and the likelihood that they will alter this pattern at this point must be considered extremely slim. If returned to the P.s care, H.J.W., J.B.H.W. and D.C.A.W. will continue to suffer the consequences of serious chronic neglect.

[17] Dr. Blood's conclusions were borne out by the evidence at trial. His observations are all the more disturbing when one realizes that the children were in this condition notwithstanding the fifteen months of intensive and varied services provided to the parents during the first proceeding and those which followed from the School Board during the gap between the two proceedings. The record overwhelmingly supports the findings of the trial judge which resulted in the permanent care orders. Judge Williams said at pp. 159-60 (N.S.R.):

> This is the second child welfare proceeding involving this family since September 1998. Both proceedings commenced with the Agency discovering that the children were in appalling physical conditions. A series of Agency and community resources were used by the family after the first apprehension. They ultimately failed.
>
> The children in this family have been neglected in a plethora of ways. There has been little recognition of the problems, little acceptance of responsibility and little or no change in the ability of the P.s to parent. The neglect these children have suffered has, I conclude, harmed them, and put them at risk physically, medically, emotionally and developmentally. I cannot identify a service that would adequately protect them from further risk or harm were they now, or before the end of the temporal limits on the proceeding (September 24, 2002 or March 24, 2003), to return to the care of their parents.
>
> . . .
>
> The P.s have not been able to provide adequate parenting to their children for a lengthy period of time. Their neglect of the children has been profound - perhaps reflecting the profound limits of their understanding of the extraordinary needs of their children.
>
> The Agency has provided services. From the point of view of the children, the struggle to ensure that they receive the parenting they are entitled to goes back at least to September of 1998.
>
> I see no possibility of the circumstances changing before or by September 24, 2002, March 24, 2003 or within any "reasonably foreseeable time".
>
> I conclude that the Agency has satisfied the heavy burden of proof it bears in proceedings such as this.

Service Provision:

[18] The parents do not argue that, at the time of final disposition, they could adequately care for the children. They say, instead, that they could not do so because they were not provided with the right services, or, if the right services, not for long enough. It is their view that they were, wrongly, left without support between the two proceedings. Their argument seems to be that if the Agency had fulfilled its "duty" to provide services, the children would not have been found in need of protection. The parents rely upon s. 13 of the **Act**:

> **13 (1)** Where it appears to the Minister or an agency that services are necessary to promote the principle of using the least intrusive means of intervention and, in particular, to enable a child to remain with the child's parent or guardian or be returned to the care of the child's parent or guardian, the Minister and the agency shall take reasonable measures to provide services to families and children that promote the integrity of the family.
>
> (2) Services to promote the integrity of the family include, but are not limited to, services provided by the agency or provided by others with the assistance of the agency for the following purposes:
>
> (a) improving the family's financial situation;
>
> (b) improving the family's housing situation;
>
> (c) improving parenting skills;
>
> (d) improving child-care and child-rearing capabilities;
>
> (e) improving homemaking skills;
>
> (f) counselling and assessment;
>
> (g) drug or alcohol treatment and rehabilitation;
>
> (h) child care;
>
> (i) mediation of disputes;
>
> (j) self-help and empowerment of parents whose children have been, are or may be in need of protective services;

(k) such matters prescribed by the regulations. 1990, c. 5, s. 13.

(Emphasis added)

[19] In response the Agency says in its factum:

> 93. It is respectfully submitted that this statutory regime does not give rise to a positive obligation upon the Minister, or a legal right available to parents to demand the provision of services from the Minister in the performance of a legal duty imposed by statute. Rather, Section 13 creates a ministerial discretion, which is reviewed by a court of competent jurisdiction pursuant to Section 42(2) where necessary in the course of making a best interests decision within a proceeding under the *Children and Family Services Act*. It is only as a result of the Minister exercising its discretion to commence such a proceeding, and exercising its discretion within such a proceeding to seek either temporary or permanent care and custody, that the review mandated by Section 42(2) is triggered.

[20] Section 42(2) of the **Act** provides:

> 42(2) The court shall not make an order removing the child from the care of a parent or guardian unless the court is satisfied that less intrusive alternatives, including services to promote the integrity of the family pursuant to Section 13,
>
> (a) have been attempted and have failed;
>
> (b) have been refused by the parent or guardian; or
>
> (c) would be inadequate to protect the child.

[21] On the facts of this case, the answer to the parents' complaint about the alleged failure of the Agency to provide services is a simple one. This allegation is not supported by the record. From 1998 forward they were provided with and introduced to all conceivable appropriate services, many of them community based and, therefore, not dependent upon the continuing involvement of the Agency. It was not unreasonable for the Agency, upon the termination of the first proceeding, to expect the parents to voluntarily continue with such services as were necessary and to maintain medical care for the children. They did not do so.

[22] The Agency intervened again, in March of 2001. Services were continued until the trial in March and April of the following year.

[23] The parents say that the Agency "failed" them by not providing ongoing intensive services in the period between the two child welfare proceedings. With

the termination of the first proceeding the Agency had no authority to impose services on the parents.

[24] The maximum statutory time limits for a proceeding are set out in section 45 of the **Act**: twelve months for children under six years of age and eighteen months for those between six and twelve years. At the end of these periods a court must either dismiss the proceeding or order permanent care and custody. The time frames within which the proceeding must be resolved are necessarily short in deference to the "child's sense of time", as is recognized in the recitals to the **Act**:

> AND WHEREAS 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;

[25] The goal of "services" is not to address the parents' deficiencies in isolation, but to serve the children's needs by equipping the parents to fulfill 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**. If a stable and safe level of parental functioning has not been achieved by the time of final disposition, before returning the children to the parents, the court should generally be satisfied that the parents will voluntarily continue with such services or other arrangements as are necessary for the continued protection of the children, beyond the end of the proceeding. Ultimately, parents must assume responsibility for parenting their children. The **Act** does not contemplate that the Agency shore up the family indefinitely.

[26] There is no evidence before us that the parents took the position during either proceeding that the services provided were not of the appropriate kind, nor is there evidence that they requested additional services. There is no factual foundation to support the allegation that the Agency failed to provide services.

[27] The words of Jones J. in **Children's Aid Society of Metropolitan Toronto v. T.C.**, [1995] O.J. No. 1634 (Q.L.) (Ont. Ct. J. Prov.Div.), although speaking in the context of a different statutory regime, are applicable here:

> ¶ 41 The plan proposed by the parents involves extensive therapeutic monitoring and child care services to be provided to the family by the society for an indefinite period of time. Even if I were satisfied that it would be possible to protect the children and promote their healthy development by the infusion of community resources to this extraordinary

> extent, I do not agree that the goal of the *Act* would be achieved under such a plan. The *Act* is designed to assist families in performing their role as effective, nurturing parents. In my view, it should not be interpreted in such a way as to require the child welfare authorities to assume the primary parenting role in order to maintain the children in their home at all costs.
>
> (Emphasis added)

The Statutory Time Frames:

[28] The parents say that the judge erred in ordering permanent care and custody before the statutory maximum time periods had fully run. As set out above, the **Act** provides that the total time period for all disposition orders is, for a child under six years of age, twelve months (March 24, 2003 for the youngest child) and for a child between six and twelve years of age, eighteen months (September 24, 2002 for the three older children) (s. 45(1)).

[29] In **Nova Scotia (Minister of Community Services) v. S.Z. et al.** (1999), 179 N.S.R. (2d) 240 (S.C.F.D.); upheld on appeal at (1999), 181 N.S.R. (2d) 99 (C.A.), Williams J. made the following comments respecting such time frames:

> [24] The question of whether a matter should be adjourned, a parent given more time to address personal deficiencies or problems, that must be resolved by a balancing of the child's needs, best interest and protection including the need to be as a matter of first choice with family and parents and the issues enunciated by s. 42(4). ...
>
> [25] Should the Agency seek a permanent order where there is what seems like so much time left on the statutory clock? The Agency has a right, if not a duty, to do so where it believes it can satisfy the burden of proof put on it by the operation of the relevant statutory provisions which include ... [those] stated in ss. 2(1), (2) and 3(2) of the **Children and Family Services Act**.
>
> [26] The time limits set out in s. 45(1) are just that – limits. They are not goals. They are not waiting periods. Each case is different. Each case must be decided on its particular facts and circumstances. ...

[30] I agree with those comments. By November of 2001, the Agency had concluded that no option remained but to place the children in permanent care. In the Plan filed with the Court on November 14, 2001, as is required by s. 41(1)(3) of the **Act** and **Civil Procedure Rule** 69.11(1) the Agency stated:

> In light of the risk issues summarized in the IWK Health Centre, Assessment Services report dated, February 1999, and the further recommendation of the same Assessor in a second Parental Capacity Assessment for Permanent Care and Custody, and as described below, the Minister of Community Services does not believe that the circumstances justifying placement of the children in care are likely to change within a reasonably foreseeable time consistent with the best interests of these children with special needs. The Agency is therefore seeking an Order for Permanent Care and Custody.

[31] The **Act** does not require a court to defer a decision to order permanent care until the maximum statutory time limits have expired. The direction of s.46(6) of the statute is to the opposite effect. Where a child is in the temporary care and custody of the Agency, at each further disposition hearing, the court may not make a further order for temporary care and custody if the court is satisfied that the circumstances justifying the earlier order are unlikely to change within a reasonably foreseeable time, not exceeding the remainder of the applicable maximum time period:

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

(Emphasis added)

[32] The judge's finding on July 4, 2001, that circumstances were unlikely to change was supported by the record. In so concluding he was entitled to take into account, as he did, the fact that this family had received services, essentially since 1998. He said at p. 160 N.S.R.:

> The Agency has provided services. From the point of view of the children, the struggle to ensure that they receive the parenting they are entitled to goes back at least to September of 1998.

[33] Having found that circumstances were unlikely to change, the judge had no option, in this case, but to order permanent care.

[34] As to the remaining grounds of appeal, not specifically addressed above, I would find that there is no merit to the parents' allegation of bias on the part of the trial judge, nor did he make errors of fact.

[35] The Agency asks this Court, to "comment" upon four issues:

> (a) The statutory framework within which consideration must be given to services to promote the integrity of the family when making a best interests decision;
>
> (b) The significance of the dispositional guideline contained in Section 42(2) of the *Children and Family Services Act*;
>
> (c) The standard for judicial review of the discretion given to the Minister by statute to determine whether and what services should be provided to promote the integrity of the family;
>
> (d) The limits of the court's statutory and inherent jurisdiction to supervise the exercise of such ministerial discretion or to substitute the court's decision for that of the Minister.

[36] These are interesting and important issues. It is not the role of this Court, however, to provide general comment and direction on issues not engaged by the facts and issues in dispute before the trial court. Here, for example, the Agency did not appeal the Judge's direction of November 22, 2001 that, failing consent of both parties to alter services, the level of services provided by the Agency would continue until trial. The Agency complied with the judge's direction. The question of the power of the Court to order the continuation of services, in the face of the Agency's conclusion that such would not assist the family, is therefore not before us. In declining to opine on this issue, I recognize the unlikelihood, for practical reasons, that the Agency would appeal such judicial direction. I am firmly of the view, however, that it would be risky for us to attempt to provide guidance without all aspects of the issue having been fully canvassed before the trial court.

[37] Similarly, as to the "obligation" to provide services, in this case services were not requested by the parents yet denied by the Agency. The judge did not find the Agency's service provision wanting. The issue of the "duty" of the Agency, if any, to provide services should be decided in a factual context, which is absent here.

The same comment applies to the Agency's invitation to give guidance on the appropriate level of deference to be accorded the Agency's decision on service provision.

[38] With the above caution, I would endorse as applicable to the case here under appeal, the comments of Niedermayer, J.F.C. in **Nova Scotia (Minister of Community Services) v. L.S.** (1994), 130 N.S.R. (2d) 193 (Fam.Ct.):

> [15] I interpret the phrase "provided by the agency or provided by others with the assistance of the agency" as follows. An agency is required to directly provide only those services it is capable of providing. With respect to all other services, the agency is to render assistance to the parent in having the service provided by others. This would include giving the parent the names and locations of these "out of house" services; payment for the cost of transportation to and from the services, if such was necessary; making referrals and setting up initial appointments where appropriate; and, advising the parent of alternatives, when needed. The agency is not expected to step by step "walk the parent through" all the stages of the service. There is a responsibility on the part of the parent to engage the "out of house" services. Not only does this indicate a willingness by the parent to improve, but it also demonstrates to others that the parent is capable of improvement as well as the degree to which positive change can be prognosticated.
>
> . . .
>
> [17] Before any meaningful consideration can be given to the duty of an agency to be found wanting with respect to the services as enumerated in Section 13(2) the client has to be willing or be able to engage in such services. The offers for services can be presented. In order for them to be looked at they must be accepted and acted upon by the client.
>
> [18] As counsel for the Minister has pointed out, it is not mandatory for the Minister to provide all of the services enumerated in Section 13 but "shall take reasonable measures" to provide services. "Reasonable measures", in the context, means the agency must identify, provide or refer to the services and there has to be a reasonable probability of success in the provision of service . . .
> [19] Notwithstanding the failings in the provision of services, the important issue to remember is that the person who is most affected by L.S.'s lack of engagement is her son, who requires a parent who is capable of parenting.
>
> > "The test is not the hopelessness of the mother or the failure of the public agency to place all its resources at the disposition of the mother. This court, as well as others, has often repeated that the only test is what is in the best interests of the children."

(**Children's Aid Society of Winnipeg v. M. and S.** (1980), 13 R.F.L. (2d) 65 (Man.C.A.) at p.66.)

[39] There is an apparent tension between s. 13(1) which leaves to the discretion of the Minister the identification of "necessary" services and other sections of the statute which, on a superficial reading at least, seem to assume that some level of services will be appropriate in every case. I refer, for example, to ss. 41(3)(a), 14(1), 42(2), 43(1), and 44(1). In s. 9 the **Act** identifies, among the functions of the Agency, the provision of various types of services. The interplay of these sections of the **Act** and the obligations or rights imposed by them is best interpreted in a factual framework. These issues were not raised before the trial judge and we do not have the benefit of his views. In these circumstances it is therefore not appropriate for us to provide comment.

[40] As a concluding comment I would note that the school authorities and, in particular, the teachers who came into contact with the children, are to be commended for the interest taken and the support provided.

DISPOSITION:

[41] I would dismiss the appeal.

Bateman, J.A.

Concurred in:

Glube, C.J.N.S.
Oland, J.A.