

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *F.M. v. Nova Scotia (Community Services)*,  
2010 NSCA 37

**Date:** 20100429

**Docket:** CA 321159

**Registry:** Halifax

**Between:**

F.M. and M.R.

Appellants

v.

Minister of Community Services

Respondent

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**Publication Ban:** pursuant to s. 94(1) of the Children and Family  
Services Act

**Judge:** The Honourable Mr. Justice Jamie W.S. Saunders

**Appeal Heard:** April 16, 2010

**Subject:** **Children in Need of Protection. Permanent Care and  
Custody. Standard of Review. Standard and Burden of  
Proof. Expert Evidence. Hearsay. *Res Ipsa Loquitur*.  
Adequacy of Reasons.**

**Summary:** Following the hospitalization of N.R. - then only two months  
old - for suspected child abuse, he and his older brother J.R.  
were, eventually, placed in the permanent care and custody of  
the Minister of Community Services. Their parents appealed.

**Held:** Appeal dismissed. While the trial judge's mention of the  
phrase *res ipsa loquitur* may have been a poor choice of words,  
she did not rely upon or apply the maxim as any kind of  
shortcut to her analysis or reasoning process. She properly  
analyzed the circumstantial evidence before reasonably drawing  
the inference that N.R.'s injuries had to have been inflicted by

one of the parents and that the other parent had not, would not or could not protect the child from physical harm by the other.

The trial judge then conducted a thorough, and separate, evaluation of J.R.'s unique circumstances. She emphasized the very significant and nurturing relationship that had developed between the two brothers, before ordering that J.R. also ought to be placed in the permanent care and custody of the Minister.

There was no material error in possibly considering certain isolated comments attributed to the foster mother, as there were many other sources upon which the trial judge based her overall evaluation of J.R.'s ongoing needs.

None of the judge's strong findings of fact were the result of palpable and overriding error. The judge did not overlook or misconstrue important evidence. She correctly applied the law in her analysis, and properly considered the statutory requirements of the **Children and Family Services Act**, S.N.S. 1990, c. 5. The judge's reasons were perfectly adequate to permit appellate review.

**This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 20 pages.**