

**IN THE SUPREME COURT OF NOVA SCOTIA**  
**(FAMILY DIVISION)**

**Citation:** Nova Scotia (Community Services) v. E.P.B., 2007 NSSC 265

**Date:** 20070907

**Docket:** SFHCFSA-044546

**Registry:** Halifax

**Between:**

Minister of Community Services

Petitioner

v.

B. ( E. P. )

Respondent

**Restriction on publication:**

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:

"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 relative of the child."

**Judge:** The Honourable Justice Beryl MacDonald

**Heard:** June 19, 20, 21, 22, 29, July 3, 4, 11, 12 and 13,  
in Halifax, Nova Scotia

**Written Decision:** September 7, 2007

**Counsel:** Katherine Carrigan, for the Applicant  
Heather McNeill, for the Respondent

**By the Court:**

[1] In this decision I have used initials to describe the parties for whom I believe privacy may be a concern. In order to understand the initials I will describe those parties as follows:

- E. P. B. is the mother of three children who were taken into care by the Minister.
- References to the Agency or the Minister are interchangeable.
- A.W. is E. P. B.'s oldest child. He was 10 years old when the protection proceedings commenced. He was placed with his father where he remains.
- J. B. is E. P. B.'s second child. He was two years old when the protection proceeding commenced. He is the subject of this hearing.
- E. B. is E. P.B.'s youngest child. He was three months old when the protection proceeding commenced. He has been placed with his paternal grandmother, K. M. D.
- K. D. is the father of E. B.
- M. I. is K. D.'s uncle and a friend of E. P.B.
- J. M. is a friend of E. P. B.
- E.M. is J. M.'s former partner

[2] On February 15, 2006 E. P. B.'s world fell apart. Her three children were removed from her care for reasons she did not acknowledge as protection concerns at that time nor does she now with two exceptions. She does admit at the time the children were taken into care she was overwhelmed with the responsibility of caring for three children under her then existing circumstances, she was facing eviction from her apartment and she had no alternate residence . She admits that on the date of the initial protection finding she was still without housing and in no position to care for her children as a result. After she found housing she was overwhelmed by the protection process and felt defeated by the allegations arising out of the protection proceeding. She had effectively given up although she would not consent to permanent care for J. B. . She did consent for her oldest child to be

in the custodial care of his father. She did consent for her youngest child to be in the custodial care of his paternal grandmother, K. M. D. She wants her child J. B. returned to her care. She now has suitable housing and considers herself able to appropriately parent this one child. She submits there are no protection concerns. The Minister is seeking permanent care of J. B.

## **THE PROTECTION FINDING**

[3] At the protection hearing E. P. B. acknowledged that her children were in need of protective services pursuant to section 22 (2)(g) of the Children and Family Services Act and this is the section under which she continued to consent to the necessary protection finding at each disposition hearing. Until this hearing neither she nor the Agency listed the factual information considered to be true and correct by E. P. B. leading to her acceptance that her children were in need of protective services. The Protection Order states:

1. The children..... are in need of protective services under the *Children and Family Services Act*, section 22(2) paragraph (g), reserving to the Applicant, the Minister of Community Services, the right to lead evidence and seek a finding with respect to the allegations under Section 22(2) paragraphs (b) and (ja), and reserving to the Respondents..... the right to cross-examine with respect to the affidavit evidence and all other documents on file herein.

[4] As a result of the decision of our Court of Appeal in *Nova Scotia (Community Services) v. B.L.C. 2007 NSCA 45*, a respondent's admission that his or her child is in need of protective services is not an admission that all or any of the factual material contained in affidavit or other evidence provided to the court prior to the finding is true or correct. As a result, at the time the finding is made upon consent, the court does not know why a respondent has decided to acknowledge that his or her child is in need of protective services. It is also likely that the Minister does not know why this acknowledgment has been made. In *B.L.C.* the Appeal Court has suggested:

- [32] Consent findings of protection are an efficient procedural tool which avoid early stage litigation and facilitate a focus on remediating the parenting issues. With respect, the judge's approach here would create a significant disincentive for either a parent or the agency to proceed on consent.

[5] I recognize the Court of Appeal's concern. However, consent with little or no acknowledgment by the respondent of the circumstances causing the children to be in need of protective services creates its own difficulties and I consider these to be as important to the "process" as is avoiding early litigation. First of all the parent's understanding about why the children are in need of protection and that of the Minister may be at odds. The Minister may be requesting the parent to accept services the parent does not accept are reasonable or are required and this can lead, and in this case did lead, to a resistance to accept or follow through with recommended services. Secondly it is a waste of the Minister's time and of community resources to arrange for the delivery of services not in fact required by a respondent. If a respondent abuses drugs or alcohol and admits this is a fact leading to a protection concern, requiring urinalysis testing and attendance at programs offered by Addiction Services is an appropriate response. If in fact the respondent does not abuse drugs or alcohol requiring that he or she participate in these "services" is a waste of resources and may result in the respondent's non-compliance for reasons I have given above. In this case the Minister's suspicions that E. P. B. abused drugs were never tested at a protection hearing. Therefore it continued to believe E. P. B.'s drug use was the explanation for the deterioration in her parenting. The untested evidence of E. P. B.'s drug use was accepted by the parental capacity assessor and was a significant element in her report. Other possible explanations for E. P. B.'s situation were not sufficiently examined with the exception of the possibility that she suffered from depression or other mental illness. There is insufficient evidence before me to suggest that E. P. B. suffered in the past or presently either from abusive drug use or from a mental illness.

[6] While E. P. B. failed to challenge the allegation of her drug use it is clear that she at no time admitted to these allegations. The Agency was aware of her denial. Given the decision of the Court of Appeal and the wording of the Protection Order her failure to put the Agency to the proof of this allegation and others in earlier proceedings does not prevent her doing so now. Indeed the manner in which the Agency conducted this case indicates it accepts that it must prove all allegations at this hearing.

[7] The lack of factual admissions or findings at the protection hearing stage may and in this case did result in a lengthy hearing. This disposition hearing extended over several days because all facts relating to protection concerns were required to be placed before the court in addition to those relating to disposition. Even though E. P. B. had previously acknowledged her children were in need of

protective services, the hearing over which I presided was in effect a combined protection/disposition hearing. The reasons why E. P. B. accepted that her children required protective services were only articulated in this hearing and she did not acknowledge facts considered significant by the Minister.

[8] The Minister likely did not insist that it be informed of the facts accepted as true by E. P. B. because she stated she was prepared to comply with the conditions and participate in the services it recommended. The respondent, although she had counsel, likely did not realize the importance of putting the Minister to the proof of the facts she would not admit, such as her drug abuse. Had she done so the progression of this file may have been a positive rather than a negative experience for both parties.

[9] The role of this court at a disposition hearing is first to determine whether the child continues to be in need of protective services. If this finding is made the court must then consider which plan for the child's care will be in the child's best interest.

[10] In analyzing the evidence I have applied the test of credibility set out by O'Halloran, J.A., speaking on behalf of the British Columbia Court of Appeal, in *Faryna v. Chorny*, [1952] 2 D.L.R. 354, at page 357:

In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

[11] In applying this test I have considered the internal consistency of the evidence, the logic and common sense of the testimony in terms of the circumstances described, the consistency of the evidence against the standard of prior statements and against any contrary evidence and the exhibits filed.

[12] In this decision when I state that there was "no evidence" or that an allegation was "unproven" it is to be understood that while there may have been information provided about a particular allegation, it was not reliable and as a result no weight was given to that information.

## **TIME LIMITATIONS**

[13] Pursuant to section 45(1)(a) of the Act, the duration of all disposition orders in this proceeding must not exceed 12 months from the date of the initial disposition order. The first disposition order was granted in this proceeding on August 8, 2006. The final disposition hearing was commenced June 19, 2007 but required 10 days to complete. Consecutive dates could not be found and final submissions of counsel were provided in writing because they were not able to complete these on the final day of the hearing held on July 13, 2007. The final written submission of counsel was received July 26, 2007. I was scheduled for vacation leave returning August 13, 2007. The parties were informed of this dilemma and my expected inability to digest 10 days of oral evidence and numerous pages of documentary evidence in order to render a decision on or before August 8. I considered the rulings in *Children's Aid Society & Family Services of Colchester County b. W.(H.)* 1996 CarswellNS 495 (NSCA) and *Nova Scotia (Minister of Community Services) v. F. (B.)* 2003 CarswellNS 384 (NSCA) and determined that I could extend the time limitation in the Act in order to render my decision but was limited to granting an order either placing the child in the permanent care of the Minister or returning the child to E. P. B.

### **PROTECTION FINDING REQUESTED**

[14] The protection concerns alleged by the Minister to have existed and to continue to exist are:

1. There is a substantial risk the child will suffer physical harm caused by the failure of E. P. B. to supervise and protect the child adequately.
2. There is a substantial risk the child will suffer emotional harm, demonstrated by severe anxiety, depression, withdrawal, or self-destructive or aggressive behavior and E. P. B. does not provide or refuses or is unavailable or unable to consent to services or treatment to remedy or alleviate the harm.
3. There is a substantial risk the child will suffer physical harm caused by chronic and serious neglect by E. P. B. who does not provide, or refuses or is unavailable or unable to consent to services or treatment to remedy or alleviate the harm.

[15] The Minister also alleges that E. P.B. has exposed her children to domestic violence. Section 22 (I) of the act is problematic because it does require proof on a balance of probabilities that “the child has suffered physical or emotional harm caused by being exposed to repeated domestic violence... and the child’s parents or guardian fails or refuses to obtain services or treatment to remedy or alleviate the violence.” This is unlike other sections of the Act which provide for a finding that a child is in need of protective services when there is a substantial risk that the child will suffer physical or emotional harm. The evidence in this case does not satisfy me that the child in question either has in the past or is now suffering any emotional harm caused by being exposed to repeated domestic violence perpetrated against E. P.B. Present knowledge about the emotional harm caused to children as a result of their exposure to domestic violence may suggest that a finding of actual harm is unnecessary. However the legislature could have chosen to recognize this by providing a clause permitting this finding where there is a substantial risk of harm. Having not done so I consider it inappropriate for me to import a risk of harm into a section that clearly requires evidence of actual harm. However, I do consider the the risk that a child will be exposed to repeated domestic violence is a consideration that can be taken into account under section 22(2)(g).

[16] The phrase “substantial risk” means a real chance of danger that is apparent on the evidence. Judge Daley elaborated on this definition in *Family & Children’s Services of Lunenburg (County) v. S. (W.L.), 1999 CarswellNS461* and stated:

Substantial risk does not mean some risk, or a little risk, or maybe a risk but a real chance of danger apparent on the evidence. Speculation or hunches or possibilities do not meet the statutory definition....

[17] The Agency has the burden of proving J. B. is in need of protective services. The standard of proof is the civil standard. After reviewing the evidence the court must be satisfied “on a balance of probabilities” that J. B. if returned to his mother’s care, would be at substantial risk of harm for any of the reasons set out in section 22 (b),(g), and (ja) of the Act.

[18] The Minister supports its allegation of protection concerns based on information that E. P. B. :

1. Had no pre-natal care prior to the birth of her youngest son and very little prior to J. B.’s birth.

2. Had not attended to her youngest son's immunizations and J. B.'s immunization was incomplete.
3. Had failed to arrange for her oldest son's appointment at the Nova Scotia Hearing and Speech clinic as recommended by his school.
4. Had failed to feed her children on February 11, 2006 and had failed to properly attend to their care.
5. Had been careless in the use of her computer which may have exposed her children and others to inappropriate images.
6. Had permitted her residence to become filthy in February, 2006. The children were not clean and had an unpleasant odor on their bodies. She was facing eviction and had no alternate residence.
7. Had allowed people into her residence at all hours of night and they played loud music and partied which eventually led to her eviction.
8. Had maintained a relationship with K. D. even though he was abusive and is now in a relationship with J. M. who has a prior conviction for domestic assault and continues an abusive relationship with the woman he assaulted.
9. Was in conflict with neighbours leading to her eviction.
10. Did not properly supervise her children allowing J. B. to hang out the window, allowing A.W. to play in the hallway of her apartment building and allowing A.W. and J. B. to play outside the building unattended.
11. Has a drug abuse problem.
12. Is an individual who has engaged in criminal activity.
13. Has been assessed in a parental capacity assessment that concluded her children should not be returned to her care.



14. Is without a social support system and is resistant or unwilling or unable to co-operating with those who would help her.
15. Did not follow through with services although she repeatedly indicated her willingness to do so and was under court order to do so. She has offered no reasonable explanation for her failures.

[19] In order to appropriately assess all of this information it is important to review what was known about E. P. B. prior to February 2006.

### **PARENTING PRIOR TO FEBRUARY 2006**

[20] The first referral to the Agency was made on January 25, 2005. It was an anonymous call but later K. M. D. was identified as the source. She reported that E. P.B. was heavily into partying with younger kids and using cocaine, ecstasy, and other drugs. She indicated that the children get locked or shut up in their room during parties at E. P.B.'s apartment. It was reported that recently E. P.B. partied for four nights straight, during which time her youngest child, J. B., only received two bottles of milk. The caller also stated that there was another occasion when E. P. B.'s oldest son came home from school early due to a snowstorm and had to hang around the building until midnight when his mother finally came home. As a result of this referral an investigation ensued which involved a home visit and interviews with collateral contacts including the oldest son's teacher and the building superintendent of the apartment complex in which E. P. B. lived.

[21] On February 10, 2005, Agency workers visited E. P. B. at her apartment for a scheduled appointment on that date. It was reported that the house was 'relatively clean and appropriately furnished' and that the children presented as physically well cared for. The oldest child was interviewed by the social worker and he did not provide any information to offer support for the allegations against his mother. E. P. B. was also interviewed and she 'vehemently denied' all allegations levied against her. She was confident that the complaints come from K. M. D whose son (K. D.) E. P.B. was dating. K. D. was significantly younger than E. P.B.

[22] On February 15, 2005 the oldest's child's teacher was interviewed and reported that he was frequently late for school and sometimes did not bring his homework or assignments in on time. His teacher also stated that E. P. B. was

difficult to get a hold of because she did not have a phone; however, she usually responded when notes are sent home and she once attended a meeting concerning her son's performance in school.

[23] On February 16, 2005 P. A., building superintendent, in a conversation with agency staff stated that E. P. B. had lived in the building he supervised for over four years and she had never been a problem with regards to parties, disturbances, or her children. Mr. A. did report that on a couple of occasions he had to speak to her about the bass on her stereo, in response to complaints from other tenants. She always turned down her music when asked to do so. There was also one occasion when her oldest son had to be brought home because he was playing in the halls. However, other children also played in the halls. The superintendent stated that he did not have any reason to be concerned about E. P. B.'s supervision of her children. In his affidavit filed as Exhibit #5 Mr. A. attempted to paint a different picture of E. P.B. but when giving his oral testimony he returned to his original analysis save only for circumstances in the last year which I understood to be a reference to events subsequent to February 16, 2005. I accept that the information he gave in February 2005 was an accurate portrayal of E. P.B. prior to that date. Until February 3, 2004 the only written complaints against her on file concerned her pets, one complaint in September 2002 and another in October. On February 3, 2004 she received a written complaint about an offensive odour coming from her unit. There were 4 "noise complaints" in total from January 26, 2005 until February 6, 2005 on the record produced by Mr. A. and I consider those to be relatively minor. She did play loud music and it appears a neighbour may have called the police in respect to these noise complaints. While the noise complaints did not concern Mr. A., and in his oral evidence he states he personally knew nothing about "parties", those 4 complaints apparently formed the foundation of the decision by the property management not to renew E. P.B.'s lease and on April 11, 2005 a letter was sent informing her that her lease would not be renewed on November 30, 2005. Perhaps the more significant reason for the decision not to renew was that the offended neighbour would call the police with these complaints and E. B had been offered a different apartment in the same building which she refused. She did so because she could not afford the rent in the alternate accommodation. Therefore complaints from the neighbour might have continued if she remained. I also note that because E. P.B. did not have a phone those wishing to go up to her apartment would call the superintendent. When this occurred late at night this was a burden. The evidence suggests this became a significant problem

after April 2005, after the decision by management not to renew E. P. B.'s lease. There are no complaints on her file about this issue.

[24] P. B., is also a building superintendent and he works with P. A.. He had only done so for six to seven months prior to March 2006. None of what he reports has anything to do with the time prior to management making its decision not to renew E. P. B.'s lease on April 11, 2005. The events he describes happened sometime between July 2005 and March 2006. I have no doubt both he and Mr. A. were bothered by those trying to get into her apartment late at night. I also note they could have assisted her by refusing to buzz such visitors into the building. Mr. B. also commented on her supervision of her children. I do not accept that he has accurately reported this event. He did not have a clear view of the property and I accept that if he did see the children playing outside, E. P. B. was watching her children from where he could not or did not see her.

[25] Reviewing the information about E. P. B. to February 2005, I am satisfied she was a satisfactory parent. She was not perfect but her imperfections did not place her children in need of protection. The information received did not support the allegation that she was a drug user who partied all night as had been alleged, nor did that information support neglect or lack of supervision.

[26] Lynn Mac Donald, a registered social worker employed by the Halifax Regional School Board, had contact with E. P. B. in April 2005 concerning her oldest son and an apparent lack of follow through in respect to an assessment and services recommended for him by the school. It became apparent to Ms. Mac Donald that there was a misunderstanding about who was to make the referral to the Nova Scotia Hearing and Speech Clinic. Lynn MacDonald testified that E. P. B. thought the school would make the referral while officials within the school expected E. P. B. to do so through her family physician. I find the misunderstanding to be real and the lack of referral was not due to any deliberate failure on E. P. B.'s part.

[27] It is known that by February 2005 E. P.B. was in relationship with K. D. a young man who was 17 years of age but who E. P. B. understood was older. This relationship brought his mother, K. M. D. into E. P. B.'s life. She was a woman who, in her oral testimony before me, E. P.B. stated "scared the crap out of me". Lynn Mac Donald, commented about this relationship to case worker Donna Best and stated E. P. B. by February 10, 2006, was "totally overwhelmed in caring for

three children. Further, she did not appear to be appropriately assertive and, in my observations, was allowing others, including the paternal grandmother of (her youngest child) to walk all over her.”

[28] On April 1, 2005, K. M. D. made a second referral to the Agency. She was concerned for the children’s safety because E. P. B. and K. D. were fighting. E. P.B. was pregnant with K. D.’s child. The previous day he had punched a hole in the wall in the hallway of E. P. B.’s apartment. A few days before he had smashed out a window in her apartment. E. P. B. came to live with her for a week and a half during which time there was an altercation between she and K. D. He raised a fist to E. P.B. but did not strike her. She believed her son need help with anger management.

[29] On April 8, 2005, K. D. made a third referral reporting that E. P.B. and K. D. had gotten into a fight. She transported K. D. to E. P.B.’s home to obtain his belongings at which time she saw J. D. “hanging out the window”. She later described this as the living room window and suggested there was a chesterfield in front of that window. She made additional statements that are in the file note. Her various statements do not have an internal consistency. In addition, when agency workers attended at her home on April 13, 2005 E. P.B. admitted she and K. D. would argue and he would yell at her. There was pushing and shoving but he did not break a window or put a hole in the wall. The workers file note, confirmed by her testimony during this hearing revealed:

Worker observed the livingroom window to have a screen in the middle window. Worker observed no chesterfield under the livingroom window as indicated by the referral source. ....E. P.B. stated and demonstrated that J. B. can and does stand on the radiator located under the livingroom window and that when J. B. stands on it only his head is above the window frame. ....Worker observed the bedroom window and observed no screen in it. E .P.B. stated that the screen blew out during a wind storm. Stated that J. B. cannot open the window himself and noted that she keeps it locked .....

[30] The agency decided to close its file on August 15, 2005 and Nadine McMullin noted in the file on July 28, 2005 that the children had seen their family doctor and their immunizations were up to date. Her note of August 15, 2005 stated “...There appears to be a close emotional bond between E. P.B. and her children and E. P.B. displays appropriate parenting skills.”

[31] The Minister now refers to the allegations made by K. M. D. that J. B. was left unsupervised and was “hanging out a window” , and that her son smashed a window and punched a hole in the wall, which it did not substantiate by August 15, 2005, are now proven in this case to be factual. I do not accept K. M. D.’s statements as credible. She has never personally witnessed the events she describes except for seeing J. B. “hanging out a window” and her son and E. P.B. verbally arguing with one another. Her evidence about the window incident is not consistent nor is it logically compelling when compared to the findings made by the worker. It is very clear that K. M.D. was displeased about the relationship between her son and E. P.B. I am satisfied that there were no protection concerns to August 15, 2005.

## **PARENTING FEBRUARY 2006**

[32] On February 8, 2006 K. M.D. made additional complaints against E. P.B. I will review each in light of the evidence before me in this hearing.

[33] She stated that E. P.B. had a kitten, rabbit, rat and bird in the apartment with the children. Both police officers and Agency workers were in E. P.B.’s apartment shortly after these complaints were made. None mentioned any animals in her apartment. It was a small apartment and animals would have been noticeable. E. P.B. did acknowledge owning animals in the past.

[34] K. M. D. complained that the foul smell in the apartment was overwhelming. Agency workers commented on the unpleasant smell in the apartment and of the fact that it was not clean. I am satisfied that E. P. B’s housekeeping standards had sharply deteriorated. She attempted to minimize the condition of her apartment at the time but I do not accept her categorization of its condition as “not as bad as the workers stated” . The condition of her apartment was unacceptable.

[35] K. M.D. stated that E .P.B. put her 3 month old son on the floor all the time. She did not care for him well and he was usually dirty. These are statements without content and they remained so throughout the hearing. I am satisfied that these children were not “clean” at the time they were taken into care. However, I am not satisfied that these were significant parenting issues for the Agency then, nor should they be now. The Agency eventually placed E. B. in the care of K. M.D. a person about whom the following comment was made by an Agency worker about her visit to her home on February 15, 2006, (Exhibit # 1 page 000041):

Attended at (K. M.D.'s residence) to apprehend E. B. Met with K. M.D. E. B. was asleep on the couch. Worker did not see any pillows around E. B. to stop him from falling off the couch if he should roll..... Children were brought back to office. Both E. B. and J. B. had a very strong odour on their clothing and bodies.”

[36] According to the evidence in this proceeding K. M.D. had E.B. in her care since February 11<sup>th</sup>, 2006. Therefore his odour came from her lack of care. Presumably K. M. D. is now more attentive to E. B. since the Agency determined it appropriate that she continue to care for him. I am satisfied the lapses in care shown by E. P. B. are explained, but not excused, by the particular circumstances in which she found herself at the time. Her present circumstances are completely different and, as with K. M. D. these lapses in care are not insurmountable nor particularly indicative of future care ability.

[37] K. M. D. complained that E. P.B. was with M. I. who was a heavy drinker and crack user. She has no personal knowledge of his substance abuse. No evidence was offered in this hearing providing any proof of the allegation that M. I. was either a heavy drinker or a crack user.

[38] K. M. D. informed the worker that E. P. B. “was arrested for an outstanding warrant”. She did not say and was not asked whether this was something that happened a few hours ago, a few days ago, or a few weeks ago. E. P.B. did have to answer to an outstanding warrant involving a shoplifting charge with which she has now dealt. There was a warrant issued for her arrest and the police were involved briefly but at the time this occurred it did not create a protection risk to her children.

[39] K. M.D. alleged that M. I. was in E. P. B.'s apartment along with some other guys and M. I.'s two sons who were 15 and 13. All were drinking and doing drugs. During this hearing no evidence was introduced in proof of any of these allegations. E. P.B. did provide information that M. I. was a frequent visitor to her home and on one occasion one of his sons arrived at her home already intoxicated. He slept on her couch that evening and vomited all night thus accounting for the smell in her apartment.

[40] K. M. D. stated that E. P. B. sent sexually explicit pictures of herself over the internet to M. I.'s two sons and these were intercepted by the boys' mother. In

fact the police did receive a complaint from the mother of these boys alleging that E. P.B. had sent her sons nude photos of herself. Upon investigation it appeared that E. P.B. did have on her computer sexually suggestive photos of herself. She was dressed but in provocative clothing. She wasn't nude. E. P. B. denies that she sent these to M. I.'s sons. Others had access to her computer. The pictures may have been sent as a result of someone else's intervention including the boys themselves who visited her apartment. The police did not charge her with any offence. E. P. B. does admit that she sent a copy of these pictures to K. D. "her old boyfriend" as she then called him. She also acknowledged that her failure to password protect the file containing these pictures meant that her own children, and in particular her oldest son, who was computer literate, could access those photos. She acknowledges that her actions were inappropriate and testifies she would not do such a thing in the future. I accept she is a person who did not fully understand that others could easily access her files.

[41] K. M. D. stated that the youngest child had never been to the doctor and had not received his needles because E. P. B. always misses her appointments. The evidence at this hearing about exactly when these children finally had all of their immunizations is somewhat unclear. Nadine McMullin in her note made July 28, 2005 stated that the children's immunizations were up-to-date. However, this information may have come from E. P. B without confirmation from the family physician. This would be a reference to the oldest child and to J. B. since the youngest child had not by that date been born. The youngest child was three months old by the time this protection a proceeding commenced and he had not received the immunizations he should have received by that date. While many parents would have attended to the immunization schedule earlier in the context of E. P. B.'s then circumstances I do not consider this failure to have placed this child at a substantial risk of harm although it did place him at risk.

[42] K. M.D. states that M. I.'s son, who is 15, supplies E. P.B. with the drug ecstasy and that she is on ecstasy all of the time. There was no evidence tendered in proof of this statement.

[43] K. M.D. informed the worker that there was a school social worker involved with E. P.B.'s oldest son. This was true. That worker was Lynn Mac Donald.

[44] K. M.D. stated that E. P.B. gave little stimulation to the baby. She props him in a chair all day with a bottle and she spends her time on MSN. In giving her

oral testimony and in her affidavit K. M.D. does not describe this allegation in detail. When did she see these deficiencies, how often did she see them, what was E. P.B. doing at the time? What were the other children doing? There was and is no content. There are those who during access visits watched the interaction between E. P.B. and her youngest child and suggested she was not as interactive with him as she is with J. B. and that she would prop a bottle under him.

[45] E. B. was taken out of E. P.B.'s care very early in his life. He was a child whom she had not wished initially to carry to full term. Her parenting of this child occurred at a time when she was being evicted from her apartment and was dealing with the constant criticism and controlling demands of K. M.D. Her relationship with that child's father was also a source of confusion and conflict. She was attempting to cooperate in respect to access and to receive some support from these individuals. Unfortunately the support they may have provided was not positive. She does acknowledge that during this time she did spend nighttime hours on MSN. She does still minimize the extent to which she had deteriorated during this time but she has acknowledged these concerns as protection concerns.

[46] E. P. B. had little time to nurture her youngest child. The unnatural environment of the "access" visit would not have assisted this development. E. P.B. is not before this court requesting that she parent her youngest son. She is requesting that she parent J. B. I find there is little in the evidence about her care of E. B. that assists me in assessing the capacity of E. P. B. to parent J. B. safely without protection concerns. Until February 2006 the balance of the evidence is that she parented both J. B. and her oldest son adequately. A.W. is reported to be a pleasant, helpful child. J. B. was reported to be healthy and happy. There is some suggestion in the evidence that his difficulty settling into the foster home may have arisen because of inappropriate parenting but this comment has not been elaborated upon in this proceeding. I am not satisfied I can make a finding of substantial harm from this observation contained in the agency file.

[47] I have carefully dissected K. M.D.'s complaints to the agency in order to highlight a reality that permeates this file. Some of K. M.D.'s concerns were real but these either have been admitted or were relatively minor. The allegations of most concern remain unproven as they have been from the moment the Agency began to deal with those allegations. K. M.D. has no personal knowledge of any drug use either by the E. P.B. or by M. I. Her apparent sources of information, her son and M. I.'s former partner are not reliable sources. Neither gave evidence in



this proceeding. Nevertheless the information provided by K.M.D. appeared to have been accepted as truthful by the Agency even though she is a person who is not always truthful, a fact known to the Agency. Also she is an individual who has had problems, some of which are similar to those suffered by E. P.B. She has faced eviction, her care of E. B. was not perfect, she has had unpleasant arguments with her neighbors . She has been in abusive relationships and has had difficulty extracting herself because the persons abusive to her were either her partner, former partner, or her son K. D.

[48] On February 12, 2006 the Halifax Regional Police received a complaint from K. M.D. advising “that she attended the residence recently after (E. P. B.’s oldest son) called her saying that his mother was passed out and he couldn’t wake her. K. M.D. reported that the oldest child had turned over some pills to her saying that his mother takes them all the time..... K. M.D. alleges that E. P.B. uses drugs regularly.” (Exhibit 30, page 000040). Constable Flynn and Constable Lassaline attended at E. P.B.’s apartment on February 12 at 17:39 and in the report ( Exhibit 23) stated:

The residence of (E. P.B.) was checked. All appeared in order. Cst. Lassaline confirmed there was food in the residence sufficient to feed the children.

[49] Interestingly these officers did not report any odor in the apartment.

[50] The report of Constable Gerry Murney attached to Exhibit 27 in this proceeding recites information he received when investigating a complaint by E. P.B. that her son had not been returned to her home by the child’s father K. D. He was in her home on February 14, 2006 and noted that at 20:30 hours E. P.B.’s oldest son and J. B. were awake in the apartment and that the residence had an overwhelming bad odor. E. P.B. explained this was because her friend’s son had arrived at her home quite intoxicated and had spent the night on her couch vomiting all night long. When he spoke with K. M. D he asked her to explain why she had not returned E. B. to his mother’s care she informed him:

She received a phone call from A.W. who called her and told her that he was starving, that there was nothing to eat. He told K. M.D. that he asked his mother to make him something to eat and she told him to go away. That his mother he be was lying down and not moving that she was on drugs. K. M.D. went to (E. P.B.’s apartment) and says she found E. P.B. in a bad way, drugged and disorientated.

That she fed the oldest child, J. B and the youngest child. While she was there the eldest child gave her to pills and said that these are the pills mommy takes, that he was worried that J. B. might take them. K. M.D. says she stayed around until E. P.B. came to then she left and took the youngest child with her.

[51] She reports this event to have occurred February 11<sup>th</sup> . From police records it appears that K. M.D. did not report her concerns until February 12<sup>th</sup> . No pills were ever given to the officers. The officers who attended at that time confirmed there was food in the residence. I am satisfied there was food in E. P.B.'s home and that either A.W. did not provide correct information to K. M.D. or she did not accurately report what he in fact told her, or that he used words that did not accurately portray the existing situation. The Agency refers to this event and complains that E. P.B. did not feed her children on the day in question. The Agency worker discussing this matter with E. P.B. on February 14, 2006 reports in her note:

I informed her that it was reported that the reason that K. M.D. had come to her home to get E. B. was because she had received an MSN message from A.W. reporting that she was acting strangely, that she was sleeping and A.W. could not wake her up. He reported that he and J. B. were hungry and she was not caring for them. It was further reported that when K. M.D. attended at her home on Saturday morning she was out of it and A.W. had to help her get in the shower. A.W. had given her 2 pills that he found near the computer telling K. M.D. that his mother had taken these pills.

[52] This is yet another version of the same events. Which is the accurate account?

[53] A.W. was interviewed on February . The worker reported:

A.W. stated that they were both upset because his little brother E. B. had gone to visit his grandmother, but now the grandmother had not agreed to bring him back home. He stated that he had a conversation with K. M.D. over the computer. He stated that he was asking her to bring E. B. back to them and she got mad at him telling him that he had not right to tell her what to do. ....He said that his mother was sleeping a lot and had not fed him. He asked K. M.D. to come over and feed them. He said that M. I. was there and they woke his mother up and then things were fine. He told K. M.D. that she did not have to come over but she came over anyway to get E. B. Austin stated that his mother was tired a lot and had to sleep a lot. I asked A.W. if he had to help his mother take a shower. He said that he did because she was so tired.... he stated that his mother should spend less time on the

computer and more time cleaning the house and doing dishes. He stated that some of the people that come over are ok and some are not. He stated that M. I. was ok and he gets along with him well.

[54] According to A.W.'s information he was on MSN on the day in question asking K. M.D. to return his baby brother. K. M.D. states the communication was about his being hungry. She states she took the youngest child out of the home as a result of A.W.'s message to her. His information is that his baby brother was not in the home when this communication occurred. E. P.B. agrees that K. M.D. took her youngest child from her home on February 11, but she, until these proceedings, did not know K. M.D.'s version of why this happened. She does admit that on the day when the youngest child was removed she was tired and A.W. may have turned on the shower for her. She denies she was naked. She did not know at the time of the occurrence that A.W. had sent a message to K. M.D. She was not directly asked whether she had fed the children on the day in question but if I accept some of A.W.'s information he did complain to K. M.D. that his mother had not fed him and he was hungry. Whether it was on the day K. M.D. removed the child or on another day I do not know.

[55] K. M.D. did not report that A.W. told her M. I. was in the home and that she didn't need to come over. I do not accept K. M.D.'s version of these events as correct in every particular. She exaggerates and mixes in past events with the present. Not all of her information is credible. A.W.'s information also has its frailties. What I do find is that at this period in her life E. P.B. was not attending to her children as she had in the past. While I am satisfied they were fed they may not have received three meals every day. The house was a mess and it did smell. E. P.B. was living in a chaotic situation from which she had not extracted herself. She was about to be evicted from her apartment. She had ignored the landlord's notice to quit and had not arranged for alternate housing although she had ample time to have done so. These factors did place her children at substantial risk of harm. However, the present situation is different. She has housing suitable for herself and J. B. and she has lived in that accommodation since January 2007. There is no evidence before me that either her neighbors or her landlord have complained about her. Wayne Hollett, who was in her present residence found it to be clean and nicely furnished. E. P.B. was able to work with persons and agencies in order to acquire this apartment. To do so she needed the assistance of her worker Ms. Gosbee which she eventually obtained. She also needed to find an organization to act as trustee on her behalf and she needed to deal with issues relating to

outstanding debt for previous accommodations. These debts had impeded her ability to obtain housing. She also had a period of time when she was not in receipt of her social assistance. She had been assigned a new benefits worker. Under the regime of her previous worker she filed yearly statements of her income and also filed when he requested her to do so. There is the suggestion that at some point she would have been required to file monthly statements but that is not evident from the information before me. The new worker expected to receive monthly statements and because these were not provided E. P.B.'s cheques were withheld. E. P.B. was supported by her friends until she eventually arranged to meet with her new worker who was not prepared to assist her at that time in completing these forms. It would have been easy and compassionate for her to do so but this worker did not offer that assistance.

[56] E. P.B. did not find housing as quickly as the agency would have preferred but in reviewing the evidence of the effort she did make and the barriers in her way I make no adverse finding against her. Perhaps others may have attended to these issues earlier but given her past history as a reasonable effective individual able to live on her own raising two children I am not prepared to draw the conclusion from these events that this or something similar to it has a probability of recurrence.

[57] Although not perhaps not explicitly stated during these proceedings it is implied that a child in E. P.B.'s care would be at substantial risk of harm because E. P. B. has never explained why she was in the circumstances in which she found herself in February 2006 nor why she was unable to deal appropriately with those circumstances or accept Agency offers of help. I find that during the course of this proceeding, and if one carefully reads the file notes about what she has said, she has explained what happened. However, she has not completely acknowledged her role in creating and continuing the situation in which she found herself and she has not availed herself of services that may have been useful to her. These failures on her part have not assisted her cause.

[58] I find that E.P.B. was the mother of three young children living on social assistance, without a telephone, involved, because of the birth of her youngest child, with a young man about whom she was ambivalent. He was not particularly nice to her, they yelled at one another and there was pushing and shoving. However she would occasionally believe that possibly they could have a productive relationship. She knew it was inappropriate that they raised their voices to one another and argued and that there was pushing and shoving between them

but nevertheless she still had some desire to have a relationship. She did suggest to the parental capacity assessor that he did some damage to her apartment but she did not describe any details. Nor was she asked. The fighting between them was histrionic and at the lower end of the scale. She did not want to have a relationship with this young man's mother but she had no choice. K. M.D. was a formidable woman who made it her place to interfere in E. P.B.'s life. Without any consequences for K. M. D. she would make untruthful allegations about E. P. B. to which E. P.B. was required to respond. K. P.B. retreated into a life where she would not plan ahead and she escaped into the Internet at night. She was unable to convince Agency workers about her situation. She was accused of substance abuse. For a considerable period of time she had no personal residence. She relied on friends to support her. She became defeated and did little to help herself. She ignored requests of her. Those with which she had complied did not appear to help. She needed someone to literally take her by the hand and get her back on her feet. This did not happen. She was told who she should meet but often did not get to those appointments. This is not the life she is presently living. The fact that she did live it does not satisfy me that it is probable she will find herself in a similar situation and react similarly in the future.

[59] Did E. P. B.'s circumstances mean that she was suffering from situational depression? It may have but no one can say what her mental state may have been at that time. She was not assessed during this crisis but only after. The conclusions of those who met with her after was that there were no mental illnesses or disorders present. The agency might suggest that if this was her problem she should have sought out services and no doubt E. P. B would agree. The question now is whether this lapse on her part under those circumstances suggests with a degree of probability that she does not have the capacity to safely parent J. B. now. I do not draw this conclusion.

## **DRUG USE**

[60] The Minister alleges that E. P. B. would be at substantial risk of harm because of substance abuse. The evidence supporting this allegation is :

1. The information supplied by K. M. D.

2. Information provided to the agency by Paula Bradberry indicating that during the last parenting skills session attended by E. P. B. she appeared to be under the influence of a substance.
3. Information received from Allison Jones, E. P. B.'s income assistance worker. During her first meeting with E. P. B. she believed E.P.B. to be under the influence of a drug because she had dilated pupils, dark eyes and she was slurring her speech. Ms. Jones reported she could barely talk. She could not tell Ms. Jones the name of her child welfare worker nor the date of J. B.'s birth.
4. Oral Testimony of Wayne Hollett, counselling therapist, indicating E. P.B. admitted to him that she had used marijuana in the past but denied any present use.
5. E. P.B. did not make herself available for uranalysis testing as she had agreed and in accordance with the court orders.
6. The observation of Elaine Boyd on page 34 of her report, supported in her oral testimony, that " E. P. B. appears to have a number of personality characteristics that have been associated with substance use or abuse problems."

[61] I have already commented upon K. M. D.'s credibility. She has no personal information about E. P. B.'s drug use and I put no weight on her allegations in this regard.

[62] I accept that Ms. Bradberry is a trained and astute observer. E. P. B. may have been under the influence of some drug on that date. I am not as confident of the observations provided by Ms. Jones. She appeared clearly uncomfortable when giving her testimony and I am satisfied E. P. B. made her uncomfortable. However, I am not satisfied this was because E. P. B. was under the influence of a drug when they met. E. P.B. is an individual who has been described by many as a person with a flat affect. She uses very black eyeliner which enlarges her eyes but unfortunately gives them a droopy, sleepy effect. Having observed her over 10 days, at which time I am satisfied she was not under the influence of any drug ( I am sure had she been, that would have been drawn to my attention.) I can understand why her appearance may lead others to draw this conclusion. She has explained why she did

not know the name of her worker at the time. I am also satisfied that she felt intimidated by Ms. Jones' questioning.

[63] E. P. B.'s admission of past marijuana use, and her failure to participate in the uranalysis testing certainly raises a suspicion of drug use but it is insufficient to justify a conclusion on a balance of probabilities that she is or has used drugs in circumstances that will now or in the future place her child at substantial risk of harm. The analysis of these pieces of evidence together with the one observation of likely drug use by Ms. Bradbury still does not prove serious or significant drug use that would place her child at substantial risk of harm.

[64] Ms. Boyd's comment about E. P. B.'s likely substance abuse is contradicted by the report provided by Capital Health Addiction Prevention and Treatment Services, a service the Agency required E. P. B. to access and she did. That report states:

Based on the results of the SASSI, the clinical interview, and the collateral contact, E. P. B. has been assessed as a low risk for drug or alcohol addictions. There is no recommendation for further alcohol or drug assessment or services at this time.

[65] The Agency has suggested that little reliance should be placed on this report since the SASSI is based on self reporting. If it has so little respect for the work performed by this Service it should cease requiring people to attend for these assessments. I can understand E. P. B.'s discouragement when it became apparent that this report did not relieve her of the suspicion of drug use. Of course by the time she offered to carry through with uranalysis testing the Agency was not prepared to provide her with that service because of previous non-compliance with this and other services.

[66] Ms. Boyd must interpret the tests she administers. That interpretation contains within it all of the information provided to the Agency by persons whose information I have not accepted as credible. Whatever the indicators in Ms. Boyd's tests, they do not satisfy me that E. P. B. has a substance abuse problem.

## **DOMESTIC VIOLENCE**

[67] The Minister alleges that if J. B. is returned to the care of E. P. B. he will be at substantial risk of emotional harm from exposure to domestic violence. Their evidence in support of this conclusion.

- E. P.B.'s statements to the parental capacity assessor Elaine Boyd
- Reports in the police records
- Her present relationship with J. M.

[68] The information E. P.B. gave to Elaine Boyd is on page 26 of her report and is as follows:

E. P.B. reported that her first serious relationship was with a young man named B. W.. They were together for 1 ½ years and the relationship began when she was age 17 and he was 21. She described the relationship as extremely abusive emotionally, physically and sexually..... according to E. P.B. this relationship created conflict between she and her parents because they were aware of the abuse and she continued with the relationship...

[69] Police records to indicate that on one occasion in 1990 E. P. B did institute a complaint of a physical and sexual assault against her perpetrated by B. W. which did not go forward because she informed the police intercourse had occurred with her consent and although the physical assault was not consensual and although he had threatened her she did not fear him and she was not hurt. She in fact wanted to continue her relationship with him. It would appear the charges were not pursued. This event occurred many years ago and E. P. B. did eventually discontinue her relationship with this individual.

[70] Police records indicate that in the year 2000 E. P. B. reported that R. M. who was a friend had assaulted her. The records do not indicate what occurred in respect to this charge but there's nothing in these records to suggest that R. M. was in a long-term relationship with E. P. B. and nothing in the evidence that I have reviewed to suggest otherwise. Her testimony is that they had been raised in the same neighborhood and therefore had known one another for some time. They had an active friendship for about three years. They did not live together. It is extremely unfortunate for an individual to be assaulted by a friend. I do not draw the conclusion that there was a relationship and that this assault could be



categorized as domestic violence. In any event it appears that E. P. B took the appropriate course of action and reported the assault. There is no evidence before me to suggest that she remained in any relationship with this individual after the assault.

[71] At page 24 E. P. B. reported:

her last employment was approximately 10 years ago at Keddy's Hotel where she cleaned rooms and offices. She indicated that her partner at the time was abusive and interfered with her employment.

[72] There is nothing to indicate who this perpetrator may have been, the length of the relationship nor when that relationship ended. If E. P. B. recognized the abuse and ended it as quickly as possible than no negative conclusion could be drawn. Since I know nothing about this relationship I can draw no adverse conclusion from this mere statement.

[73] On page 28 Ms. Boyd reports with respect to E. P. B's relationship with K. D.:

E. P. B indicated that although K. D. did not hit her he would grab her and was verbally abusive and destructive in her apartment. Conflict between K. D. and E. P. B. took place in front of the children..... she and he separated when she was three months pregnant with their son ... because of the abuse and drama with his mother who E. P.B. portrayed as negative toward her having a desire to take E. B. away from her.

[74] Although E. P. B. and K. D. ceased to live together they did continue to have contact and he did spend time in E. P. B.'s apartment during which time there was opportunity for further arguments between them. K. D. and his mother were in E. P. B.'s life because of E. B. It was not an easy task to manage these relationships without contact and contact could lead to expressions of anger in front of the children both between K. M. D., K. D. and E. P. B. I do not place all of the responsibility for this exposure upon E. P.B. Ending her relationship with both of these individuals was difficult and she had not done so by the date of the Minister's involvement. Shortly after these proceedings began K. D. left Nova Scotia. He is no longer involved in K. P. D.'s life and I am satisfied there is no likelihood they will be in a relationship in the future. I do not draw the conclusion that E. P. B is an individual who will remain in an abusive relationship just to have a relationship

although I recognize this is a risk noted by Ms. Boyd in her report. She was in a relationship, such as it was, with K. D. because he was the father of her child. However, by the time of the Agency's involvement she and he were not living together and I accept that this occurred at her choice.

[75] K. P. D. has, since January 2007, been in a relationship with J. M. She states they do not live together but I am satisfied he spends considerable time at her residence. J. M. is an individual who has had and still has a very troubled relationship with a former partner R. M. He committed a serious physical assault upon her in 1996. He admitted to the assault and was imprisoned for approximately 11 months and then served probation. His original sentence was for a period of three years. Subsequent to this he has been charged with other assaults upon her which he has denied and which remained unproven as a result of her failure to attend on the trial dates. This also occurred on an occasion when she alleged he had physically harmed her son born of a previous relationship. I do not know whether these other assaults occurred. The nature of the relationship between these parties could lead to false allegations. Susan Hastey, who conducted a parental capacity assessment involving J. M. and R. M. reported " J. M. minimizes the history of domestic violence in his relationship with R. M. While this Assessor believes that R. M. has fabricated some information in regard to this history, there does appear to be a valid concern in regard to anger management and impulse control." The evidence before me does not "prove" that J. M. assaulted R. M. save only for the assault to which he has admitted and served his sentence. He also admits that he seriously beat his dog in front of R. M. and his older son. He did so because the dog had threatened to attack the child. From the record before me R. M. does not appear to be a particularly credible individual. I have no doubt these individuals were verbally abusive toward each other. I have no doubt there has been domestic violence between them. What I am not prepared to do is draw a straight line from that relationship to the conclusion that he will be abusive in his relationship with E. P.B. and she will do nothing to eliminate or alleviate that risk.

[76] Agency workers working with J. M. have found him to be belligerent, demanding, argumentative, sensitive to insult even when this was unintended. Susan Hastey noted he has a sense of entitlement, which may have resulted in his propensity to engage in illegal activity. He is often uncooperative. In his testimony before me, he has explained some of why he has displayed these characteristics and I am satisfied that not all of his explanations are without merit. Susan Hastey concluded J. M. would not be an appropriate primary care giver for his oldest son,

despite having been observed to be a patient, nurturant and positive in his parenting of that child during access. This child is in the primary care of J. M.'s sister and he has regular unsupervised access with this child. There is no evidence before me to suggest J. M. has been physically abusive with other partners or other persons. E. P. B testified that he has not been abusive of her. He can be verbally abusive to some persons when he feels wronged and unfairly judged. He would be a better person if he learned to contain or eliminate that aspect of his character but I am not satisfied that this is the type of "abuse", in and of itself, that our legislature intended to protect against. If it did many persons in our society who are otherwise safely raising their children would be subject to Agency scrutiny. The identified problem and the risk it presents to the child needs to be carefully evaluated.

[77] The essence of the Minister's complaint about J. M. appears to be that even if all the allegations of assault were unproven, it is a fact that J. M. was in an abusive relationship with R. M. that placed their children at substantial risk of harm. J. M. continued to be abusive of R. M. because he has not sufficiently dealt with his anger. The conclusion I have been asked to reach is that this anger will eventually result in his abusing other partners.

[78] J. M. testified that he no longer will permit his anger to result in any physical threat to others. He has learned how to recognize when his anger may cause this result and he withdraws from the situation that created this emotion. This is a technique he has learned from the several anger management programs he has taken. For many people, as confirmed by Martin Whitzman, knowing when to withdraw, when to stop a conversation, when to walk away, may be the best they will ever be able to achieve as a result of their participation in these programs. Anger is a natural human response to many situations. To probe within oneself in the hope of reaching an understanding about when anger is justified and when it is not; to learn how to safely express anger so that others are not physically or otherwise threatened, is a task not all are equipped to undertake either intellectually or emotionally. Knowing when to prevent one's anger from bubbling over into physical violence may be the best achievable result for some. Requiring such persons to do more may be counterproductive. In this case I accept that J. M. has likely benefited as much as he will from the programs he has taken. It would likely take extensive, intrusive therapy for him to progress further and I am not satisfied that he must take such programming to lessen the risk he presents. What he has achieved has lessened his risk to others considerably. He remains a person who in certain situations, particularly when dealing with authority figures, will likely be

unpleasant to work with but I do not accept that, for this reason, he presents a substantial risk of harm to E. B.P.'s son if he is in a relationship with her. Nor do I accept the suggestion that she would accept his abuse, were he abusive of her and that she would do nothing to stop that abuse. A finding that a child is in need of protection as requested by the Agency requires, not only a finding of substantial risk, but also a finding that a parent will do nothing to eliminate or alleviate that risk.

## **PARENTAL CAPACITY REPORT**

[79] Ms. Boyd's report was prepared over one year ago. E. B. D.'s circumstances have changed. Many of her observations suggest E. B. D., has personal and behavioural characteristics that impact constructive parenting. A child in her care may well be exposed to individuals whose values and personalities do not reflect the desired social norm. Her personal lifestyle may not be the desired social norm. However, the issue is whether E. B. D.'s personality and behavioural characteristics, her choice of friends, partners and lifestyle will, on a balance of probabilities, place her son at substantial risk of harm if placed in her care. I am not satisfied this is the probable outcome for E. B. if placed in his mother's care.

[80] Perhaps the most damaging comment is that E. B. D.'s "need for love and affection appear to largely be met through the children and she is unable to maintain appropriate parental boundaries." Given previous observations made of her appropriate relationship with her older son and J. B. and given what I consider to be a distorted interpretation of her expressions about her relationship with her children, I do not accept this observation as an accurate assessment of E. B. D. I take her comments to indicate that she is not autocratic authority figure. She gains compliance with her requests by being what she describes as a friend. She listens to her children. She talks with them. I do not take this to mean that she does not understand the need for a parent to provide guidance to a child.

[81] Of equal concern to the Agency were reports that J. B. was parentified. This term is often used to suggest the placement of parental responsibility upon the shoulders of a child. This conclusion was reached primarily on the evidence of E. B. D.'s statements already referenced above and upon evidence that J. B. enjoyed being helpful. For example, he wanted to feed his baby brother. E. P. B. would allow and encourage such activity. In many societies it is considered important that children learn how to care for siblings at an early age. I am not convinced that to

do so in this society causes a substantial risk of harm to a child. Similarly I do not accept that carrying a lukewarm cup of coffee to his mother is evidence of his parentification or of her neglect and lack of supervision. The evidence in this case falls far short of what is required to satisfy me that J. B. will become parentified in the care of his mother. Although A. W. expressed concern about his mother I consider his comments quite normal. Any child would express worry about his parent in the circumstances in which his statements were made.

### **CRIMINAL ACTIVITY - CONFLICTUAL PERSONALITY**

[82] E. P. B.'s conflict with two of her neighbours, does not satisfy me that she is an individual who is prone to involve herself in conflict. In one of these situations she and her neighbour reconciled. That is E. P. B.'s evidence and she had previously informed the agency of this fact. It is in the worker's notes. Nothing before me contradicts this. Occasionally human beings have arguments with others. Certainly the facts as they exist in this case in no way support the proposition about risk put forth by the Agency.

[83] Unfortunately E. P. B. has once again engaged in criminal activity. She was charged with fraud under \$ 5,000.00 for using a master card on April 11, 2007. On June 13, 2007 she entered a guilty plea to this offence and she received nine months probation. She has also been charged with an offence that occurred on April 17. She along with J. M. is charged with theft under \$5,000, possession of stolen property under \$5,000, damage to property under \$5,000, theft of a credit card and fraudulent use of a credit card. She is to appear and enter a plea on August 9, 2007. Her information is that she does intend to plead guilty to the use of a fraudulently obtained credit card. She denies she stole this card but she did know it was stolen. She does not expect to be incarcerated as a result of that proceeding. Certainly it is regrettable that she engaged in criminal activity. Society however does not prevent parents who have been convicted of crimes from caring for their children unless there is an identifiable, real, probable risk of harm to those children related to the criminal activity. The suggestions of risk of harm put forth by the Agency do not meet this standard. They are at best speculative, at worst alarmist.

### **CUMULATIVE RISK**

[84] Although not explicitly stated there is in the Agency's submissions the suggestion that there are so many risks associated with E. P. B.'s parenting, even if each individually is not a substantial risk, taken together the body of evidence is conclusive and supports a finding that J. B. would be at substantial risk if placed in his mother's care. Though there may be circumstances under which this argument would be persuasive, the circumstances do not exist in this case. Many of the risks in this case have not been proven, the substance abuse for example. Others are speculative such as the risk presented as a result of criminal activity.

[85] There are risks for J. B. in his mother's care, but living is full of risk and no one raises children free of risk. Some view certain childhood activities as risky, others view the same activities, for example, climbing a chair, as appropriate for gross motor skill development. In child protection only those risks that can be shown to be substantial are sufficient to justify the permanent removal of a child from the care of his or her parent. The risks to J. B. are not substantial. He is to be returned to his mother's care.

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Beryl MacDonald, J.