

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Nova Scotia (Community Services) v. A.M., 2012 NSSC 343

Date: 20121003

Docket: SFSNCFSA74698

Registry: Sydney, N.S.

Between:

Minister of Community Services

Applicant

v.

A.M. and J.W.

Respondent

TO PUBLISHERS OF THIS CASE:

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

SECTION 94(1) PROVIDES:

Prohibition on publication

1. 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.

Editorial Notice

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

Judge: The Honourable Justice Darryl W. Wilson

Heard: September 20 and 21, 2012 in Sydney, N.S.

Written Decision: October 3, 2012

Counsel: Adam Neal, Counsel for the Minister of Community Services
Kimberly Franklin, Counsel for the Respondent, A.M.
Alan Stanwick, Counsel for the Respondent, J.W.

By the Court:

[1] This proceeding concerns twin girls, J(D) and J(A), born September *, 2006. The Minister of Community Services (the Minister) applies for an Order of Permanent Care and Custody with no provision for access so that the children may be placed for adoption.

[2] The Respondent mother, A.M., and Respondent father, J.W., who oppose the application, request a dismissal of the protection proceeding and a return of the children to the mother's care.

[3] The concerns of the Minister when this protection proceeding was initiated were the father's criminal history, including sexual related offences, the mother's lack of concern for the same and her ability to protect the children.

BACKGROUND

[4] The Minister had a prior history of involvement with the mother and father. The Minister's involvement with the mother began in December, 2004 as a result of a conflict between her and her daughter from a prior relationship, who was 6

years old at the time. Concerns addressed were the mother's significant problems with anger, dealing with stress and inappropriate discipline. The Minister also became aware that the mother began a relationship with the father, who had a past history of sexual offence charges. The mother was not open to counselling. The Minister's involvement ended following an assessment, family support involvement focusing on parenting and the mother's parents assisting with the care of the older child, B. The father's past sexual offences were not against children.

[5] At the time of the twins' birth in September, 2006, the Respondents were living together along with the older daughter, B.

[6] Another referral was received in November, 2007 as a result of a verbal conflict between the Respondents. A safety plan was implemented and the Minister's involvement ended in December, 2007.

[7] Another referral was received in 2009, wherein it was reported that the father had assaulted the mother. The father was placed on probation. Services were put in place whereby a Family Support Worker worked with the mother on

parenting issues, appropriate discipline of the children and her issues with anger and stress.

[8] An anonymous referral was received in July, 2010, that one of the twins had disclosed the father, “licks her bum” and the mother had said the father does “crazy things when he’s drinking”. This referral was not accepted for investigated because it was from an anonymous third party. There was no history in the referral file under the mother’s name. Until March, 2011, the Minister was not aware the mother’s child welfare file was registered under a different surname. That file did include information regarding the father’s sexual offences.

[9] The recent involvement by the Minister with the Respondents began in October, 2010 when the Minister learned the father was being investigated for sexual offences against a third person’s children. The Minister attempted to meet with the mother to discuss safety issues but there was no response. In December, 2010, the father was charged with sexual assault and sexual touching involving the children of the third person.

[10] The Minister had a difficult time meeting with the Respondents during January and February, 2011. In March, 2011, representatives of the Minister met with the Respondents to address the referral concerns and the mother's ability to protect her children. The Respondents were living together with the twins at this time.

[11] During that meeting, the father acknowledged a prior sexual assault conviction when he was eighteen (18) years old. He had past offences for drinking and driving, mischief and assault against the Respondent mother. The Respondents dismissed the current charges against the father as the result of a conflict between them and the mother of the children, who made the disclosures.

[12] The referral received in July, 2010 that one of the twins stated the father, "licks her bum" was discussed. The Respondent father was not aware of this disclosure. The Respondent mother recalled the incident and stated she did not believe her child made the statement. She discredited the person who reported the child's statement as someone who had a prior involvement with the Respondent father.

[13] At the conclusion of the meeting, representatives of the Minister held a risk conference and decided to apprehend the children based on the father's past sexual assault charges, his current charges for sexual touching, his access to the children, the Respondent mother's lack of cooperation and the mother's denial that the father presented any risk to the children.

COURT PROCEEDINGS

[14] The initial court appearance was on March 17, 2011 and an Order was granted based on Affidavit evidence of the Minister. The Respondents had not yet retained counsel. The Interim Hearing was adjourned to March 24, 2011.

[15] On March 24, 2011, the Respondents still were without counsel and the Interim Hearing was further adjourned to April 4, 2011.

[16] On April 4, 2011, the Respondents requested a further adjournment since they were still unable to retain counsel.

[17] On April 18, 2011, the Respondent father had retained counsel and the Respondent mother provided a letter from counsel who indicated he would be

representing the mother but was unable to attend court on that day. The Protection Hearing was scheduled for May 30, 2011.

[18] On May 30, 2011, the Protection Hearing was adjourned. Counsel for the Respondent mother requested an adjournment due to disclosure issues that had arisen. An adjournment meant that the Protection Hearing could not be completed within the ninety (90) day time limit set out by the *Act*, however, it was determined that it was in the best interests of the children to extend the ninety (90) day period to allow for disclosure for all information relevant to the protection proceeding to the Respondents.

[19] The Protection Hearing was held on July 15, 2011. The children were found in need of protective services pursuant to Section 22(2)(b) and (d) - substantial risk of physical harm and substantial risk of sexual harm.

[20] Subsequent to the Protection Hearing, the mother's counsel left private practice and the mother was required to retain new counsel.

[21] The Disposition Hearing was held on October 14, 2011. The Minister filed a Plan of Care on September 27, 2011 seeking a Permanent Care and Custody Order, however, they were only seeking an Order for Temporary Care and Custody at the time of the first disposition. Assertions were made that if the mother did well with services, the plan for permanent care and custody could change. The Respondents did not consent to a Plan for Permanent Care but did agree to an Order for Temporary Care and Custody. They also consented to engage in services set out in the Plan of Care.

[22] Disposition Reviews were held on December 7, 2011; February 22, 2012; May 16, 2012; May 30, 2012.

[23] The final Disposition Review was held on September 20th and 21st, 2012.

[24] This proceeding consisted of *viva voce* testimony of several witnesses on behalf of the Minister, including Nicole Sheppard, Caseworker; Paul Moore, Child in Care Worker; A.M., grandmother and foster parent; Dr. Julie MacDonald, Psychologist; Joanne MacCormack, Access Facilitator; and R. Pitchuck. Both Respondents also testified.

[25] A report by Dr. Julie MacDonald, summarizing her counselling sessions with the twins, was filed as an exhibit.

PROTECTION FINDING

[26] There was a consented Protection Hearing. The decision was not reported. The following is a brief summary of the court's determination.

[27] In the summer of 2010 the mother was made aware of a disclosure by one of her daughters that the father had inappropriately touched the twins in a sexual way. She did not do anything to address this disclosure. In the Fall of 2010, the father was charged with sexual touching and sexual assault on children of a person with whom he had a prior relationship. The mother does not believe the charges are true and asserts this person has a vendetta against her, which led to the charges. The mother and the twins began living with the father after he was charged with these offences. The mother knew her own daughter made a disclosure to a different person in June 2010. The mother did not believe the daughter made this disclosure. The Minister's attempt to contact the mother to make her aware of the circumstances of the offence and their concerns for her

children's safety were ignored by the mother and she refused to cooperate with them in addressing their concerns. The Court determined that the mother did not want to address the issue of substantial risk of harm and actually put the children at risk of harm by residing with the father after he was charged with the offences of sexual assault and sexual touching.

[28] The Court was satisfied the mother did not have the necessary insight as to the substantial risk of physical and or sexual harm to her own children in order to take the appropriate steps to protect them and a protection finding was entered.

FINAL REVIEW

[29] The twins have been in the care of their paternal grandmother since their apprehension in March, 2011. Both Respondents had access for a short period of time after the apprehension. Access was terminated in June, 2011, when the father was charged with sexual offences in relation to his daughter. The father has not had any access since that time. The mother's access was not reinstated until March, 2012.

[30] Joanne MacCormack is a contract worker, who works as an access facilitator. She provides transportation for the children to and from access visits. She also monitors the visits and records observations which are given to the protection worker and have been provided to the Respondents. She monitored five visits between March 21, 2012 and April 25, 2012. Her overall impression was that the visits were stressful and not pleasant for the children. The mother probed them about their activities, their relationship with an older sibling, and who they play with. When they did not respond to a lot of her questions, the mother's tone was harsh. The mother spoke often of the children's father, showed them pictures of him, and gave them information about his family. When Ms. MacCormack attempted to intervene she was told to "be quiet". The children did not initiate contact with the mother and were stiff when the mother hugged them. The mother told the children that they would be returning home soon but she received no response from them. The access facilitator was concerned about the mother's insensitivity to the children and their reaction to her. Access visits were terminated because the children were anxious before and after visits, sexualized behaviours had re-appeared and the mother was not prepared to change her behaviour during visits.

[31] The maternal grandmother stated that she and her husband have a strained relationship with their daughter. They are caring for their daughter's older child, although there is no custody order in place. They want their daughter to have a relationship with her twins but it has been difficult to deal with her. They are prepared to care for the twins on a long-term basis. They involve them in various activities, including swimming, dancing, soccer, skating, and drama. They help them with their school work. The twins are doing fine at the moment but they have had concerns about their inappropriate behaviours in the past. They had to build onto their home to provide separate bedrooms for the twins because J(D) was acting out in a sexually inappropriate way with J(A).

[32] After the children were initially taken into care, they were referred to Dr. Julie MacDonald, for an assessment of their behavioural and emotional functioning to determine if either of them were displaying any difficulties in these areas, either as a result of being taken into care and having no contact with their parents, or as a result of alleged sexual abuse by the father or for any other reason. The assessor was not prepared to provide an opinion to confirm or deny the allegations of sexual abuse.

[33] Dr. MacDonald prepared a Psychological Assessment of the children's emotional and behavioural needs between August and September, 2011. This report was completed in October, 2011 and filed with the court in December, 2011. A copy forwarded to the Respondents. The assessment identified a number of concerns. Dr. MacDonald made a number of recommendations to assist the grandparents with behavioural management and to help the children deal with their anxiety and improve their coping skills. She also discussed the children's sexualized behaviours and provided advice to the grandparents to help them modify these behaviours, as well as teach the children the importance of good-touch and bad-touch between children and between children and adults.

[34] Once access was restarted in March of 2012, the acting out behaviours of the twins returned. The grandparents received a phone call from the school principal reporting inappropriate sexual behaviours by J(D) in the school bathroom.

[35] In June, 2012, Victims' Services advised the grandparents that the trial involving the father's alleged sexual assault of his daughter, J(D) would not proceed. The grandparents were telling the child she did not have to testify in

court. During this conversation, the other twin, J(A) made a disclosure involving the father. No charges resulted from this disclosure, however, the children were, once again, referred to Dr. MacDonald for counselling, to help with any behavioural and emotional issues they may be experiencing occasioned by the resumption of access and the recent disclosure.

[36] Dr. MacDonald's letter, filed as Exhibit #1, outlined her involvement with the twins, which began in June, 2012 and ended on July 30, 2012. Her brief report states as follows:

Re: J(D) and J(A) M.

I am writing to provide you with an update regarding my involvement with J(D) and J(A). At this point, no further appointments have been scheduled and they were last seen on July 30th, 2012. The girls were always accompanied to their appointments by their maternal grandmother.

First, J(A), over the last few months, J.'s grandmother has reported that J. Is doing well and no behavioural or sexualized behaviours were reported. J. also did not disclose any abuse during sessions. She was usually eager to attend and pleasantly engaged until I rased mom or dad. I usually asked indirect neutral questions, but she would very quickly changed her presentation, bury her head or curl in a ball on a chair. She would ignore my attempts at conversation regarding her parents, visits with them or lack of visits with them. Not on any occasions of our meetings together did this change.

J(D), initially had very high anxiety, was extremely shy and appeared distressed. After a few sessions, this dissipated and J. became quite comfortable. Like J(A), J(D) never acknowledged or disclosed any form of abuse, physical or sexual. J. also did not like to discuss her parents. Instead of hiding like J(A), J(D) would talk repeatedly for many sessions about how much she missed her cat. On a few visits, J. mentioned that her parents were working on being better parents before she could see them again. She did not elaborate on this.

Given the reports of J(D) engaging in sexually inappropriate behaviours, good-touch and bad-touch was reviewed. Their grandmother reports that J.'s anxiety has improved significantly and neither of the girls were currently having behavioural issues. Behavioural management, the discussion of sexual behaviours with children, and the importance of teaching boundaries with the girls was reviewed. It was also reinforced the high importance of vigilant supervision for the girls.

At this point, counselling is not expected to provide any further benefit and so has been discontinued. If it is felt I can be of further help in the future, please do not hesitate to contact me.

[37] R. P. was a friend of the father, which included a sexual relationship at times. Approximately three years ago he invited her to meet his twin daughters and their mother. In the summer of 2010, she spent some time with them. On one occasion, while at a local beach, one of the girls came to her and said "daddy licked her bum" and then the second child said the same thing. She did not question them. She reported the conversation to the mother who was nearby. The mother stated "daddy does a lot of strange things when he is drinking". The father was not present when she reported the conversation to the mother. She did not

report the disclosure to the child protection authorities but told a friend who later reported the disclosure. She did not report the disclosures because the father was a friend of hers and she did not want to get involved. She has not had any involvement with the father since that time.

[38] The twins were jointly interviewed by police and social workers for the Minister. Based on this interview the father was charged with sexual assault and sexual touching in relation to J(D). The Court was not provided with any evidence in relation to this interview.

[39] The mother testified that she does not understand why she is not allowed to be around her children. She was told that she was in denial of the risk of harm to her children based on the father's behaviour and that she could not protect them. She denies that she is not able to protect her children and stated that no one has harmed them while in her care. She was always around the children and never observed the father harm them in any way. She does not believe the children said what R. P. reported they said about the father.

[40] She was not given the chance to see her children after access was terminated in 2011. The Minister wanted to attach conditions to her access visits which were different than its policy and she would not agree to sign the forms until the conditions were removed. As a result access did not resume until March, 2012. She disagrees with the facilitator's observations. She said the children warmed up to her after the initial visit. They were upset at first but this had more to do with the situation than with her. The visits were very short which meant she did not have quality time with them. After the last visit, she observed the access facilitator talking on her cell phone while transporting her children. She reported this to the workers for the Minister. Her visits were then terminated.

[41] Her older daughter is disrespectful to her and she blames her parents for this. She is not living with her at the present time because the Minister has said that if she returns to her care, she will be apprehended.

[42] She has complained to the Minister about the behaviour of social workers who have treated her poorly and thinks this is why they are keeping the children away from her. She is angry because she has not been given a chance in a long time to visit with her children or parent them.

[43] In May, 2011 she saw Dr. Durdle, a Psychologist, for education sessions about signs to watch out for when a child abuser is around children. She attended for three sessions but did not return because Dr. Durdle only dealt with people who were convicted of sexual offences and the father had not been convicted. Dr. Durdle did not file a report. She believed the children would be returned to her care after these sessions but instead access was denied.

[44] She has not participated in additional services including the parental capacity assessment because she has done nothing wrong. She has not been provided with particulars of the sexualized behaviours of the children. The children did not exhibit inappropriate sexual behaviours while in her care. The children have acted up in the past and have had nightmares since they were young. The twins kissed each other playfully but there were no signs of inappropriate sexual behaviour.

[45] Her parents have had her in counselling since she was fifteen and so she is tired of it. She denies being angry around her twins and believes she can protect them adequately and they should be returned to her care.

[46] The father testified that the criminal charges with respect to his daughter were withdrawn in June, 2012. There are still outstanding criminal charges with respect to other children which will be heard in April, 2013. He had access to his children after they were apprehended but it stopped in June, 2011 when he was charged with sexual touching to his daughter. He has not seen them since. He is not sure if he asked for visits or was waiting for his trial to be completed. He was living with the children when they were apprehended. He said the mother is a fine mother. She was overly protective of the children and would not allow anyone to harm them including himself. He is prepared to follow any Court Order restricting his access to the children if that meant they would be returned to the mother's care. He denies sexually touching or assaulting his children or the children for which he is about to stand trial.

PLAN OF CARE

[47] The Minister proposes that these children be placed in permanent care and custody, with no provision for access so that the children may be placed for adoption. The children have been living with the maternal grandparents since they were taken into care in 2011. The maternal grandparents are prepared to care for

the children on a long-term basis and are prepared to adopt them as their own. The Minister supports the grandparent's plan for adoption but that process cannot be initiated until there is a Permanent Care and Custody Order.

[48] The Respondents propose that the children be returned to the care of the mother. The mother sees no problem with the father having access to the children. The father stated that, if necessary, he would not have any contact with the children, if it would assist in having the children returned to the mother's care.

SUBMISSIONS

[49] Counsel for the Minister submits there has been no change in circumstances since the Disposition Order was issued in October, 2011; that the Plan of Care applied at Disposition is not being carried out and the least intrusive alternative that is in the children's best interests is permanent care and custody with no provision for access. The Minister's plan supports the grandparent's wish to adopt the children. The children are bonded to their maternal grandparents and have been in their care since apprehension in March, 2011. The children would have ongoing contact with family members including an older sibling. The Minister further submits it is not in the children's best interests to return them to the mother

because the risk of harm is greater than the risk of harm if they were to remain in the care of the Minister.

[50] Counsel for the mother submits the protection proceeding should be dismissed because the children have not been harmed while in the care of the mother and she would not allow anyone to cause harm to them. Counsel for the mother submits that she did not access services because she did not do anything wrong and she viewed accessing services as a punitive measure. Counsel for the mother submits that the mother's confrontational response to various workers of the Minister is based on her belief that everyone is ganging up on her when she did not do anything to harm her children. Counsel for the mother further submits the court should not remove the children from her care simply because she would not admit the father could harm the children.

[51] Counsel for the father submits that there is evidence the mother is overprotective of the children and appreciates the risk of harm to them; that the withdrawal of charges, based on the disclosure of their daughter, is a change in circumstances contemplated by Section 46.4 of the *Children and Family Services Act*. Therefore, the substantial risk of harm has been eliminated and the failure of

the mother to participate in services is not significant since the risk of harm has been eliminated through the withdrawal of the criminal charges.

[52] Counsel for the father further submits that the disclosures of the twins reported by R. P. and the grandparents must be weighed against the fact that no disclosure was made to police by one child based on the reporting of R. P., the charges, based on the disclosure to R. P. by the other child was withdrawn, that no charges resulted from the disclosure to the grandparents and the children did not make any disclosure throughout their counselling sessions with Julie MacDonald.

[53] Counsel for the father further submits that the Minister's reliance on the children's reaction to the mother during access visits as a lack of bonding was unfair to the mother because the Minister terminated access for a long period of time and did not seek an assessment to determine whether the children's behaviours were the result of the mother's actions or the result of the Minister's failure to facilitate access over an extended period of time because of the mother's abrasiveness.

[54] Counsel for the father further submits the father is willing not to have any contact with the mother and the children if they are returned to her care. There is no evidence that he breached court orders in the past and, therefore, there should not be any risk of harm to the children if they are returned to the mother's care.

BURDEN OF PROOF

[55] The burden of proof in this proceeding is the civil burden on the balance of probabilities but one that must take into consideration serious consequences of a request to have a child placed in their permanent care of the Minister. The burden of proof is on the Minister to show that a Permanent Care and Custody Order is in the children's best interests.

LEGISLATION

[56] The court must consider the requirements of *Children and Family Services Act, S.N.S. 1990, c. 5* in reaching its' conclusion. I have considered the preamble, which states:

AND WHEREAS children are entitled to protection from abuse and neglect;

AND WHEREAS parents or guardians have responsibility for the care and supervision of their children and children should only be removed from that supervision, either partly or entirely, when all other measures are inappropriate;

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;

[57] I have also considered Sections 2(1) and 2(2), which provide:

Purpose and paramount consideration

2 (1) The purpose of this Act is to protect children from harm, promote the integrity of the family and assure the best interests of children.

(2) In all proceedings and matters pursuant to this Act, the paramount consideration is the best interests of the child.

[58] I have considered the relevant circumstances of Section 3(2), which provides:

3 (2) Where a person is directed pursuant to this Act, except in respect of a proposed adoption, to make an order or determination in the best interests of a child, the person shall consider those of the following circumstances that are relevant:

(a) the importance for the child's development of a positive relationship with a parent or guardian and a secure place as a member of a family;

(d) the bonding that exists between the child and the child's parent or guardian;

(e) the child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs;

(i) the merits of a plan for the child's care proposed by an agency, including a proposal that the child be placed for adoption, compared with the merits of the child remaining with or returning to a parent or guardian;

(k) the effect on the child of delay in the disposition of the case;

(l) the risk that the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent or guardian;

(m) the degree of risk, if any, that justified the finding that the child is in need of protective services;

[59] Other relevant Sections include Sections 42(2), which provides as follows:

(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.

[60] I have reviewed the least intrusive alternatives, including services to promote the integrity of the family. Services to promote the integrity of the family have been refused by the mother. The court is unable to determine if the mother benefited from educational sessions with Dr. Durdle as no report was filed and Dr. Durdle did not testify.

[61] Section 42(3) provides:

(3) Where the court determines that it is necessary to remove the child from the care of a parent or guardian, the court shall, before making an order for temporary or permanent care and custody pursuant to clause (d), (e) or (f) of subsection (1), consider whether it is possible to place the child with a relative, neighbour or other member of the child's community or extended family pursuant to clause (c) of subsection (1), with the consent of the relative or other person.

[62] Family placement has been considered. The children have been residing with the maternal grandparents since March, 2011. The maternal grandparents wish to adopt the children and the Minister supports this plan.

[63] Section 42(4) provides:

(4) The court shall not make an order for permanent care and custody pursuant to clause (f) of subsection (1), unless the court is satisfied that the circumstances justifying the order are unlikely to change within a reasonably foreseeable time not exceeding the maximum time limits, based upon the age of the child, set out in subsection (1) of Section 45, so that the child can be returned to the parent or guardian.

[64] The time limits pursuant to the legislation have expired and the court must either place the children in the permanent care and custody of the Minister or dismiss the proceedings and return the children to the care of the Respondents, or the mother alone.

CONCLUSIONS:

[65] There are too many red flags that suggest the child J(D) has been exposed to sexually inappropriate behaviours and that the mother knew of these concerns and did not take them seriously. I accept the evidence of R. P. that the twins told her in the summer of 2012 that their father “licked their bum”. She immediately reported this disclosure to the mother who replied that “the father does crazy things when he is drinking”. The statements were spontaneous statements of the children and the court has no reason to believe that R. P. would fabricate this information. The mother acknowledged to workers of the Minister that R. P. mentioned the children’s disclosure soon after it occurred. The grandmother’s observation of sexually inappropriate behaviour by J(D) while in their care after apprehension provides credibility to the statement being made as opposed to the mother’s belief that the children did not make any statement.

[66] The father has a prior conviction for sexual assault albeit against an adult and not a child. The father has been charged with sexual touching and sexual assault with respect to other children. The mother began living with the father

knowing he was charged with these offences and knowing that her own children disclosed that the father licked their bum. The mother did not take these risks seriously.

[67] The mother has refused services that were agreed to at the Disposition Hearing and which were included as part of a Plan of Care to address Protection risks. There is no indication she benefited from education sessions with Dr. Durdle.

[68] The mother has been confrontational rather than cooperative when attempts were made to address issues surrounding the children's safety.

[69] The mother has shown more concern for how poorly she has been treated by workers for the Minister, her parents, the access facilitators and others who have reported concerns about the father's behaviour than the distress the children are experiencing as reported by Dr. MacDonald and others.

[70] The withdrawal of the criminal charges with respect to the allegations of sexual touching and sexual assault involving J(D) do not risk reduce the

substantial risk of sexual harm to the children in the future. The father still faces sexual assault and sexual touching offences in relation to other children. The mother continues to believe the father would never harm the children. She took time during access visits to reintroduce the children to the father and his family and told them they would soon be returning home. The mother was insensitive to the children's emotional needs. As a result they experienced anxiety after these visits with the need for counselling with a Psychologist.

[71] The mother refused to participate in the Parental Capacity Assessment which was ordered by the court. Given the mother's oppositional and confrontational behaviour with workers of the Minister, her parents, access facilitators and others, a Parental Capacity Assessment would have assisted the court in determining if she had the capacity and ability to protect the children from harm.

[72] The children continue to experience anxiety and engage in inappropriate behaviours when exposed to their parents. Based on the hearsay statement of the children to R. P., the mother's dismissal of these statements and the outstanding criminal charges, the children's acting out behaviours while in the care of the

grandparents, the father's outstanding charges of sexual touching in relation to other children, and the mother's refusal of services to promote the integrity of the family, the court finds the children still in need of protective services pursuant to Section 22(2)(b) and (d) of the CFSA *supra*.

[73] The court is required to make an Order in the children's best interests. I have considered all the relevant factors for determining the child's best interests as set out in Section 3(2) of the *Children and Family Services Act*. I accept the Minister's Plan of Care for the children to be in their best interests. This plan would mean the children being placed for adoption with the maternal grandparents. This plan would ensure the children have a secure place as a member of a family. The children would be able to continue relationships with relatives. There would be more continuity in their care. The likelihood of disruption of that continuity is greater if they were to return to the care of their mother. The children are bonded to the grandparents who are able to meet all their physical, mental and emotional needs.

[74] The risk of harm of returning these children to the care of the Respondents or the mother alone is greater than the risk of them remaining in the care of the Minister and placed for adoption.

[75] I find the Agency has met the burden of proof. It is in the children's best interest to be placed in a home in which their personal security and physical safety are assured. The court is not satisfied that would be available in the home of the Respondents or the mother. Therefore, it is in the children's best interest to be placed in the Permanent Care and Custody of the Minister.

[76] Since a provision for access would impede the Minister's plan for a permanent placement through adoption, which is in the children's best interest, there will be no Order for access.

J.