

PUBLISHERS OF THIS CASE PLEASE TAKE NOTE THAT S. 94(1) OF THE **CHILDREN AND FAMILY SERVICES ACT, S. N. S., 1990, CHAPTER 5** APPLIES AND MAY REQUIRE EDITING OF THIS JUDGMENT OR ITS HEADING BEFORE PUBLICATION. SECTION 94(1) PROVIDES:

"94(1) NO PERSON SHALL PUBLISH OR MAKE PUBLIC INFORMATION THAT HAS THE EFFECT OF IDENTIFYING A CHILD WHO IS A WITNESS AT OR A PARTICIPANT IN A HEARING OR THE SUBJECT OF A PROCEEDING PURSUANT TO THIS ACT, OR A PARENT OR GUARDIAN, A FOSTER PARENT OR A RELATIVE OF THE CHILD."

PUBLISHERS OF THIS CASE FURTHER TAKE NOTE THAT IN ACCORDANCE WITH S. 94(2) NO PERSON SHALL PUBLISH INFORMATION RELATING TO THE CUSTODY, HEALTH AND WELFARE OF THE CHILDREN.

1999

F.DM.No. CFSA99-08
F.DM.No. CFSA99-08(a)

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

BETWEEN:

MINISTER OF COMMUNITY SERVICES

APPLICANT

- and -

**J.G.B., S.E.C.
and M.S**

RESPONDENTS

Revised Decision: The text of the original decision has been revised to remove personal identifying information of the parties on September 3, 2008.

DECISION

[Cite as MCS v. J.G.B., S.E.C. and M.S., 2002 NSSF 1]

HEARD BEFORE: The Honourable Justice R. J. Williams

LOCATION: Halifax, Nova Scotia

DATE HEARD: November 26, 27 & 28, 2001

DECISION: December 13, 2001 (Orally)

WRITTEN RELEASE OF ORAL: January 4, 2002

COUNSEL: Ms. T. Pillay, for the Applicant
Mr. L. Mitchell, for the Respondent

WILLIAMS, J. (Orally)

This is a proceeding under the *Children and Family Services Act*. It involves a young mother, J.G.B., and her children A.K.G.C., born [in 1998], now three and a half, and D.B., born [in 2000,] now almost two.

The Department of Community Services asserts that the children should be placed in their permanent care and custody and ultimately placed for adoption.

J.G.B. seeks to have the children returned to her care and the proceeding dismissed or terminated. She states that she would voluntarily enter and utilize services from the Agency and/or community upon termination of the proceeding.

A. THE LEGAL PROCEEDINGS

The background of the legal proceedings is lengthy. It includes the following:

- (1) February 11, 1999. An application alleging that A.K.G.C. was a child in need of protective services was initiated by the Department of Community Services;
- (2) February 15, 1999. The matter came before Justice Legere. A consent order left A.K.G.C. in the care of J.G.B. (who was residing with her parents at the time). Ms. Pillay, counsel for the Agency, advised the Court that there was a no-contact order between S.E.C., A.K.G.C.'s father, and J.G.B. arising from separate proceedings in the Provincial court. S.E.C. was present. He did not have counsel. Mr. Mitchell appeared with J.G.B. on this occasion, and throughout this proceeding;
- (3) March 1, 1999. The matter came before this Court for a pre-trial on the need of protective services issue. Mr. Manthorne appeared with S.E.C. but indicated he did not yet have instructions. Mr. Mitchell indicated he was uncertain whether the in need of protective services issue would be contested or not. The matter was adjourned for this to be considered. A.K.G.C. remained in J.G.B.'s care;

(4) April 22, 1999. Mr. Manthorne withdrew as S.E.C.'s counsel. He did not have instructions. S.E.C. did not appear. By consent, as between J.G.B. and the Agency, and based on the record before the Court, as it related to S.E.C., A.K.G.C. was found in need of protective services pursuant to s.22(2)(g) of the *Children and Family Services Act*.

22 (2) A child is in need of protective services where
(g) there is a substantial risk that the child will suffer emotional harm of the kind described in clause (f), and the parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;

The consent was an admission pursuant to s.40 (3) of the *Children and Family Services Act*.

The matter was adjourned with A.K.G.C. remaining in J.G.B.'s care.

The order contained a number of conditions including:

(1) That J.G.B. and A.K.G.C. shall reside and sleep each night in the home of her parents, M.B. and G.B.; and further that she would have in-home supervision while her parents were absent. That supervision would be provided by and at the cost of the Agency.

- (5) June 23, 1999. A pre-trial on the issue of disposition was held. The Agency Plan (dated June 9, 1999), sought a supervision order. Mr. Mitchell, on behalf of J.G.B., expressed some difficulty with supervision continuing. The matter was adjourned to July 16, 1999;
- (6) July 16, 1999. A disposition (supervision) order was granted by consent. Mr. Mitchell filed a letter dated July 15, 1999, indicating that J.G.B. would cooperate with the Agency, that there had been improvement in her relationship with "supervisors". The matter was adjourned for a disposition review;
- (7) October 6, 1999. The supervision order was renewed by consent;
- (8) November 3, 1999. The clause requiring in-home supervision when J.G.B.'s parents were not present was deleted from the order by consent. J.G.B. continued to live at her parents' home;

(9) January 27, 2000. The supervision order was renewed. The requirement that J.G.B. live with her parents was removed, again by consent. J.G.B. had left her parents' home by this time;

(10) April 3, 2000. The supervision order was continued. D.B. was born [in 2000], he was not part of the proceeding then before the Court. The matter was adjourned to June 5, it being anticipated that the proceeding would be terminated at that time. Pursuant to s.45(1)(a) of the *Children and Family Services Act*, the proceeding had to be completed by July 16, 2000, (i.e., one year after the first disposition order).

Events intervened. The Agency initiated a new proceeding concerning D.B., and took him and A.K.G.C. into care on May 19, 2000;

(11) May 29, 2000. The new matter concerning D.B. came before Justice Gass. Counsel agreed that the issue of A.K.G.C. coming into care would also be dealt with and that the June 5 date that had arose from

the April 3 appearance would be cancelled. Both children remained in the care of the Agency. Both matters were adjourned to June 16 and trial dates, if necessary, were set for September 18, 19, 20 and 21 before this Court;

(12) June 16, 2000. An appearance took place before Justice Gass. Trial dates concerning D.B.'s interim care were set for July 19 and 20, after consultation with counsel. The 30-day time period for interim hearings was extended by Justice Gass with the consent of J.G.B.'s counsel and that of the Agency. The issue of D.B.'s interim care was scheduled to be heard July 19 and 20. A.K.G.C.'s temporary care was to be dealt with at the September trial dates;

(13) July 19 and 20, 2000. The interim care proceeding concerning D.B. took place before this Court. Evidence was heard from Wayne Hollett, Karen Lewis, C.B., R.J., M.B. and J.G.B.. An order returning D.B. to J.G.B.'s care was made, it being understood that she would reside with C.B., her boyfriend R.J.'s mother, until she (either with or without R.J.) secured an apartment approved by the Agency or by the Court;

(14) July 31, 2000. A pre-trial conference was held. Counsel agreed to proceed as follows:

- (a) The existing proceeding concerning A.K.G.C. would be terminated;
- (b) A new proceeding concerning A.K.G.C. was to be initiated effective that date, July 31;
- (c) A consent order placing both children in the temporary care of J.G.B. was made;
- (d) The two new proceedings were consolidated, that is the proceeding concerning D.B. that had been initiated with the first appearance being May 29 and the new proceeding concerning A.K.G.C.;
- (e) A s.96 order admitting the evidence from the initial proceeding concerning A.K.G.C. into the new consolidated proceeding was made;
- (f) The issue of finding in need of protective services with respect to both children was adjourned until August 16. This issue (with respect to D.B.) had to be dealt with by August 23. A consent order was anticipated. Counsel indicated the desire to get both children on the same time lines under the legislation;

(15) August 16, 2000. A consent order was taken out before Justice Campbell. The Order granted found both children in need of protective services pursuant to s.22(g) of the *Children and Family Services Act*.

22 (2) A child is in need of protective services where

(f) the child has suffered emotional harm, demonstrated by severe anxiety, depression, withdrawal, or self-destructive or aggressive behaviour and the child's parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;

(g) there is a substantial risk that the child will suffer emotional harm of the kind described in clause (f), and the parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm.

Temporary care of the children remained with J.G.B., who continued to live with C.B.. The consolidation and s.96 orders were included in this order;

(16) October 19, 2000. The disposition hearing took place. By consent the disposition order was granted with a supervision order. Mr. Mitchell, J.G.B.'s counsel, gave notice of a motion for an assessment by someone independent of Assessment Services. The motion was adjourned to be dealt with at the future request of Mr. Mitchell. This motion was not subsequently crystallized;

(17) January 8, 2001. A disposition review was scheduled. The Agency sought a renewal of the supervision order. Mr. Mitchell had just

received the documentation and did not have instructions. The appearance was treated as a pre-trial and adjourned to January 29, 2001;

(18) January 29, 2001. The supervision order was renewed by consent;

(19) April 9, 2001, the matter was scheduled for disposition review. Mr. McVey, on behalf of the Agency, indicated that the Agency had considered seeking a termination of the proceeding, but due to "changes in the home" sought time to review the matter. Mr. Mitchell indicated his client was seeking a termination of the proceeding. The matter was adjourned;

(20) May 15, 2001. The Agency sought a continuation of the supervision order. An Agency plan seeking this was filed. J.G.B. sought a termination of the proceeding. J.G.B. was directed to file an affidavit prior to the next appearance indicating day-care status, programs she was enrolled in and had attended at the Parent Resource Centre, and

detailing appointment services missed including those with Dr. Ellis and, finally, outlining her plans for the next 9 to 12 months;

- (21) July 20, 2001. The Agency filed a review application dated July 19. This review application sought a further supervision order and was filed in anticipation of an appearance scheduled for July 25. The Agency plan attached to this review application was dated May 9 and stated in part at page 7:

Since the review hearing at Halifax Supreme Court (Family Division) on April 9, 2001, the respondent J.G.B. has not followed through with the recommendations made by the Agency. A statement of understanding was developed on May 7, 2001, as a means to engage J.G.B.'s cooperation. If J.G.B. demonstrates progress, the Agency will review seeking a termination order.

- (22) July 20, 2001. The children were taken back into care;
- (23) July 25, 2001. The matter came back to Court. J.G.B. did not appear. Mr. Mitchell appeared on her behalf but did not have instructions. A temporary care order was granted and the matter adjourned to allow Mr. Mitchell to secure instructions;

- (24) July 30th, 2001. The matter was adjourned to August 1 at Mr. Mitchell's request;
- (25) August 1, 2001. A consent temporary care order was granted. The matter was adjourned to September 7 for pre-trial; October 23 for a settlement pre-trial; and November 26, 27 and 28 as tentative trial dates. The outside date for disposition was October 19, 2001. Discussion at the August 1 appearance indicated that consideration of extension the time periods under the legislation may have to be given, in part, as a result of commitments Mr. Mitchell had and to provide him with time to prepare adequately for trial;
- (26) On September 7, 2001, an organizational pre-trial was held. The temporary care order was renewed by consent. The pre-trial memo from that date provides in part, quote:

The outside date for disposition in the proceeding is October 19, 2001. Counsel for the Agency and counsel for J.G.B., the mother of the children, both agree that it is in the best interest of the children that the time period be extended by the Court in accordance with the principles of the Nova Scotia Court of Appeal in HW and Family and Children Services of Colchester County. Based on the Court record and the assertions made by counsel, the Court makes the

finding that it is in the best interest of the children to extend the time period. The time period for disposition is extended to January 30th, 2002, or to such other date as may be ordered by the Court.

The trial dates of November 26, 27 and 28 were agreed to and confirmed. No small part of this order arose from Mr. Mitchell's indication that he required time to adequately prepare for trial and to consult with J.G.B. over the events that had occurred in July of 2001. And the Court's conclusion that it was in the interest of the children to ensure that their mother had appropriate and adequate time to put forward her position to the Court;

(27) October 15, 2001. A pre-trial was held. Mr. Mitchell consented to admission of the July 24, 2001, video-taped statements of A.K.G.C. (as an exception to the hearsay rule). He reserved the right to make argument or submissions as to the weight and to the significance of the content of that videotape;

(28) October 23, 2001. A settlement pre-trial was held;

(29) November 26, 27, 28, 2001. The trial proceeded. Mr. Mitchell waived cross-examination of Bev Deal, Cst. Murray, Colleen Maloney, Dr. Lowell Blood and Pauline Cross. Some 40 exhibits were filed. Evidence was called from Wayne Hollett, Dr. Catherine Ellis, Dr. Catherine Morrison, Elizabeth Taylor, Dianne Wheeler, Karen Lewis, Andrea Boyce, Tina Jennings, M.B. W.J., C.B., R.J., and J.G.B.. My decision was reserved.

B. THE

EVIDENCE

I have had an opportunity to review the record as it is before me, my notes, and, for some witnesses, transcripts of the proceedings.

J.G.B.'s parenting has been before the court since February of 1999, close to three years.

The initial referral to the Department of Community Services (concerning J.G.B.) was September 3, 1998. It concerned A.K.G.C.. It was from a Public Health nurse. The referral included the following

concerns: no pre-natal medical care; baby did not see a doctor for 20 days after birth and when seeing had thrush; nurse did a home visit in Halifax; J.G.B. had left the residence but the apartment was a mess; there were six cats in a room which was covered with urine and feces; there was vomit on the floor as well as condoms and tampons. Efforts to locate J.G.B. by the Agency failed. These “concerns” were not proven at trial; the Public Health nurse was not called.

In the fall of 1998 J.G.B. and A.K.G.C. moved in with her parents. They left and spent a week with S.E.C.. They returned to her parents and then went back with S.E.C. in mid-January of 1999.

On February 2, 1999, the Department of Community Services received another referral. The February 11th, 1999, affidavit of Charlene MacDonald reads in part:

7. We went (February 2) to Apartment 13 where A.S., J.G.B. and the baby, A.K.G.C., were present. The apartment consisted of one room with an adjoining bathroom. A.K.G.C. was strapped in an infant seat on the floor, naked. There was a blanket under her that was wet with urine. She seemed overall to be healthy. The

apartment was dirty. Cigarette butts were scattered all over the floor and there were three cats in the apartments. J.G.B. indicated that one of the cats slept with the baby. There were numerous holes in the walls, put there by A.S., who said that he had been defending J.G.B. from an individual named S.E.C.. J.G.B. explained that she had moved in with S.E.C. approximately one month ago but had left him last week and moved in with A.S., whom she described as just a friend. The apartments were adjacent to each other and the previous Thursday, S.E.C. became very violent, trying to break through the wall to get at J.G.B.. The police were called in and S.E.C. was arrested.

12. February 3, 1999, I spoke with J.G.B. who provided the following information:

When asked why [...] Street was referred to as a "crack house", she responded that it probably had something to do with the fact that there were "crackheads" coming to her door "every ten minutes" wanting to consume crack.

15. February 3, 1999. I met with J.G.B. to review the Agency's concerns and indicated that the Agency was prepared to allow J.G.B. to reside with her parents along with her baby, A.K.G.C., if J.G.B. was prepared to abide by certain conditions. The alternative would be that A.K.G.C. would be placed in foster care. I also explained to J.G.B. that we were not comfortable with her being unsupervised during the day while her parents were at work. We explained that we hoped to hire a service provider to be with her during the day while her parents were at work.

16. I agreed to accompany J.G.B. to [...] Street, Apartments [...], so that she could pick up her belongings. Upon arrival at [...] Street, I observed a large young male with a bulldog pounding on A.S.' door. This individual was yelling, "I want my fucking money right now. I mean it." He appeared to be angry. I asked J.G.B. permission to take some pictures of the apartment where she and S.E.C. had been residing. J.G.B. gave me permission to do so. I entered Apartment [...] and observed that it consisted of one

room and a bathroom. There was a mattress on the floor, a couch with broken legs, a chair and a refrigerator. There was a smell of garbage throughout the apartment and I noted that there bags filled with garbage in the bathroom and closet. There was debris on the floor including gyproc and insulation. I observed a hole in the wall that was larger than a basketball. J.G.B. identified this hole as where S.E.C. had tried to break through the wall to get at her at A.S.' apartment on January 22. There was very little food in the fridge. After J.G.B. collected a few of her belongings, we proceeded to A.S.' room, Apartment [...] I observed that A.S. resides in a room similar to Apartment [...] although there were more personal belongings in his residence. J.G.B. introduced me to three cats who were being cared for by A.S. in her absence.

Later in that paragraph,

There were several holes in the walls of the apartment. A.S. stated that J.G.B. had made these holes the night of January 22. A.S. explained that J.G.B. experienced some kind of anxiety attack and was having difficulty breathing. J.G.B. panicked and started hitting the walls in frustration. He further added that S.E.C. had been at the window and door trying to break into his residence when J.G.B. was doing this. J.G.B. confirmed this.

As a result of these events, the February 11, 1999, proceeding was initiated. An independent assessment by Dr. Lowell Blood was recommended. It became available on May 18, 1999. It recommended the following services be provided to J.G.B.: a family skills worker meet with J.G.B. two to three times a week; individual counselling; supervision continue in the home.

J.G.B. and A.K.G.C. lived with her parents with daytime supervision and support until or just before January of 2000. D.B. was born [in 2000]. Things seemed to be, in relative terms, going well. A family skills' worker, Pauline Cross, and individual therapist, Wayne Hollett, were involved with J.G.B. through the fall of 1999. J.G.B. was now in a relationship with R.J.. His mother was very supportive. J.G.B. lived with her for a time after leaving her parents' home and then she, R.J., A.K.G.C. and D.B. moved into an apartment in March of 2000.

Wayne Hollett, MSW, had seen J.G.B. since August of the previous year. His clinical treatment progress report of March 22, 2000, concluded:

Now that J.G.B. is out on her own, it is essential to maintain family skill and therapeutic intervention for a sufficient length of time to provide parenting assistance and individual relationship therapy, to assess individual and family functioning in light of the new circumstances, and to ensure that the children's physical and emotional needs continue to be met.

In May of 2000 the situation broke down. D.B. and A.K.G.C. were taken into care. Karen Lewis' affidavit of May 25, 2000, reads in part:

4. This proceeding has been before this Honourable Court since February 1999 when the Minister of Community Services commenced an application pursuant to s.32 of the *Children and Family Services Act* seeking a supervision order in relation to J.G.B.'s only child at the time, A.K.G.C.. When the Agency became involved, J.G.B. was living with A.K.G.C. in deplorable conditions and the child was not being properly taken care of. Furthermore, J.G.B. was involved in a relationship with an abusive partner, S.E.C..

5. Arrangements were put in place whereby J.G.B. moved in with her parents. Supervision was put in place during the time when J.G.B.'s parents were not home. Numerous services were also put in place, such as a parental capacity assessment, counselling for J.G.B. and parenting education.

6. J.G.B. was extremely resistant to Agency involvement and did not participate in services during the initial part of this process. However, she did make some improvements in changing her attitude and this has been documented by her counsellor, Wayne Hollett.

7. While J.G.B. resided at her parents' home under the supervision of the Agency, she became pregnant again. J.G.B.'s parents indicated that they were not prepared to let J.G.B. continue to reside with them with her two children. J.G.B. was aware, therefore, that she would have to move out on her own. Both Wayne Hollett, J.G.B.'s counsellor, and Pauline Cross, the family support worker, expressed concern about J.G.B.'s ability to cope with two young children on her own without in-home support.

11. As appears from the case recordings of March 24, 2000, I visited J.G.B. in her home. R.J. was introduced to me and we discussed his role with J.G.B. and the children. R.J. related that he spent a great deal of time with the children and saw them all as being a family unit in the future. R.J. indicated that he had a criminal record and that he had been charged with assault in the past. We also discussed

R.J.'s anger and I asked R.J. if he would be prepared to attend sessions to assess whether he could control his anger or not. He was hesitant. I then asked if he was prepared to attend sessions with Wayne Hollett to address these issues and he agreed.

13. As appears from the case recordings of May 12, 2000, Pauline Cross and Bev Deal visited J.G.B. in her home. They reviewed the Agency's concerns. There had been ongoing police involvement and during one incident, J.G.B. started yelling at the police officer. The children were present. J.G.B.'s response to this was that she wanted to teach her children to stand up for what they believed in. It was explained to J.G.B. that the children were too young to understand that. J.G.B. also stated that she had broken off with R.J. because he had too many problems of his own. J.G.B. denied that R.J. was violent. Ms. Cross pointed out that R.J. had been convicted of assault and that there appeared to be a lot of holes in the apartment which looked as if someone had punched the walls.

I should indicate for the record, that I would not conclude from the evidence before me that the cause of those holes in the wall was as stated in this affidavit.

Furthermore, Pauline Cross indicated that she had been at the apartment on the previous night and had helped clean it up. Ms. Cross had observed various things that caused to have very serious concerns about the children's safety. For example, ashtrays were overflowing, there was broken glass on the floor, there was a glass tumbler in the baby's crib, a glass window sitting against the wall and dirty diapers all over the place. J.G.B. admitted that she was feeling overwhelmed.

It was made clear to J.G.B. during that visit that the Agency was very concerned about her ability to care for her children and that she needed to make her children the priority in her life. Ms. Cross mentioned to Bev Deal that when she was there on the previous night, the baby had been in the same sleeper for three days and it was too small. Furthermore, the baby was dirty.

The evidence and affidavit indicates that the matter was reviewed at the Department of Community Services office, that a number of concerns about J.G.B.'s care of the children were identified and discussed.

On May 18 Ms. Lewis made an unannounced visit to J.G.B.'s home. The conditions were similar to those that had been noted previously. A decision was made that the Agency would take the children into care.

The Agency was unable to locate J.G.B. immediately. J.G.B. had gone to a hotel, the [...]. Ms. Lewis's affidavit relates that on May 19 she attended the [...] and indicates at clause 16:

16. I attended with a colleague, Danny Smith, and police officers at the [...] in order to take the children into care. J.G.B. answered the door and asked for reasons as to why the children were being taken into care. I indicated that we had discussed the Agency's concerns the day before and that it was the Agency's

position that the children were at risk as a result of her inability to care for them. I asked J.G.B. where D.B. was, and she pointed to a car seat on a chair. As I approached D.B., I noticed a strong odour and when I lifted him up, his bottom was covered with faeces. This was leaking out all around his diaper. J.G.B. stated that R.J. had left to buy some diapers. I did not see any bottles in the room. After a few minutes, J.G.B. passed A.K.G.C. to me. I noticed that A.K.G.C. was filthy. She had food on her face and in her hair and a very smelly diaper. She had on the same pants on she had yesterday when I visited J.G.B. and still had no socks. A.K.G.C. was fine in the car on the way to the foster home and smiled and chatted.

At the foster home it was noted that the children were in a filthy state. A.K.G.C.'s language was identified as an issue in the foster home. The use of words like "fuck", "shit", and "bitch" being identified.

Clause 18 of Ms. Lewis's affidavit indicates that she had received a telephone call from Wayne Hollett on May 21 indicating that it was his understanding that J.G.B. had the option of moving in with her parents, but that J.G.B. would not do that unless R.J. could go with her.

Clause 20 of her affidavit indicates that on May 23 Ms. Lewis spoke with C.B., R.J.'s mother. C.B. indicated that she had offered to take the children from J.G.B. to help out.

I asked C.B. when she thought things began to deteriorate. C.B. responded that when J.G.B. moved into her own apartment it was always a mess.

C.B. in her subsequent testimony differed in her recounting of the conversations referred to in the notes made by workers in this and subsequent contacts. I did not find C.B. credible when she asserted that her comments were different or significantly different from those recorded by the workers on the case.

Pauline Cross, the family support worker, provided a report covering the March 29, 2000, and May 15, 2000, time frame. That report states in part, quote:

Over the past six weeks things have deteriorated in J.G.B.'s situation to the point where the professionals involved with she and her children have become quite concerned and she is in an emergency situation regarding housing. She has at the time this writing, three days to obtain housing as she has

been evicted. Also, she has been and may continued to be involved with a man with a bad temper who has directed his anger at this worker on two occasions.

J.G.B.'s supports have diminished considerably, her mother is not longer willing to offer financial and emotional support, nor to take J.G.B. back in under her roof.

This writer has been in close contact with J.G.B. recently and has repeatedly offered assistance in seeking suitable housing but help continues to be refused.

During my visit on May 10, as I was preparing to leave, the police arrived. R.J. was inside the apartment with the children, J.G.B. was on her way to the store. In the driveway I suggested to J.G.B. that she go back into the building to see what was going on. As she did not come immediately out I entered the building. The police were standing outside J.G.B.'s door with the superintendent and when I asked what was going on they informed me they were there to escort R.J. out of the building and off the property. Apparently there was a Protection of Property order in effect. He was not to be on the property. When I questioned R.J. about this he denied it.

I should note at trial he acknowledged that R.J. knew he was not to be at the property.

Ms. Cross's report goes on to state:

During many of my visits and this day also, the children were privy to the angry remarks exchanged between all parties involved. I was particularly surprised when J.G.B. made some most inappropriate remarks to the officers present.

Ms. Cross goes on to describe the children sitting in strollers in the wind while the angry exchange between the police, herself, R.J. and the building superintendent took place.

After some discussion with the people involved, it was decided that J.G.B. and the children would spend the night at R.J.'s mother's home.

Ms. Cross goes on to describe helping (the next day) J.G.B. clean up her apartment. She describes it as follows:

There was a pile of broken glass behind a chair from a broken picture in the living room and another pile of broken glass from a lamp in the master bedroom. There were six or more dirty diapers thrown about the children's room on the floor amongst the toys and a ceramic mug. The blankets in the crib were soiled, there was no sheet, and there was a glass sitting in the crib. There was soiled clothing everywhere. There was a fair bit of garbage everywhere. J.G.B. was somewhat resistant to my involvement in getting things straightened up but seemed in better spirits afterwards. The baby had been in the same soiled sleeper for two days and I got him bathed and dressed. The baby was badly in need of bathing and was beginning to develop a diaper rash.

Ms. Cross went out and purchased some items. She also took children's clothing to a laundromat and had them washed.

Later that evening Ms. Cross received angry and threatening telephone calls from R.J.. Part of his complaint was that she had dumped ashtrays which were their source of tobacco.

Karen Lewis, as I have indicated, was the Agency's social worker through this time frame. Her notes include the following.

May 12, 2000. Worker, Pauline Cross and family support worker made a home visit. There has been ongoing police involvement. There was an incident on Wednesday evening. J.G.B. escalated and was yelling at the police officer. The children were present. J.G.B.'s response to this was that she wanted to teach the children to stand up for what they believe in. Worker explained that they were too young to understand this. All they would have seen was mommy angry and it would have scared them. J.G.B. says that she has broken off with R.J. because he has too many problems of his own. Denies that he is violent although Pauline Cross pointed out that he has an assault charge. J.G.B. admitted feeling overwhelmed but feels she has reached out for supports.

The plan being developed at that time was to find an apartment in a better location.

Ms. Lewis's May 18 note includes the following:

Worker made unannounced home visit this morning, arrived approximately 12:00. J.G.B. answered the door and appeared to have been lying down. She stated both children were napping. Worker discussed the information the Department had received over the past week, and J.G.B. acknowledged that there had been many problems and that it has been hard to look after the kids.

Worker reminded J.G.B. that everyone has ongoing issues, but the children's care must remain her primary responsibility. Worker noted to J.G.B. that the appearance of the apartment has deteriorated since last visit. J.G.B. stated that she is beginning to pack. Worker noted the packed items were not a concern, but worker is concerned, for example, with three bags of garbage on the living room floor.

The kitchen was full of dirty dishes, covering counter and kitchen table. A lot of dishes still had food on them. J.G.B. states that she has not done her supper dishes from last evening and prior to worker's arrival, she was getting ready to take garbage bags downstairs. Worker asked where the children were, and she stated they were napping. Worker told J.G.B. that they needed to be seen, and she said, "But you'll wake D.B.." Worker acknowledged this, but reiterated that I needed to see the children. On the way to the bedroom, worker noted cereal all over the carpet. J.G.B.'s room was a mess - sheets thrown on the bed, floor covered in clothes, half filled glasses on bureaus.

J.G.B. opened the children's room and children were awake and quiet. D.B. was in his car seat, and worker noted his sleeper was filthy around collar area and in front of the sleeper. A.K.G.C. was lying in the crib on a bar mattress. Her face was filthy and her hair had food in it. The closet had clothes thrown in the bottom. A crib mattress was on the floor. Worker asked J.G.B. why D.B. was asleep in his car seat, and she said, "It's the only place he'll sleep."

On May 19 Ms. Lewis' notes indicates the following:

Phone call to HRM requesting police escort to the home of J.G.B.'s. No one was at the residence. We proceeded to the home of C.B. who related that J.G.B. and the children spent the night at her home but left this morning.

On May 19, 2000, the worker attended the [...] and the children were taken into care.

A hearing concerning these events took place on July 19 and 20, 2000 (relating to D.B.). At the time Wayne Hollett, who had been seeing J.G.B. since the previous August, testified He indicated (from the transcript, Page 39 and 40) at that hearing:

Q. What risks do you see, if any, in the return of D.B. to her care?

A. If J.G.B. finds herself in the situation of stress because of extraneous matters like, for example, landlords or reports or whatever, it would be my opinion that there would be a tendency for her to be somewhat preoccupied, both emotionally and cognitively. And if that were the case, it is conceivable that some of the physical needs of the children may not be met in a consistent -- in a consistent manner.

I don't believe that there's any strong risk with regard to a constant or a chronic situation of neglect. I believe more that if she's exposed and if she reacts in a particular way to the stresses in her life, that there might be some intermittents in her ability to meet the children's physical needs appropriately.

And I make it a point to say physical rather than emotional, because my experience has been that J.G.B. makes every effort to react and relate in appropriate ways with her children in an emotional sense. The only concern that I would have in that regard is that if she's really upset, then the children would pick up on her upset and that might be somewhat of a difficult situation.

Q. Do you see it likely that she would continue to cooperate with the Agency and yourself and other supports?

A. I see it much more likely than in the past, yes.

The plan put forward at the time involved R.J.'s mother C.B., the couple and the children living with her (C.B.). This is a key aspect of the decision to return D.B. to J.G.B.'s care. I commented in my decision (of July 31, 2000) with respect to D.B.'s interim care,

The difficulty with the Agency case, in my view, is the second part of the test in s.39(7), the portion that the Court must conclude that the child cannot be protected adequately by an order pursuant to clause (a), (b) or (c).

The plan was to live with C.B.. I indicated:

I really have little or no evidence to suggest to me that this would be inadequate to protect the child from the risk that has been demonstrated, that risk being a risk of neglect.

The issue of neglect was (and is) clearly the primary issue of concern in relation to these children.

D.B. was returned as a result of my decision. A.K.G.C. returned shortly thereafter by consent. The new (current) proceeding was started. Services were maintained. The children were admitted to be and found to be in need of protective services on August 16, 2000. The finding was made pursuant to s.22(2)(g) of the *Children and Family Services Act*.

22 (2) A child is in need of protective services where

(g) there is a substantial risk that the child will suffer emotional harm of the kind described in clause (f), and the parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;

Section 22 (2)(f) provides:

22 (2) (f) the child has suffered emotional harm, demonstrated by severe anxiety, depression, withdrawal, or self-destructive or aggressive behaviour and the child's parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;

The seriousness of the issues of neglect had been clearly flagged at this time. It had been flagged by Mr. Hollett in his evidence on July 19 and 20, 2000 indicated, and I quote,

...if D.B. were to be returned, a condition that would be very important to consider would be that J.G.B. would recognize and respect the need to consistently meet the physical needs of the children; as I understand that they weren't necessarily met for a period of time.

More specifically, my understanding is that cleanliness and hygiene was an issue. That there were aspects of the physical living arrangements that potentially caused danger, and that these issues were brought to J.G.B.'s concern -- brought to J.G.B.'s attention.

It is clear to me that these topics and issues (of neglect and risk to the children) have been repeatedly discussed with J.G.B. over the course of the last number of years. She has been present in the courtroom when people have testified about the concerns. The concerns have been highlighted in the Agency "statement of understanding" and various Agency plans. They have been related to her by numerous people involved.

Dianne Wheeler, of Assessment Services, prepared an assessment report in the fall of 2000. The report is dated November 30. The report reviews the history of the matter. It indicates at page 5:

From the background information it appears that J.G.B. was inconsistent in cooperating with the Agency workers and service providers during this time period and, although as initially cooperating, by July of 1999 the situation had begun to deteriorate. J.G.B. had become quite angry about the Agency's involvement and began to resist and refuse to cooperate with the family skills worker.

Her parents had stated that they were not willing to have J.G.B. continue to live with them once she had the second child.

At Page 7.

Both J.G.B. and R.J. admit to having relationship difficulties in the past however now feel that they have worked through many of their own issues and that they will stay together as a couple. J.G.B. states that she depends on R.J. to help her with the children and she doesn't think that she could manage it on her own.

Also at Page 7.

As previously stated R.J. was not willing to be a full participant in this assessment but rather chose to be a collateral contact only. He cited his reasons for this being that he "did not want anyone getting into his head." As R.J. did not show for either of his two individually scheduled sessions no further information about him could be included in this report.

J.G.B. described this apartment on [...] Street that they moved into in February 2000 as "not being the greatest" but that she had been promised by the landlord, Mr. L., that some of the problems of exposed wires, painting, general cleaning would be completed after they moved in. J.G.B. stated that these things were not done and the relationship

with this landlord deteriorated and became riddled with tension and conflict. Both J.G.B. and R.J. were fighting with him constantly, there were frequent verbal arguments, physical altercations, death threats, police were involved and this escalated to the point J.G.B. felt very stressed. J.G.B. said she did not move her residence during this time as she believed it would not look good with the Agency if she were moving often. Both J.G.B. and R.J. feel that "their real problems started in March of 2000" when there was an anonymous report of child abuse made to the Children's Aid Society.

Again, I want to be clear, there is no question that there were problems with this landlord. The difficulties at this time were not with issues that J.G.B. and R.J. could not control, (things such as repairs that were not made) but were things that they could control - the altercations, the yelling, the arguments, the cleanliness inside their own apartment, i.e. their actions and reactions.

I should also be clear that the anonymous report of child abuse referred to was never substantiated or proven and is not a factor in this decision in any way.

Ms. Wheeler goes on (at page 8 of her report):

In May 2000 the situation had become riddled with very serious neglect issues that were identified by the Family Support worker, Pauline Cross and the Social Worker, Karen Lewis. Some of these concerns were centred around what had become a highly conflictual living arrangement between J.G.B. and R.J. and their landlord, Mr. L.. These conflicts involved the police being called on numerous occasions and the children witnessing angry verbal outbursts.

The report goes on to refer to some of the excerpts from the case recordings I have already referred to. Ms. Wheeler comments on the events following the apprehension of the children in the late spring of 2000.

J.G.B. stated that despite all the evidence to the contrary, that their living situation was really not that bad and that she doesn't think her kids should have been apprehended.

In July 2000 the two children were returned to J.G.B.'s care under the condition that she would live with R.J.'s mother again for a two month period and during this time that they would seek, and the Agency would have to approve, new living arrangements.

At this time C.B. made comments about J.G.B. actions on lack thereof in the early fall of 2000. C.B. then withdrew them, or did not recall making them at the trial. J.G.B. was supposed to be working with the family support worker to find alternate living arrangements. J.G.B.'s evidence concerning this is that she was cooperative. The family support workers, in

Agency evidence, is to the contrary. It would be difficult to conclude that J.G.B. was more than minimally assertive in her cooperation.

Ms. Wheeler's report goes on and, again, is dated November 30, 2000.

J.G.B. and R.J. and the two children moved into their present apartment in [...] approximately eight weeks ago. The apartment appears adequate... There have been reports of them keeping it clean, neat and none of the evidence thus far of the way they were in previous living arrangements.

Since moving to their new apartment in October 2000 J.G.B. acquired a dog. J.G.B. wanted them to have a pet. On observation, it was noted that this pet will increase for J.G.B. the issues around cleanliness, safety and may put an additional burden on the already burdened situation, however, she is determined to keep the new dog.

There is a theme of concerning the presence of pets throughout this. J.G.B. has had pets at various times while this matter has been before the Court and more than one person has cautioned her on the increased responsibility that this puts on her in an already stressful situation and the issues that pets create, especially in apartments, around cleanliness and hygiene.

Ms. Wheeler observed that there had been a pattern developing for this family that initially things go well once a new situation, however they begin to deteriorate progressively.

J.G.B. indicated to Ms. Wheeler that her major stress in her life was the Department of Community Services.

Ms. Wheeler observed the children to be healthy, pleasant natured, bright. They had reached their developmental milestones.

Ms. Wheeler also observed the language issues with A.K.G.C. that had been previously referred to. Ms. Wheeler personally observed A.K.G.C. telling a dog to “fuck off” when he was running around during one of her home visits.

A.K.G.C.'s age at this time was noted to be not yet two and a half.

D.B. was noted to be a healthy [...] baby at the time. Much of the focus of Ms. Wheeler's report is on J.G.B.'s interaction with the Agency and supports.

Mr. Hollett noted that there had been a number of crises from time to time and that the issues had to be dealt with. It seems clear that part of Mr. Hollett's practical mandate was to act as a sort of buffer for J.G.B. between her and other support services, including the Agency.

Ms. Wheeler concluded:

J.G.B. is a teenage mother who has a history of difficulty in getting along with people and particularly anyone she perceives as not agreeing with her or having a different opinion.

Although J.G.B. has some strengths identified as a parent, she has also placed each of her children at risk of chronic neglect due to living situations and environments to which she had exposed them and her own parenting practices. J.G.B. has not been able to separate her children's needs from her own which may be part of her oppositional adolescent orientation.

It is essential that the Agency know more about R.J., his parenting values and practices to ascertain the risk factors for the children.

It appears J.G.B.'s difficulty with providing for her children's needs is a combination of immaturity, as a young single

parent with two children, and personality difficulties that get in the way of her effectively providing for her children.

During each of the parental capacity assessments J.G.B. has been able to present as adequate and appears to be making some necessary changes to effectively parent her children. Following the previous assessment, J.G.B. did not sustain these changes.

J.G.B. has received extensive services in the past and now needs to display her seriousness of being able to parent her two children in a healthy way so as not to subject them to further risk in their young lives. If J.G.B. is not able to display an ability and/or willingness to do this then it is felt that these children should not remain in an environment that places them at high risk for re occurrence and subsequent risk for the serious consequences that neglect places children.

The recommendation was that:

A.K.G.C. and D.B. are children at high risk for further neglect/abuse. It is recommended that at the first incident of any neglect/abuse issues that are identified that these children come into the care of the Minister of Community Services immediately. It is strongly believed that these children should not be put under any further risk in their young lives.

She also recommended that:

J.G.B. be monitored by a third party who could ensure that the goals were being met...and

That A.K.G.C. attend day care for a minimum of three days per week.

The evidence concerning the months that followed is less than consistent. Some of the recommendations of Ms. Wheeler were not implemented. The day-care being one.

J.G.B. and R.J. and the children seem to have been doing reasonably well until March or April of 2001. Mr. Hollett had been involved with J.G.B. as a support therapist from August of 1999 until April of 2001, almost two years. He testified in July of 2000 and again at the November 2001 hearing. He had ended his involvement in April 2001. He felt at that time there was little purpose to ongoing involvement, that he could not be there forever. He acted at times as a buffer between J.G.B., R.J. and the agency or other supports. He helped her interpret expectations, not to react as negatively as she might otherwise have done.

Mr. Hollett was present at a June 18 case conference when the Agency expectations and a written "statement of understanding" were reviewed with J.G.B.. She agreed with the expectations outlined at this meeting. The expectations, I conclude, were reasonable, basic and consistent with the then court order. The suggestion that J.G.B. did not

sign it is not of particular importance from the children's point of view. These expectations were related to J.G.B.'s care of the children. The failure to meet the expectations affected or potentially affected her care of the children.

Mr. Hollett noted that R.J. left the home at the end of March, that J.G.B. was concerned with his irresponsible behaviour. Mr. Hollett described J.G.B.'s situation with the children as one of "episodic neglect."

J.G.B. filed an affidavit dated May 9, 2001. It provided in part:

7. I am of the opinion that I do not require any form of supervision from the agency whatsoever. My home is always clean and orderly.

8. When this matter last appeared for a hearing in court, I was involved in a relationship with R.J.. I chose to end that relationship of my own accord on or about the end of March, 2001. I concluded that R.J. did not have sufficient maturity to deal with the demands of a young family. R.J. had a tendency to be argumentative and uncooperative and this lead to some unnecessary altercations and misunderstandings with some service providers. I was of the opinion that R.J.'s lack of maturity was potentially threatening to my position in this matter.

10. Of my own volition, I am utilizing programmes made available through the Dartmouth Resource Centre. I am

enrolled in the Nobody's Perfect Parenting Programme and the Parent and Tod Programme. I have been independently seeking appropriate community supports on my own.

11. I am consistently obtaining medical attention for the children from Dr. Catherine Ellis. The children have monthly appointments with Dr. Ellis and are seen on other occasions as required.

J.G.B. testified regarding the programs at the Dartmouth Resource Centre. She went to five of eight sessions with the Nobody's Perfect Parenting Program. She went to one session of the Positive Parenting Program. R.J., not she, took D.B. to the Well Baby Clinic. They assert that he took D.B. on three or four occasions. The records available for the hearing indicate there was one such visit.

The children did not have monthly doctor's appointments as asserted in the affidavit.

The "Statement of Understanding" was developed on May 7 at a meeting involving J.G.B., Tina Jennings, the social worker on the file, and Elizabeth Taylor, a home support worker. It included expectations such as: J.G.B. is to keep all scheduled appointments with Family Skills Worker, Ms. Elizabeth Taylor; identified some things that Ms. Taylor and J.G.B. would

work on; stated that J.G.B. would attend on-going parenting programs; that J.G.B. is to attend the Well Baby Clinic once per month with both children; that J.G.B. is to schedule and attend regular medical appointments for both children.

These items were developed and discussed with J.G.B. on May 7, 2001.

Ms. Jennings, the agency's Social Worker, evidence and records, included notes from May 11, 2001.

Scheduled home visit to the residence of J.G.B.. Worker noted J.G.B. standing on the sidewalk in front of her apartment building. J.G.B. indicated that we could talk there as worker pulled up beside her in the car. I indicated that I needed to check her cupboards and refrigerator for food. J.G.B. became agitated and swore several times. She said if I wanted to check her cupboards I could call her lawyer. I reminded J.G.B. that we had a supervision order and that it was my responsibility to ensure that she had adequate food for the children.

J.G.B. indicated that she felt harassed.

Ms. Jennings made phone calls to J.G.B. on May 24 and 25 asking her to call back. J.G.B. returned the call on May 28.

On June 14, an unannounced home visit was made to the residence of J.G.B..

R.J. answered the door. When asked R.J. stated that J.G.B. was at work and that A.K.G.C. was watching television and D.B. was napping. It was 11:15 a.m.. The living room, dining room and kitchen were clean and tidy. The kitchen floor looked like it had recently been washed and was partially dry. A.K.G.C. was wearing a diaper and sitting on a little chair in front of the television. She said hi when I came in and talked to me throughout the visit.

When asked R.J. said he and J.G.B. are friends and that he comes over to look after the children when she needs him. He said that J.G.B. had missed work on Saturday because he had been out of town so she had no one to look after the children. He said that his present relationship with J.G.B. "Is not sexual." This worker asked R.J. to ask J.G.B. to call the office as soon as she has her next work schedule on Saturday, June 16, 2001. He said he would do so.

A case conference was held on June 18. Peter McVey, counsel for the Agency, and Mr. Mitchell, Wayne Hollett, Elizabeth Taylor (the Family Skills worker) and J.G.B. and Tina Jennings (the agency Social Worker) were present. The notes from that date included:

J.G.B. stated that she had an appointment on June 20, 2001, at the [...] Daycare and that A.K.G.C. will start attending this daycare one week later.

J.G.B. stated that R.J. does not live with her.

Ms. Taylor indicated that she had been having difficulty connecting with J.G.B.. That J.G.B. had been unavailable to meet with her. There seemed to be some difficulty or confusion around J.G.B.'s phone number immediately after this date.

On July 4, 2001 Ms. Jennings spoke to Dr. Ellis. Dr. Ellis indicated that she had last seen A.K.G.C. and D.B. on April 6. A.K.G.C. had an appointment with her on June 15, but J.G.B. had not keep that appointment.

J.G.B.'s evidence indicated that the children had been taken to another doctor in this time frame.

On July 4, 2001 Ms. Jennings called J.G.B. and left a message asking her to call her. R.J. returned the call.

On July 5, 2001 Ms. Jennings attempted to visited J.G.B. at her home. It was unannounced visit. The note of that day states:

Attempted unannounced home visit to the residence of J.G.B.. When I walked around the building I noted the dining room window was open. I was admitted access to the building by the office and knocked on the apartment door for several minutes. The television was on in the apartment. As I left the apartment building I noted that the dining room window was now closed.

On July 10, 2001 Ms. Taylor attempted to phone/contact J.G.B..

On July 12, 2001 there was an unannounced home visit to the residence of J.G.B.. Again, Ms. Jennings was admitted to the apartment building. No one answered the door. It did not appear that anyone was in the apartment. The windows were all closed on this occasion.

On July 13, 2001 an unscheduled home visit was made. Prior to knocking on the door Ms. Jennings had heard voices. No one answered

the door or a phone call to the residence. A message was left for J.G.B. suggesting that they meet tomorrow.

The affidavit of Andrea Boyce dated July 24, 2001 contains subsequent notes. On July 19 Ms. Jennings again made an unannounced visit to the residence of J.G.B.. Her notes indicates:

As I walked to the building I noted the dining room window of J.G.B.'s residence was open. I could hear Mr. Dress-up on the television. A child was crying and a male said, "Are you going to fucking cry?" A female then said, "Hug her." No one answered the door when I knocked. As I walked back to the car I noted that the dining room window was now closed.

Consultation with a supervisor ended in the suggestion that the police be consulted.

On July 19, 2001 the worker visited the home. The note states:

The police officers first knocked on the dining room window but no one answered. Someone let us into the building and the police officers banged on the door and asked J.G.B. to open the door but she did not. We contacted the superintendent who came with the keys and attempted to open the door, however, there appeared to be a dead bolt locked from the inside. The police officers proceeded to

force the window open and at this time J.G.B. agreed to open the door.

A.K.G.C. and D.B. appeared healthy and happy. They were both dressed. The police officer said that they both had full diapers and when one of the children sat on J.G.B.'s lap she became wet from urine.

I took pictures of the apartment.

In the children's room I noted the following: the closet door is broken; broken blinds on the window with the cords dangling; both the crib and toddler bed had bottom sheet, the bottom sheet in the crib was partially off, both beds had a blanket as well. On the wall behind the crib is an electrical outlet with no plug covers and close to this was a hole the size of a quarter. On the wall behind the bedroom door was a hole that had been caused by the doorknob. The floors were filthy, the carpet stained, many small pieces of food and garbage including a pop bottle top and glass drinking glass in the closet. A bag of garbage sat at the end of the crib and a pile of blankets on the floor.

In the hallway between the two bedrooms is a very cluttered desk with an overflowing ashtray and a bottle of Lysol on top.

In J.G.B.'s room was a pile of four or five garbage bags. I am unsure what was in these bags. There was a half empty food dish on the floor containing French fries and a cigarette butt. A children's show was playing on the television in this bedroom. There was also a lot of dirt on this floor.

The television was also playing children's shows in the living room. In the living room was clothing and newspapers on the floor and on the couches and chairs. A cigarette butt was on the living room floor. A garbage bag sat on one of the couches.

In the bathroom there was a quantity of cigarette ashes in a potty and the tub was half full of water.

The storage closet was full of boxes and at least one bag of garbage, there was a strong smell of cat litter in this closet.

The front closet contained a dirty litter box and also smelled strongly of cat litter. There was a cat dish full of water and a half empty plate containing some French fries on the plate and others on the floor. The plate also had a piece of what looked like cheese.

The kitchen had items scattered over the counter including a paring knife. At one point one of the police officers took the knife from D.B. as he had taken it off of the counter. The cupboard contained various empty boxes, a partial bag of sugar, icing sugar, tea bags, one can of soup, a bag of noddles and some pancake mix. There was a partially full box of Lucky Charm cereal and a half loaf of bread and an empty milk carton were on the counter.

The refrigerator contained six empty two-litre containers of milk, one empty one-litre container of milk and one litre containing milk which was approximately one quarter full, one half block of cheese, a pot of gravy, a bottle of iced tea and four wieners. In the drawer of the refrigerator were sprouted onions, mouldy lettuce and mouldy carrots.

Debbie Rodgers consulted with the supervisor Vicki Black. Debbie Rodgers advised J.G.B. to have her apartment cleaned by 3:00 this afternoon at which time I will visit to verify. J.G.B. is to get a medical appointment at the [...] Clinic for A.K.G.C. today so that her bottom can be examined.

The worker returned at 3:00. J.G.B. was not present. The worker left a note saying that she would be back at 5:30. She did this because J.G.B. had left a note saying that she had just gone to get groceries. J.G.B. was not present around the supper hour.

The Agency note of July 20 indicates:

J.G.B. is either not at home or avoids or refuses to answer her door thus restricting the Agency's ability to assess risk to the children.

J.G.B. is infringing on the Agency's ability to implement the supervision order and to assess risk to the children.

It would be difficult to disagree with these conclusions.

J.G.B.'s testimony lacked credibility. I have the impression she says what she thinks people want to hear. She has great difficulty working with or taking the advice of other. Whether referring to day-care starting Monday, the Boys and Girls Club starting soon, R.J. and she being separated to workers, "R.J. and I are a couple," in her testimony; saying the home deteriorated because of her work and because of disagreements with R.J. about her work, when, in fact, her work had ended on July 7. There are many spots in her testimony where it appears she was saying what was convenient to her, or acknowledging her difficulty in accepting advice.

Her testimony in November, 2001 included the following (at page 6):

Q. Why did you cease to reside with C.J.?

A. Because it was becoming over crowded and people were getting on each other's nerves.

Q. Getting on each other's nerves in what way?

A. She was always interfering.

At page 18 about Mr. Hollett's involvement:

Q. And what, if anything, can you say about Mr. Hollett's intervention in regards to the matter?

A. He was very helpful.

Q. In what way?

A. In every way. When I was feeling overwhelmed, I could always pick up the phone and call him.

At page 19:

Q. What's the problem with dealing with the workers?

A. Scrutiny. A lot of it.

Q. When you first became involved with the Agency, you were 17.

A. Yes.

Q. And what was your capacity for working with the Agency at that point?

A. It was bad.

Q. What do you mean?

A. I was not cooperative at all.

She goes on to indicate that she thinks that she has changed.

At page 20:

Q. Do you feel there was any improvement in regards to your relationship with the workers?

A. Definitely. Definitely.

This is hardly reflected in her actions of July of 2001.

J.G.B. indicates in her testimony that she feels the Agency was not always direct in their accusations towards her and/or R.J.. I interpret these comments as being in relation to the perianal warts that A.K.G.C. suffered from and the suggestion that one possible cause of such warts was sexual abuse. And while I can, in one sense, have some sympathy for the sentiment being expressed here, it is difficult to make a connection between these feelings of unfair accusations and the serious neglect and condition of the home that has existed on more than one occasion.

At page 22 of her testimony J.G.B. states:

Q. Now in regards to R.J., what's the nature of your relationship with him?

A. He's my boyfriend and he's my best friend.

Q. Have there been any breaks in regards to that relationship?

A. Only one this year.

(Although, according to the evidence, there was one the previous year too)

Q. When was that?

A. That was in March.

Q. And for how long did the break occur?

A. A month and a half, two months. I just thought he was irresponsible. It was like he couldn't hold a job. So I told him when he showed me that he could handle a job and the responsibility of the finances, then we'd get back together.

R.J.'s role is somewhat confusing to me, particularly when lined up with the evidence of R.J.'s grandfather who seemed to testify that R.J. was living with him for periods of time when J.G.B. has been saying that they (R.J. and she) were together.

J.G.B. testified that she was working for a couple of months at the S... when the latest problems arose. Her period of employment there ended July 7, which is approximately 10 to 12 days prior to the events of July 19.

J.G.B. indicated she did not let workers in her home in early July because the house was dirty. In giving an explanation she said it was:

A. Because me and R.J. got into a little tiff about me not doing any of the housework.

Q. Yeah.

A. For a few days. And he wanted me to do it.

Q. Okay. Were you employed during that period of time?

A. Yes.

Q. And what about R.J.?

A. No.

She goes on to say that R.J. was disenchanted with his duties concerning the home, that he was not thrilled about it, that he refused to do it. When asked why she let her home get in the state it was found in, she answered,

A. Because when R.J. is employed, it's my responsibility to take care of the household and to look after the children. And I felt that it was his responsibility where I was the one employed and he was the one taking care of the children, it was his responsibility to clean up after the children and to clean up after himself.

The record before me indicates her employment ended July 7. The problems became acute and evident to the Agency July 19. She says the house was dirty and in the neglectful state it was because it was R.J.'s job to clean the house because she was working. Even as I say, if she was working I would have difficulty accepting this as an excuse. Even if one were to accept that that was somehow some sort of valid excuse for the deterioration in the condition of the home, the fact is she was not working at

the time. This is an example of what I mean when I indicate that it appears to me that J.G.B. will say what she thinks will “work.”

She acknowledges that the police eventually had to get involved. She acknowledges that the records of the agency and pictures accurately reflect the state of the home. She did, it appears, make some efforts to clean the home on July 19, 2001. However, rather than deal with the matter and come back and meet with the Agency she went off with W.J., R.J.'s grandfather, and avoided the Agency. I see this as much a reflection of her own immaturity as anything else. She obviously was not comfortable facing the reality of the problems that she and R.J. had created by allowing the house to again get in the state of neglect that it was in.

In her testimony J.G.B. relates having a series of pets, dogs and cats. Not insignificantly, it appears, she has been unable to look after any of them beyond a period of months.

There are a number of pieces of the evidence that are inconsistent - some of them small, some of them more significant. I have referred to the time when she is working, compared to the excuse that was given. She

says that R.J. was fired from T.... because he was late twice. He acknowledges having missed an entire shift. There is, as I said, a confusion about where R.J. is living when one compares the evidence of his grandfather to that of he and J.G.B.. This confusion extends right up into the month of September of this year (2001).

If one accepts J.G.B.'s evidence, that at the core of the problems in July this year was a dispute between she and R.J. over who would clean. It is a remarkable reflection of the immaturity of their relationship. By J.G.B.'s account they effectively got into a stand-off saying, "You clean/No, you clean." And allowed the home to deteriorate while the two children (under three and a half) were in their care.

In her testimony (p. 90, 91) J.G.B. acknowledges that shortly after she and R. J. separated he came into her home. It was suggested to her that she had reported that he had trashed the place or her bedroom. In her testimony, J.G.B. diminished the strength of these assertions. It is clear, however, even from J.G.B.'s testimony, that R.J. came to her home and caused her to do "extra cleaning" as a result of his actions in April shortly after their separation.

R.J.'s testimony was that the housework was not done for two days. I would conclude from the evidence that it would have taken a lot more than two days for the apartment to get into the state it was found in. I would also conclude from the number of times that J.G.B. denied the Agency entry to the apartment that it existed in that state for some time prior to two days.

Andrea Boyce's records indicate that J.G.B. told her on July 24 that she was working at S.... J.G.B. denied that at trial. I would conclude that she did say that to Ms. Boyce.

On page 103 of J.G.B.'s testimony there is an indication that J.G.B. said that she was not currently (in late July, 2001) in a relationship with R.J.. She denied saying that. Again, I would conclude that the Agency record is the more accurate.

There are a number of issues that are not factors in the decision that I am making here today.

I am not concluding that the interview with A.K.G.C. that was videotaped is a significant factor to this decision. Perhaps the most significant aspect of that evidence is that it discloses the home at that time had been cleaned up.

The perianal warts are not an issue. They have different causes. There is nothing close to a case of sexual abuse that has been made out here.

The bruises on the children in July of 2001 have not been shown to be so unusual as to suggest that there would be any reasonable possibility, in my view, that they are as a result of abuse.

R.J. has not been shown to be physically abusive. The evidence does indicate that he is, at times, quick to react. He did not agree to be part of the fall 2000 assessment. There are uncertainties about his relationship with J.G.B..

This is not about financial poverty. The cleanliness and hygiene issues that have been documented relate to a poverty of responsibility not financial poverty. What this case is about is an exceptionally immature young mother, young couple, and two very young children who have repeatedly been exposed to neglectful circumstances.

J.G.B.'s affidavit of November 5, 2000 states at Clause 17, (this is an affidavit that is filed some months after the July events that brought us back to a contested proceeding).

17. The children's doctor is Dr. Catherine Ellis. Dr. Ellis has been treating A.K.G.C. since she was approximately seven months of age and D.B. since his birth.

The evidence would indicate that while perhaps strictly speaking Dr. Ellis has been involved with the children it certainly has not been regular.

Clause 31 of her affidavit describes her rationale for the state of the apartment in July of 2001. It outlines what I have already reviewed and J.G.B.'s rationale for not allowing the Agency in.

Clause 39 of her affidavit indicates:

39. It is my respectful representation to this court that my two children be returned to my care and that these proceedings be terminated. I am quite prepared to enter into a voluntary arrangement with the agency that would permit Elizabeth Taylor and Wayne Hollett to continue working with me. I do intend to continue to take advantage of the programmes offered through the Family Resource Centre. I realize now that, considering the agencies of my children, it would be best for me not to work until such time as D.B. has entered school. I intend to make myself available so that I can provide consistent care to my children. Both children will be taken to all doctors appointments on a frequent basis and I intend to continue to take D.B. to the Well-Baby Clinic. I believe that, considering A.K.G.C.'s sociable nature, that it would be best for her to be involved, at least on a part-time basis, with a subsidized day-care and then the Four Plus Programme.

R.J.'s affidavit, Clause 8 acknowledges that he has "a tendency to become oppositional" when he feels that he has been inappropriately treated by authority figures. He indicates he found Tina Jennings "to be high-handed and forceful" in regards to the interaction that they had and to have been intruding upon their privacy.

He indicates at paragraph 18 that he found Wayne Hollett's involvement useful and productive. He indicates that since they separated in March and April the relationship has been much more stable. He says

he does admit that he was resentful of being left to do all of the housework. It seems remarkable to regard a relationship as being stable and then says that disagreements in the relationship over who cleans led to the state of the home in July, 2001.

C.B.'s affidavit states that she believes she has seen real change in J.G.B.'s personality over the course of the last year and a half, that she is more open to taking criticism. C.B. believes D.B. and A.K.G.C. should be returned to their mother's care and that she supports the application.

M.B.'s affidavit also supports the return of the children to J.G.B..

C. **DECISION**

The children have been found in need of protective services pursuant to s.22(2)(g) of the *Children and Family Services Act*. The Court has concluded then that:

22(2)(f) the child has suffered emotional harm, demonstrated by severe anxiety, depression, withdrawal, or self-destructive or aggressive behaviour and the child's parent or guardian does not provide, or refuses or is unavailable to consent to, services or treatment to remedy or alleviate the harm;

22(2)(g) there is a substantial risk that the children will suffer emotional harm of the kind described in clause (f), and the parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm.

There have been a series of occasions when these children's physical care has fallen significantly below an acceptable standard. It constitutes a substantial risk to the children. It has been a recurring risk.

Mr. Mitchell, in his submissions, acknowledged that in July of 2001 workers were presented with non-compliance on the part of J.G.B., that the conditions in the apartment were not acceptable and that J.G.B. had made it difficult for the Agency to return and inspect the apartment.

He also points out, quite appropriately, that there were times when things were good, times when the children were doing well and that the apartment was clean.

In considering the making of a disposition under the *Children and Family Services Act* the Court must consider a series of statutory factors:

1. The preamble to the *Act* must be considered. I have considered the whole of the preamble, and, in particular these portions:

WHEREAS the family exists as the basic unit of society, and its well-being is inseparable from the common well-being;

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.

- Here J.G.B. has lived and parented in the homes of her parents and C.B.. Services have been in place for a lengthy period of time.

2. S.2(1) provides:

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.

S.2(2) provides:

(2) In all proceedings and matters pursuant to this Act, the paramount consideration is the best interests of the child.
1990, c. 5, s. 2.

3. S.3(2) defines "best interest" in this legislation. In particular, I consider s.3(2)(a), (b), (c), (d), (e), (k), (l), and (m).

Best interests of child

(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;
- (b) the child's relationships with relatives;
- (c) the importance of continuity in the child's care and the possible effect on the child of the disruption of that continuity;
- (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;
- (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;

These children do have a relationship with relatives. I include C.B. in stating this. She is, from the children's point of view, a relative, they having lived in her home for a period of time.

I acknowledge too that there is a bond between J.G.B. and the children and, for that matter, between R.J. and the children.

I also consider, as I have indicated, the age and basic physical needs of the children.

The neglect has occurred, reoccurred and reoccurred. It constitutes a substantial risk to the welfare of the children. It is highly probable, I conclude, that it would continue to reoccur in the future.

4. S.41(2) of the *Act* provides that where the Court finds that a child is in need of protective services:

41(2) The evidence taken on the protection hearing shall be considered by the court in making a disposition order.

The proceedings have been consolidated here and there is a history of problems and then improvement of sorts and then again, problems.

Both Mr. Mitchell and Ms. Pillay have referred to this cycle. There is little, if any, evidence to suggest that this problem would not continue in the future.

5. S. 41(3) provides that the Court consider the plans for the children's care. Consideration of the plans must be done with reference to or acknowledgement of the time frames set out by the legislation.

41(3) The court shall, before making a disposition order, obtain and consider a plan for the child's care, prepared in writing by the agency and including

- (a) a description of the services to be provided to remedy the condition or situation on the basis of which the child was found in need of protective services;
- (b) a statement of the criteria by which the agency will determine when its care and custody or supervision is no longer required;
- (c) an estimate of the time required to achieve the purpose of the agency's intervention;
- (d) where the agency proposes to remove the child from the care of a parent or guardian,
 - (i) an explanation of why the child cannot be adequately protected while in the care of the parent or guardian, and a description of any past efforts to do so, and
 - (ii) a statement of what efforts, if any, are planned to maintain the child's contact with the parent or guardian; and
- (e) where the agency proposes to remove the child permanently from the care or custody of the parent or guardian, a description of the arrangements made or being made for the child's long-term stable placement.

The Agency plan here is to seek an adoption placement for both children.

J.G.B. seeks a termination of the proceeding, return of the children. She indicates she would voluntarily utilize services with/from the agency, including Mr. Hollett.

6. Section 41(5) states:

41(5) Where the court makes a disposition order, the court shall give

(a) a statement of the plan for the child's care that the court is applying in its decision; and

(b) the reasons for its decision, including

(i) a statement of the evidence on which the court bases its decision, and

(ii) where the disposition order has the effect of removing or keeping the child from the care or custody of the parent or guardian, a statement of the reasons why the child cannot be adequately protected while in the care or custody of the parent or guardian.

I am providing those reasons herein.

7. S.42(1) presents the options available to the Court in making a disposition order.

42 (1) At the conclusion of the disposition hearing, the court shall make one of the following orders, in the child's best interests:

(a) dismiss the matter;

(b) the child shall remain in or be returned to the care and custody of a parent or guardian, subject to the supervision of the agency, for a specified period, in accordance with Section 43;

(c) the child shall remain in or be placed in the care and custody of a person other than a parent or guardian, with the consent of that other person, subject to the supervision of the agency, for a specified period, in accordance with Section 43;

(d) the child shall be placed in the temporary care and custody of the agency for a specified period, in accordance with Sections 44 and 45;

(e) the child shall be placed in the temporary care and custody of the agency pursuant to clause (d) for a specified period and then be returned to a parent or guardian or other person pursuant to clauses (b) or (c) for a specified period, in accordance with Sections 43 to 45;

(f) the child shall be placed in the permanent care and custody of the agency, in accordance with Section 47.

Here we are not only at the end of the disposition time frame but we are beyond it. The time frame has been extended under the legislation to January 30, 2002 (as previously indicated).

Further, with respect to A.K.G.C., we have now effectively extended the time frame for a second time. There was a previous proceeding concerning A.K.G.C.. It was terminated, then recommenced essentially to give more time to court supervision of the situation, more time to the provision of services.

7. S.42(2) provides:

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

Here there have been two family placements attempted. Essentially both M.B., senior, and C.B. have had a go at parenting, it would almost appear, J.G.B. and these children, or perhaps more accurately at least providing within their homes some support and structure to J.G.B.'s parenting of these children. These homes are not long term options that have been presented as being available to me or the children at this time.

Mr. Hollett's services were in place for a lengthy period of time. He effectively acknowledged that he could not be there indefinitely.

Other services have been effectively refused by J.G.B.. She has repeatedly refused the Agency access to her home. This means what the Agency says it means - It means the Agency cannot do its job and supervise the care of these children in her home. This is a court proceeding. The supervision order is a court order. The supervision being done by the Agency is at least in one context supervision done that (while perhaps not for the Court) is certainly accountable to the Court. When the Court makes a supervision order it expects to have information concerning that home available to it. Closing the door or not opening the door to the Agency denies the Court that information. Access to the home is the most fundamental of services.

9. S.42(3) provides:

42(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.

There is no long-term plan that has been put forward by relatives or neighbours or a member of the child's community for the care of these children. Nothing that is substantial is before me in that regard.

10. S.42(4) provides:

42(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.

We are beyond the statute time limits at this point. There is nothing before me to indicate that something has changed since July of this year. J.G.B. is making the same promises she has made before. The suggestion that Mr. Hollett should go in again, ignores the practical reality of his testimony which is to the effect that, "I can't be there forever."

We are beyond the time limits here. Near the very end of the time limits J.G.B. and R.J. had, to her use her words, "This tiff over who does the cleaning," that allowed the care of the children in a physical sense to spiral into a situation of very clear neglect.

(11) S.45 of the legislation sets out the time periods, which I have referred to.

45 (1) Where the court has made an order for temporary care and custody, the total period of duration of all disposition orders, including any supervision orders, shall not exceed

(a) where the child was under six years of age at the time of the application commencing the proceedings, twelve months . . .

from the date of the initial disposition order.

Again, as I have indicated, the time period with respect to both children has been extended under this proceeding, effectively for a second time with respect to A.K.G.C..

J.G.B. has been given an extraordinary level of support (from the Agency and "family") since A.K.G.C. was born. She has had the benefit of

experienced counsel, who no question, has advised her of the importance of the various issues before the Court and, in particular, of her conduct. She has lived with her mother for a period of time with the children and then with C.B. for a period of time. I would conclude she has effectively exhausted both of those resources.

There is no family support system available at this time that is comprehensive and long-term as an alternative.

J.G.B.'s plan is effectively to return these two very young children to a couple who allowed the physical conditions of their home to deteriorate below a remotely acceptable level because they say they could not agree on who would do the cleaning.

I cannot reasonably conclude that there is any likely change in the situation. The neglect and risk to the children will reoccur. I cannot conclude that she would cooperate voluntarily with the services and kind of supervision required when she has been unable to do so when before the

court and under court order. The relationship with R.J. is unstable and uncertain.

A number of reasons (or excuses) for the children's physical care and environment becoming problematic and neglected have been put forward. Whether it is abuse by S.E.C. or a harassing landlord, a pre-occupation with work, a disagreement between J.G.B. and R.J. or the death of a grandparent; the plain fact is that from D.B. and A.K.G.C.'s point of view it does not matter why there is dirt or cat litter or cigarettes about them or why they are left dirty and in diapers. It does not matter why the neglect occurs from their point of view. They experience it as having been neglected. They are put at risk. Being part of yelling at a landlord or being exposed to threats by S.E.C. or part of two "parents'" disagreement over who cleans aggravates the concerns, it does not excuse them.

I conclude that a lengthy series of family and Agency supports (and when I say "family" I include C.B., because she has acted as family would or should, as M.B. has) have resulted in there being periods of adequate care. Recurring incidents of neglect, however, leave these children at risk

and in need of protective services as defined by s. 22(2)(g). Given their ages, the children, when they and their environment are neglected (as they have been on three separate occasions) are at substantial risk of emotional, developmental and physical harm.

I conclude that there is little, if any, recognition by J.G.B. of the responsibility of a parent to maintain, on an ongoing basis, an adequate physical environment for children. She has not demonstrated an ability to work with and cooperate with the agency.

I am satisfied that the Agency has satisfied its burden of proof, which it bears in proceedings such as this.

The plan put forward by J.G.B. would inevitably lead to further neglect. The purpose of the *Act* is to protect children from harm. They were found to be and remain in need of protective services pursuant to s. 22(2)(g). I can identify no further services that can remedy the situation in a reasonable period of time.

J.G.B. does what she wants, whether it is putting D.B. on whole milk against the advice of a doctor, not arranging for day-care, having pets, not opening doors, getting rid of pets, not keeping appointments, hiding in hotel rooms. It is not likely to change.

Wayne Hollett has as much as said that at some point we have to say, "Can she parent on her own?" J.G.B. answered that in June and July of 2001.

Ms. Wheeler was sadly prophetic in questioning in November, 2000, whether J.G.B. could put her kids needs ahead of her own. The excuses for the state of the home in July, 2001, reflect her inability to do so.

Dr. Lowell Blood said in his May 18, 1999, report, "Although she expresses a commitment to parenting her child, it does not appear that the reality of what such a commitment involves has been fully realized by J.G.B.." That statement remains as true today as it did at the time Dr. Blood made the initial assessment.

I conclude that the only viable plan before me that is consistent with the best interests of the children is the Agency plan of permanent care and custody and adoption. In the circumstances, it is not appropriate there be an order of access as that would interfere with the plan of adoption.

There will be no order as to costs.

J.