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Section 94 (1) provides:

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

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

BETWEEN: CHILDREN'S AID SOCIETY OF HALIFAX - APPLICANT

- and -

D.C. & J.A.D

- RESPONDENTS

- and -

C.L.D. & A.M.D.

- INTENDED INTERVENORS

Revised Decision: The text of the original decision has been revised to remove personal identifying information of the parties on September 17, 2008.

DECISION (oral)

[Cite as CAS of Halifax v. D.C.; J.A.D & A.M.D.& C.L.D. 2003 NSSF 9]

HEARD BEFORE: The Honourable Justice Deborah Gass
Justice of the Supreme Court (Family Division)

PLACE HEARD: Supreme Court (Family Division)
P.O.Box 8988, Station "A"
3380 Devonshire Avenue
Halifax, NS B3K 5M6

DECISION (orally): February 7, 2003

COUNSEL: James Leiper, counsel for the Children's Aid Society
Peter Katsihtis, counsel for D.C.

Linda Tippet-Leary, counsel for C.L.D. & A.M.D.

This decision is with respect to an application by the Children's Aid Society of Halifax for a disposition order in the nature of an order for permanent care and custody of two children, J. and J.C., who are the sons of D.C. and J.A.M.D. J. will be six years old on [...] and J.C. who was born [in 2000] just turned two. These two children were taken into care by the Children's Aid Society of Halifax [in 2000], J.C. having been taken into care at birth.

There were two prior agency referrals with respect to this family and in particular, the child J.. One was when J. was nine months old back in 1997. At that time the report was that he was left in care of his father, J.A.D, who was impaired by drugs and in particular the concern was that he was sniffing glue.

Again there was a referral in May of 2000 when the child J. was left unattended and was found out in the traffic dressed in only a sleeper, navigating his way through a busy street. At that time it was determined that he was supposed to be in the care of his father who had, in turn, left him in the care of a teenage nephew, and lack of supervision was a major concern at that time. Both of these incidents were during periods of time when the mother, D.C., was at work and J.A.D was responsible for the care of the child.

[In 2000], D.C.'s brother contacted the Children's Aid Society because he had heard concerns with respect to the conditions under which his sister and the child were living. There were concerns with respect to drug use on the part of J.A.D, the child's father; neglect of the child; an unhealthy dependent relationship between D.C. and J.A.D; allegations of selling drugs from the residence; and generally a very unhealthy environment for the child and D.C.. He went to see for himself and he described in his

affidavit and in his evidence what he considered to be the appalling physical conditions he found. He was very concerned about the welfare of the child and he was also concerned about D.C. who was only days away from giving birth to her second child at that time. He was concerned about the possibility of her having used drugs during her pregnancy and as well about the lack of prenatal care. There were also some concerns at that time about D.C.'s mental health.

When one puts that in the perspective of the circumstances in which D.C. was found at that time, it is important to note that she was at that point laid off without money and had not had the wherewithal to seek income assistance. She had a three-year old child. She had a partner who virtually did nothing to help out and she was in the very advanced stages of pregnancy with a second child. She was described as being isolated generally from the rest of her community. She appeared overwhelmed, very tired and perhaps to some extent depressed, although not clinically depressed but feeling at a very low point. In addition, as I indicated, there were concerns about her drug use and the fact that J.A.D was allegedly selling drugs from the home, which he readily admitted to.

From the outset of these proceedings, the Court can only conclude from the beginning to the end that J.A.D has been forthright and honest about his drug use and as well his role in procuring drugs for himself and others. Although he always maintained that he did not do that in the presence of the child, there is no doubt in the Court's mind that he had the care and responsibility for J. during periods of time when he was under the influence of one or more drugs. He also was involved as a "middle man" in procuring drugs while he was responsible for the child although it does not appear that J. was actually present, at least when these things were going on.

Having said that though, the Court recognizes that even with those qualifications J.A.D placed on his involvement and participation in drug use, his care of the child was

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significantly compromised and that is borne out in the previous concerns that had been brought to the attention of Agency.

When K. returned with an Agent, he observed that the apartment had been considerably cleaned up from when he went on the first occasion. J. was observed to be a child who had no structure or limits and D.C. appeared to be physically and emotionally overwhelmed by parenting him and physically and emotionally unprepared to have a second child who was due to be born immanently.

The concerns did not result in the child being taken into care on that particular occasion, but rather on [...], which was approximately ten days after all of this occurred, when she gave birth to her second child. At that time, when the decision was made to take the children into care, the concerns were that: the children were being left with inappropriate care givers; there was a lack of supervision; drug use on the part of J.A.D when J. was in his care; possible drug use by D.C. and possible use during her pregnancy; about drug trafficking from the home; the mental health of the mother; the cognitive abilities of the mother to appreciate the concerns; and the physical state of the environment in which they were living.

At that time, the children were placed with a family member, C.C. and her partner J.S., who were approved as a restricted foster placement.

During the access visits, there were ongoing issues observed with regard to D.C.'s difficulty in managing J.'s behaviour. During that period of time as well, there were concerns on the part of D.C. and others with respect to what was going on in the foster home.

Immediately after the children were taken into care, a parental capacity assessment was commissioned in January with the IWK Assessment Services. It was

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completed [in 2001], three months to the day of the children having been taken into care. At that time, the recommendation of the Assessment Services was that not only were the children in need of protective services but also that the appropriate disposition in this matter was one of permanent care and custody.

On March 19, 2001, the children were found to be in need of protective services and that finding was made by consent. Prior to that, the access the mother was having at C.C.'s home eventually moved out of the foster home.

Some of the findings of that first assessment, were that neither of the parents, that is D.C. nor J.A.D, had a particularly nurturing or healthy upbringing themselves. D.C.'s father was abusive. She had some learning difficulties, difficulties in school, socializing, and with making friends. J.A.D had behavioural problems from the beginning and those were only a couple of the features of their backgrounds that I am noting at this point in time.

J.A.D and D.C. had been in a long-standing relationship of over 20 years although it was not considered to be a particularly supportive relationship. J.A.D has been continually in conflict with the law and in and out of jail but it is interesting to note that considering his extensive criminal history there is no record or indication of any violence in his background.

D.C. has worked for the same hotel company for 13 years and she has maintained that employment. She did depend of J.A.D to look after J. in recent years although the evidence would suggest that he was less than reliable. Because of J.A.D.'s use of drugs and his involvement in the drug trade, it was concluded that that in itself held a potential risk of harm to the children and there was no indication that J.A.D was prepared to change his ways. There was also concern about the fact that J. had been left on more than one occasion with unreliable care givers apart from J.A.D.

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There were concerns about D.C.'s cognitive abilities, her understanding of what is required of her in parenting and in providing discipline, structure and routine, to establish a sense of security and stability that a child needs.

The concerns with respect to the father were acknowledged by him. He recognized that he has a drug addiction and that is the way his life is and is going to be and everything else has to accommodate that. His addiction rules his life and he recognizes that. Everything else is second, although he has high praise for D.C. as a strong, independent woman and a good mother.

The report concluded that D.C. would unlikely participate in services. She was described as angry and defensive, and unable to meet the needs of her children because of her mental health difficulties compounded by her cognitive limitations. Again, and as an aside, one has to take into consideration that this assessment was conducted immediately after she had just given birth to a second child. She was dealing with the physical and emotional effects of being postpartum, compounded by the fact that her baby had been taken from her at birth and she had just lost her other child who was at that point three years of age.

Anger, defensiveness, suspicion, resistance, all of those things the Court cannot consider as being unnatural or even marks against her as a mother, considering the circumstances under which this assessment was conducted. She was at a very, very low point in her life.

At any rate that report recommended permanent care and custody essentially determining that there was no hope for change. The Agency then filed its plan accordingly in April 2001.

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It is to be noted that [in 2000] D.C. did come face to face with the system in all its force. Up to that point, she had kept pretty much to herself. She did her job. She managed her finances. She did live an isolated existence. It was determined when the visit was made in [...] and the situation was revealed, that she really did not know how to go about applying for assistance and was feeling somewhat powerless and overwhelmed. In spite of that very early report, conducted at the absolute lowest point in her life, she did willingly participate in access. She continued her access faithfully, although she always put the needs of her children ahead of herself in that if the children were ill, she did not want them to be put at risk by having her visits. She was concerned at all times about the children getting adequate fresh air, attention and being read to. She did participate in access throughout and the access was always appropriate. Although she was angry and defensive and felt that everything was stacked against her, she was determined to do whatever she was told to do that was necessary.

There is consistent evidence throughout the proceedings of the children's positive attachment with the parents, particularly J.. It appeared that J.A.D, during his access, was more involved with J.C. and D.C. was more involved with J.. Again it was noted from the outset the sense of defeat that the mother had with respect to J.C. and whether or not she could handle two children. Bearing in mind that she was already attached to J., and facing the prospects of a permanent care order she would perhaps not attach as closely with J.C. as a defence mechanism.

While the access was occurring, there were also concerns about the children in the C.C. foster home. Eventually the children were removed from there and they were placed in another foster home in, I believe, mid March.

The Agency then decided, in spite of the plan for permanent care and custody as a result of some positive reports from access supervisors and family skills people, to

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amend the plan of care to pursue temporary care and custody. This changed plan would give opportunity to the mother to work on the issues, as a result of the positives that were coming out of the reports provided to the Agency.

Lilly Szeto was involved as an access supervisor from March until May and she became involved in providing some parenting skills as well. She noted positive interaction, how the mother was always prepared for access visits and how she appropriately dealt with the children.

In Mr. Hennessey's affidavit of April 18, 2001, at paragraph eight, is a summary of Ms. Szeto's observations which are all very positive. Faye Halpern became involved from April until May, another transition. It was noted on her part that D.C. did have an interest in learning and improving her parenting and her overall interactions with individuals seemed to be one of a desire to do whatever was necessary.

During this time, D.C. was concerned about the care the children were receiving in the foster home and in particular noted concerns about whether J. was getting enough fresh air and whether his nails were being properly cared for et cetera. Throughout all of this, she expressed these concerns while she continued to work positively on the issues that she had to deal with.

The report of Alana MacLean with regard to drug use was that D.C. was not an individual who had any dependence on alcohol or non prescription drugs. What was revealed was that the unhealthy relationship in which she found herself and her general personal circumstances could be triggers that would make her at risk of becoming dependent. She needed to address some of these other issues in her life in order to keep from falling into that kind of dependency.

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In the year 2001, A.M.D. and C.L.D. were assessed as a restricted foster placement. A risk conference concluded that they would proceed with long-term placement with A.M.D. and C.L.D.. The children were placed with them in the Spring of 2001.

In July 2001, D.C. began her counselling with Mary Haylock. Mary Haylock gave lengthy evidence and filed a report. She described D.C. as someone with low self-esteem, isolated, depressed but not clinically depressed, maybe experiencing depressive episodes, being fearful and panicky all in the context of the circumstances in which she found herself. She had been living in an abusive, unhealthy relationship which had the effect of putting her children at risk. Ms. Haylock described D.C. as having come a long way in this therapeutic relationship and progress continued to be made. By January of 2002 enough progress had occurred that D.C. was encouraged to prepare her home for the beginning of "in home" access. This would have been one year after the children were taken into care.

It was around that time that there was a deterioration in the relationship between D.C. and the foster parents. It is hard to discern at that point whether this was because A.M.D. and C.L.D. had their own ideas about wanting to assume long-term care of the boys and this movement toward access in the home with D.C. was a threat to that. It is difficult to say, but D.C. expressed concerns about them and generally there was a deterioration in that relationship during that period of time. At any rate, D.C. was working on a plan with the idea of hopefully having the children eventually returned to her care. She was expecting that access would start moving into her home when the second bombshell struck. Ms. Shepherd's report of February 25, 2002 also recommended permanent care and custody.

Ms. Shephard's report was very thoughtfully prepared. She concluded that notwithstanding the evident love and affection that D.C. and J.A.D both had for the

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children, the needs of these children still could not be met by either or both of these parents. She emphasized the need for J. to have a full developmental assessment conducted. She expressed concern that the foster parents work more closely with the day care and make sure his issues were being addressed. As a result of that second report, the matter was set for a permanent care and custody hearing for October 2002.

The time lines in this proceeding were extended.

The mother continued to have supervised visits and she continued her therapy with Ms. Haylock in spite of all this. Ms. Haylock as well concluded that even with all D.C.'s progress she was not convinced that the children could go back into her care without significant help. She still had a long way to go in dealing with parenting issues. She had come a long way in addressing some of her personal issues and becoming more open, but she still would need considerable help if the children were to be returned to her care.

Essentially the conclusion was that it would be appropriate to move forward with the permanent care hearing on the basis of these two reports.

It was then that the D.'s expressed an interest in presenting a long-term plan for the children and spoke about wanting to adopt the children. It is to be noted that at the very beginning back in May when the children were placed with them they did express an interest in providing long-term care for these children and the word "adoption" was used at that time. There was no active involvement in the proceedings on the part of the D.'s from May until the fall of 2002 in actually putting forward a plan. However, they were certainly there as an option for the Agency to consider.

As a result of this, an assessment was commissioned by the Agency to look into the D.'s situation as a potential adoption placement. That was done in the summer and the report was released in September of 2002. Notwithstanding the negative result

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of that report, the D.'s went ahead and engaged counsel and became actively involved in presenting their long-term plan to the Court.

The concerns that were raised in that adoption assessment were: concerns about ongoing involvement with the biological parents; concerns about potential for conflict between the households; concern about their commitment and attention to the children's needs, especially those of J.. At that point, there was little concern for J.C. except his club foot. It was however suggested that he will have some difficulties and needs that will have to be addressed. Their lack of cooperation with the professionals, not only those who were supposed to be working with J. in terms of play therapy and speech therapy, but attendance at day care, were noted. As well there was a lack of cooperation with Ms. Shepherd in getting the material she needed, medicals done and references. Ms. Shepherd's report recommended against the D.'s being a potential adoptive placement for these two children.

I am going to just stop there for a moment and go back to the factors that the Court has to consider in determining whether or not a disposition order in the nature of a permanent care order is appropriate as being in the best interests of the children.

According to s. 42(2), the Court must be satisfied:

“that less intrusive measures to promote the reunification of the family or the integrity of the family have been put into place, they have either been attempted and had failed, they have been refused by the parent or they would be inadequate to protect the child.

Certainly the Agency did, in spite of the permanent care and custody recommendation that was made at the outset, as a result of what was gleaned through the access, put into place some family skills workers and as well provided therapy for

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the mother and put into place some other services for the children. I am not convinced that they have been attempted and have failed. In fact, I would suggest that what I have heard from the evidence is that they have been attempted and that there was considerable progress being made. However, this matter has gone on for two years. The services that have been put into place, would not be sufficient to protect the children if they were in her care. It would be necessary to have ongoing intensive involvement of professionals to assist D.C.. While there have been some significant changes since the children were taken into care in that J.A.D is in jail, that does not necessarily mean the end of their relationship because it is of over 20 years' duration. While it has been a somewhat loose relationship, it has always been consistent. That dependency still exists, although it would appear that Mary Haylock's work indicates that D.C. may be rising above some of that and may be becoming a more independent person vis-à-vis her relationship with J.A.D. While there have been changes, the changes that would need to occur to give the Court and the Agency the comfort level to return these children to the care of their mother and walk away is not there and I am not satisfied that they could be safely and adequately protected in the care of their mother. Nor are those circumstances are likely to change in the reasonably foreseeable time, and in any event the time frame has already been extended in this proceeding. (s. 42(4) CFSA)

The Court then, in determining that it is necessary to have the children not returned to the care of the mother, must, before making an order for permanent care and custody consider whether it is possible to place the child with a relative, neighbour or other member of the child's community or extended family with the consent of the relative or other person. (S. 42(3) CFSA). This flows into the assessment of the D. family where the boys have been since the spring of 2001.

There are major concerns raised in the assessment of Coleen Shepherd. There are concerns about the lack of follow through on play therapy and speech therapy.

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Although it appears that that speech therapy has resumed, the concern remains that at the very time that A.M.D. and C.L.D. were under scrutiny of a process that would have significant influence on whether or not they would be able to keep these children, they were not following through with the things that were expected of them. Mr. Leiper suggested that if that was the very best of the parenting that J. and J.C. were going to receive because it was at the time they were under the microscope. It is correct that they did not comply with the expectations of the assessor or those working with the family. J. needed therapy, to attend regularly at preschool. What is more puzzling is the fact that A.M.D. lied and made excuses for many of the things that did not happen. Those matters are of considerable concern. There is also the concern about the chaotic household in which the children were residing.

There were many positives in this assessment as well. The children appear to be in a stable and loving home where they have a sense of security. There is nothing to suggest that their attachment to A.M.D. and C.L.D. is an insecure attachment. While the household is chaotic, there do not seem to be concerns that the physical needs and safety of these children are not being met. There are also two teenage children in this household who, by all descriptions, are wonderful young adults; who are well adjusted and who are doing well. One of them has some struggles at school but is a likeable, well adjusted, well behaved young man. The daughter is excelling and doing extremely well and these are children with whom these two little boys have developed a sibling relationship. They are role models for these children.

The report of Ms. Shepherd, while she does not recommend the children staying with A.M.D. and C.L.D. and that they be placed out of their home for adoption, is prefaced by the need for a consultation team to meet and determine the degree of risk to these children should they be moved again and placed for adoption. While she is making that recommendation, she is underlining that recommendation with this requirement. This means that until the answer is known, there is some uncertainty

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about her recommendation against the children remaining with A.M.D. and C.L.D.. Throughout all of the evidence and all of the material I have read in this proceeding, I am still left with that very much being an unknown, that is the risk to these children should they be moved again.

I have listened intently to the evidence of A.M.D. and C.L.D. and certainly while there are lots of excuses made and there are lots of words uttered, it is to be noted that throughout these proceedings that there has been full cooperation; maybe not as much follow through as there should have been, but there has certainly been cooperation. The parents, A.M.D. and C.L.D., did cooperate and encourage and foster the relationship with D.C.. There have been rough moments in that relationship but for the most part, they were supportive of that relationship. There is the recognition that these children have serious needs that have to be addressed and they are certainly emphasized loudly in Ms. Shepherd's report. If A.M.D. and C.L.D. do not have the message by now, they never will.

But I have to say that I have before me the evidence of a very loving home. Perhaps it is a chaotic home but it is a home that has four children in it, two busy teenagers, an almost six year old who requires a lot of attention and a toddler. The older siblings are marvelous teenagers. They are well adjusted and are role models for these little boys. They were raised by A.M.D. primarily on her own and that does not happen by magic.

J. is certainly a very fragile child. He is the one who has the most challenges and those challenges have to be met.

It is important to remember that Ms. Underhill testified as to his considerable progress and that even though he missed a lot of speech therapy that obviously he was being worked with at home and progress had been made. That is not a substitute for

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the need for the child to be actually taken on a regular basis to his speech therapy. It is not a replacement for the need for therapy other than speech therapy for J., such as the play therapy that was initially started.

J.C. is a toddler who has been basically with A.M.D. and C.L.D. since he was an infant and they are the only parents he has known. J.C. too as now been in this home for almost two years. There is nothing to suggest that he feels anything other than a sense of security and stability there. Certainly it is always preferable to keep children together and it would not be appropriate for these children to be separated. A.M.D. has already demonstrated an ability to raise two very wonderful children and now she has two who are going to require some extra attention, for which she and C.L.D. must follow through. Certainly it would appear that C.L.D. must take a more active role in this. The Court has to consider all of those factors which are known factors, versus the unknown factor to which the Court still does not have an answer. What are the emotional and psychological consequences for these children of taking them from the care of A.M.D. and C.L.D.. These parents know the challenges of these two children now. They know that they have the grave responsibility to meet their emotional developmental and physical needs. These children are a known commodity to C.L.D. and A.M.D. and C.L.D. and A.M.D. are a known commodity to these children. The most significant and obvious unknown is the damage of removing these children from these parents at this time and putting them in yet another unknown environment. Whether it is a foster home while they are waiting to be placed in an adoptive home, or putting them in an adoptive home, all of which would be the inevitable result of a permanent care and custody order, they would face at least one, probably two more moves.

That is the one issue the Court has the most difficult time in balancing off against the very serious concerns that Ms. Shepherd has about C.L.D. and A.M.D. meeting the extraordinary needs of these children. These children already have been moved four times: they lived with D.C. and J.A.D, then with C.C., then in another foster home and

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then with A.M.D. and C.L.D.. They would be moved again to a fifth home after they have been for a year and one half in what is demonstrated to be a secure and stable home.

In balancing the concerns of Ms. Shepherd and those concerns of the Agency, with that major concern about the implications of removing the children from the care of A.M.D. and C.L.D., I have to come down on the side that the plan of A.M.D. and C.L.D. is more in the best interests of these children than the plan of the Agency, which has not yet answered the question about the short and/or long-term effects of removal of the children from their care at this time. Nor am I convinced that the risk of the children being exposed to the biological parents, is necessarily in the short or long-term not in the best interests of the children. Certainly it has been raised and issues of conflict have been raised but there really has not been from my review of the evidence a rationale for why that exposure would not be in their best interests. Clearly the children need to be in a stable, secure environment where they know that their parents are their parents, these are the people who are responsible for their day to day care and upbringing and all the major decisions that will be made. There ought to be no confusion in these children's minds as to who their parents are. That is not to say, however, that this cannot be accomplished with having a biological parent being involved. I am not going to advocate that at this point in time, but certainly it is not unusual for children to be raised by family members or other community members and still have the involvement of biological parents and still know who they are. This is a situation where these two children do know their biological parents and one of these is almost six years of age. There was also a concern about whether this would destabilize the placement but by the same token there has been ongoing access with the mother while the children have been in the care of A.M.D. and C.L.D. and it has not had that affect. I really have not heard any evidence to suggest that that is necessarily going to be against the best interests of the children but because there are some issues arising from that, again questions to we do not have answers, that A.M.D. and C.L.D. should

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take counsel from a professional who is engaged in working with this family to sort that out over time.

The Court is on balance determining that it is possible, before going to the extreme of making a permanent care and custody order, to make an alternate order here and I am dismissing the Agency's application for permanent care and custody. I grant leave, if I have not already done so, to A.M.D. and C.L.D. to apply for custody and I grant them custody of the children.

The Court has the authority to put conditions on custody and I am going to do that because this is a situation where there are issues that need to be addressed.

- 1) There will be no change in custody or access without giving notice to the Agency. Failure to provide notice to the Agency would be considered to be an act that would not be in the best interests of the children and could give rise to further intervention of the Agency.
- 2) J. shall engage in speech therapy.
- 3) He shall participate regularly in day care.
- 4) There shall be a review of this custody arrangement.
- 5) Consultation shall be sought over the coming months with respect to access occurring with the parents. There shall be no access in the interim. Failure to provide the services that the Court has outlined, that is the speech therapy, regular attendance at day care and another form of therapeutic intervention for J., such as play therapy would be considered contrary to the best interests of the child and would as well be grounds for further Agency intervention. The Agency

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will be advised of the review date. The Court will expect on that review date reports from the various service providers including reports from the day care with respect to J.'s attendance and his performance. As I have indicated, I am not sure that access properly constructed would not be in the best interests of these children but it appears to me that it will require some time to further stabilize the parenting situation with A.M.D. and C.L.D. and there needs to be consultation with professionals as to whether or not this would be appropriate and if it is appropriate, how it would occur.

I would also urge A.M.D. and C.L.D. to turn to the Agency for assistance if they require assistance with respect to meeting some of these needs. There is the provision in the legislation for "Section 13 services" and it seems to me that they should be available as a resource if it is necessary although it does appear from the evidence before me that A.M.D. and C.L.D. do have the ability to continue to engage in these services. They should consider it open to them to approach the Agency for assistance in providing some of these services if it is necessary to do so.

There will be a review in six months and as I have indicated there will be no change in the access or custody without notice to the Children's Aid Society and they will be advised of any court reviews.

Deborah Gass, J.

DG/ng