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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 relative of the child."

SFHC-14170

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

BETWEEN: MINISTER OF COMMUNITY SERVICES - APPLICANT

-AND-

A.C. and J.C. - RESPONDENTS

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

**DECISION
2003 NSSF 015**

**HEARD: BY THE HONOURABLE JUSTICE LESLIE J. DELLAPINNA ON
APRIL 29, 2003; APRIL 30, 2003; MAY 1, 2003; MAY 2, 2003;
MAY 5, 2003 and MAY 16, 2003**

DECISION: MAY 28, 2003

**COUNSEL: ALETA CROMWELL - APPLICANT
LINDA TIPPETT-LEARY - RESPONDENT**

DELLAPINNA, J.

The Minister of Community Services is seeking an order for permanent care and custody with respect to the two children P.T., born [in 1991] and C.A.T. born [in 1993] who are the children of the Respondent, A.C.. The biological fathers to P.T. and C.A.T. were never parties to this proceeding. J.C. is the children's stepfather and has chosen not to oppose the Minister's application.

Background to These Proceedings

The protection application is dated February 12, 2002 and was filed after the children were taken into care on February 7, 2002. The Minister had prior involvement with the C.'s but the children's apprehension in February, 2002 followed an investigation which disclosed that the children were missing a significant amount of time

at school and their academics were suffering. When they did go to school they were not clean and smelled of cat urine. It was also learned that the children were apparently being disciplined by J.C. with the use of an electrical cattle prod. The family residence was discovered to be uninhabitable. The entire residence was in disarray with debris and garbage throughout the residence, there was animal feces on the floor of the residence, numerous cats roamed throughout the residence, numerous dogs were both in and outside of the residence, stagnant water was in the bathroom tub, there was a risk of fire because of a space heater in among the debris in the livingroom and an unbearable stench of cat urine throughout.

The “five day” order was granted on February 14, 2002 with the so-called “30 day” interim order granted on February 26, 2002. The Minister was granted interim care and custody of the children.

On May 10, 2002 the children were found to be in need of protective services pursuant to subsection 22(2)(k) of the **Children and Family Services Act**.

On August 8, 2002 the first disposition hearing was held. A temporary care and custody order was granted to the Minister. The Respondents as well as the children were referred for the completion of a parental capacity assessment including psychological testing. Following the Minister’s receipt of the parental capacity assessment report and a psychological consultation report, the Minister put forward a plan for permanent care.

The temporary care and custody orders were renewed at review hearings on October 9, 2002 and February 6, 2003.

The Parties Positions

The Minister's position is that the Respondents do not have the capacity to parent the children. Quoting from the Minister's plan for the children's care dated October 1, 2002:

" In the needs assessment report completed by Debra Garland with regard to P.T. and C.A.T., her concluding remarks are:

P.T. and C.A.T. are young boys whose emotional and physical needs were not being met in their mother and step-father's care. These children have witnessed domestic violence, and have likely been privy to a variety of sexual practices. The adults parenting these boys do not exhibit insight, any degree of parenting skill, or emotional maturity. A.C. has many unmet needs that are likely residual from her own childhood, thus her ability to satisfy her sons needs are severely impaired. J.C. and A.C. are perhaps responsible for the use of inappropriate punishment of the boys (based on their allegations).

P.T. and C.A.T. require a structured, stable, consistent environment in order to reach their developmental potential. They need a sense of emotional and physical security and to be raised in an environment that promotes and models pro-social behaviour.

It is the Agency's position that neither A.C. nor J.C. are able to provide that."

A.C. opposes the Minister's application and seeks a continuation of the temporary care and custody order or alternatively, a permanent care and custody order with access provisions so that she can continue to see the children. She admits to having "failed" the children and failing to protect them and acknowledges that the

Minister was justified in apprehending the children and in fact, was glad that they did. However, she feels that after receiving the parental capacity assessment report, the Minister did not provide further services which may have led to her eventual reunification with her children. She states that she is prepared to do anything to get the children back. All indications are that she has cooperated fully with the Minister and she has demonstrated a desire to improve her circumstances to become a better parent.

A.C. acknowledges that her son P.T. has little, if any, bond with her and that he has settled in well with his current foster home and would prefer to remain there. She once had a stronger bond with C.A.T. and hopes that with increased access and ongoing services that bond can be renewed. In her plan of care, she states:

“ I know that I need to demonstrate continued progress or face permanent care again.”

She is opposed to any contact between the boys and J.C..

The Respondents' Prior Involvement with Child Protection Agencies

A.C. is now 29 years of age. She was an only child. She was raised in New Brunswick but describes her parents as not having been very caring and not very warm people. She testified that she was not permitted to have friends. Both of her parents had told her that they did not love her. Her mother is now deceased. Her father remarried and she now has two half siblings who are six and three years of age.

She has a grade twelve education and as well took some accounting courses at community college. During the past year, with the help of a tutor, she has raised her reading level from an equivalent of a grade five to a grade nine level.

P.T. was born [in 1991] when A.C. was 17 years old and attending high school. P.T.'s conception was as a result of a sexual assault. A.C.'s parents cared for P.T. while she completed grade twelve. After high school she moved from her parent's home and took P.T. with her. Her parents, apparently of the opinion that she could not adequately care for her son, contacted New Brunswick Family and Community Services. An investigation followed which raised issues regarding A.C.'s ability to care for the child on her own. The agency was concerned with A.C.'s level of maturity, her transient lifestyle and tendency to choose inappropriate partners. Eventually, P.T. was placed, with A.C.'s consent, in the custody of her parents. A.C.'s mother passed away approximately a year later. P.T. remained living with his grandfather until the Fall of 1998 when he returned to live with his mother, J.C. and younger brother, C.A.T.. Prior to securing P.T.'s return, A.C. believed that P.T. was being neglected and possibly abused while in the care of her father. After he was returned to A.C., she noted that he required dental work and was scared, timid and acted out.

C.A.T. was born [in 1993]. A.C. became involved with C.A.T.'s father shortly before the agency began investigating P.T.'s circumstances. C.A.T.'s father was physically abusive to A.C. and according to her, intentionally abused her with the specific intent of trying to cause a miscarriage. He was also known to have a record for

child molestation. After C.A.T.'s birth, A.C. left C.A.T.'s father when he became involved with another woman. Following two more unsuccessful relationships, A.C. moved from New Brunswick to Nova Scotia to, in her words, get away from her past. She eventually secured accommodation in [...] and soon thereafter met J.C. who lived in a building next to hers. Their relationship commenced almost right away.

J.C. had an extensive history of sexually assaulting young girls. He apparently disclosed to A.C. that he had a record for sexual assault but did not provide her with all the details.

Because of A.C.'s association with J.C., the Children's Aid Society of Halifax opened an investigation in the Fall of 1994. Among other things, they confirmed J.C.'s record of sexual assaults, including a sexual assault on his six year old niece. They confirmed also that his name was on the Child Abuse Registry and his probation officer at the time described him as a pedophile. After learning of the details of J.C.'s past, A.C. remained intent on staying with and marrying J.C.. A.C. was then just a few months away from her 21st birthday.

The Children's Aid Society filed a Protection Application in relation to C.A.T. and J.C. and A.C. on October 28, 1994 seeking a supervision order with placement of C.A.T. with A.C.. C.A.T. was found to be a child in need of protective services pursuant to subsections 22(2)(b) and (d) on January 26, 1995. A Supervision Order was granted on April 11, 1995 continuing the placement of C.A.T. with A.C..

Among other things, a parental capacity assessment was performed and various services were put into place including counselling for both J.C. and A.C., the parties were given family skills education and J.C. was ordered to attend a Maintenance Program as a form of relapse prevention (which he failed to complete). The proceeding was dismissed on the 3rd of June, 1996.

After the Children's Aid Society ended their involvement with the parties, J.C. and A.C. resumed their cohabitation and were married. What has been described as deviant sexual behaviour between J.C. and A.C. commenced immediately after the Agency ended its involvement. This behaviour involved extreme sadomasochism, bondage, and eventually bestiality and the involvement of third parties including prostitutes. Initially, A.C. was placed in the submissive role but gradually J.C. came to prefer that she play the dominant role.

A.C. claims that although she took part in these activities, she did so only because of J.C.'s insistence and because she wanted to stay married to J.C.. This went on for many years.

On one occasion in early 1999 when J.C. inflicted an unusual amount of pain on A.C., she left him and went to Bryony House. A short while later, however, she returned to J.C.. In 2001, A.C. introduced A.D. to J.C.. A.D. was a female friend and co-worker of A.C.. At the suggestion of J.C., the parties and A.D. had sexual relations together. Although A.D. did not move in with the parties, she did stay with them for prolonged

periods of time for approximately a year. She slept in the same bed with J.C. and A.C. and eventually displaced A.C. who began sleeping in the livingroom.

After J.C.'s attentions turned more to A.D. and less to A.C., the parties separated in November, 2001.

A.C. testified that the children were never exposed to the sexual practices of the parties. This is hard to believe given the very small premises in which the parties and the children lived and considering the period of time over which this behaviour took place.

In the Summer of 1999, J.C. made a referral to the [...] District office of the Department of Community Services expressing his belief that C.A.T. may have been sexually abused by his 10 year old cousin. An investigation followed. It was around the same time that both brothers exhibited sexualized behaviour in the form of mutual fondling. A.C. attributed P.T.'s behaviour to events which she believed occurred while P.T. was in the care of his grandfather. P.T. had been residing with his grandfather up until less than a year before this behaviour was reported by the parties. The family was referred to Dr. John Swaine who met with the family on several occasions and provided reports including a letter dated June 26, 2000 wherein Dr. Swaine stated:

“ ... [I] am generally quite satisfied that the sexual issues between P.T. and C.A.T. are no longer taking place; these issues seem to have been dealt with satisfactorily ... “

The C.'s next involvement with a child protection agency was with the Applicant in March, 2001. The agency received a referral from a neighbour of the C.'s to the effect that the children were "dirty and untidy" and that J.C. had been observed slapping the children in the back of the head and chasing them with a stick. The children were interviewed separately while at school. C.A.T. disclosed that he was physically disciplined by both J.C. and A.C. and that J.C. used a "buzzer" device on the children as a form of discipline. Eventually it was determined that this "buzzer" was an electrical cattle prod. When the agency workers made an unannounced visit to the C. residence on March 28, 2001, they met both J.C. and A.C.. They were refused entry into the C. home. The agency's involvement at that time ended with the C.'s signing a Statement of Undertaking. By signing that statement, the C.'s acknowledged the position of the agency which was that if they owned such a device, its use on the children was considered physically abusive and they were not to use such a device for the purpose of disciplining the boys and were to dispose of it. The C.'s at that time did not admit owning such a device.

The next referral with respect to the C.'s came on January 29, 2002 when J.M., a school psychologist, reported that C.A.T. disclosed during an academic assessment that this prod had been used on him by J.C., although he reported that J.C. was no longer residing in the family home. J.M.'s referral expressed concerns regarding C.A.T.'s frequent absence from school. As a result of the investigation that followed, the children were taken into care.

Psychological Assessment Report

Ms. Valorie Rule is a registered clinical and forensic psychologist who was asked to provide an addendum to the parental capacity assessment report being prepared by Ms. Debra Garland. In her report dated July 23, 2002 Ms. Rule states that the purpose of her consultation was “to assess the impact on and risk to the children resulting from the sexual deviant behaviour that J.C. and A.C. were charged with.”

Ms. Rule’s report contains details of the sexual relationship between the parties as described by A.C.. According to Ms. Rule’s report, A.C. told her the bestiality occurred in a shed located outside of their mobile home but also, on at least a couple of occasions, inside the home. When asked where the children were when one act of bestiality occurred in the living room of their mobile home, she stated that she wasn’t sure. When asked where the children were when the third parties were invited into their home for sexual purposes, she said that they were in bed. As to why she took part in these activities, she told Ms. Rule that it was against her will but that J.C. was able to place her in a trance and during these trances she just did what he told her to do. At other times, Ms. Rule was told by A.C. that she stayed with J.C. and took part in these activities because she was forced to do so physically and at other times because he threatened suicide and threatened to tell the authorities. She stated that she was afraid that she might lose the children. During her testimony, she stated that she just wanted someone to love her.

Under the heading Impressions and Summary, Ms. Rule states:

“ [A.C.] admits to engaging in bestiality, although states that this was while under a trance-like state. It is interesting to note that A.C. could not describe how J.C. put her into a trance including, being unable to described (sic) what he looked like or what he did in order to place her in this state. There is a possibility that A.C. was in a dissociative state during the sexual events that she described, however she did not dissociate throughout the entire interview and is not able to describe symptoms that are characteristic of dissociation. Therefore it is unlikely that she was dissociated. Given this impression, it is likely that she was a consensual sexual partner with J.C..”

Ms. Rule diagnosed A.C. with Paraphilia, specifically Zoophilia and stated:

“ Based on A.C.’s interview data, it is likely that she and J.C. consensually engage in bestiality for which they are both currently charged.

...

Although A.C. reports the children were in the bedroom and did not witness the incidents of sexual deviancy, it is probable that they were either directly or indirectly exposed to this behaviour. In addition, the use of pornography sites on the Internet is accessible to children and they may have witnessed this information as they were using the computer. In terms of parenting practices, this is undesirable behaviour.”

According to A.C., the children had no access to pornography on the Internet and there is no independent evidence that indicates otherwise.

With respect to J.C. and A.C.’s sadomasochistic sexual practices, Ms. Rule stated:

“Based on A.C.’s information, it appears that she and J.C. are involved in sexual sadism and masochism.

...

The causes and psychological significances of sadomasochism are unclear. Therefore it is difficult to discern the reason that J.C. and A.C. engaged in this behaviour. **More to the point in this consultation is the affect this has on the children. It will be crucial not to over pathologize their sexual behaviour and make it the focus of the consultation. It is more important to focus on**

how their behaviour interferes with their ability to provide the children with a safe and nurturing environment.” (Emphasis added.)

In conclusion, Ms. Rule stated:

“It is the consultant’s opinion that A.C. does not display any appreciable level of empathy for the experiences of her children in regard to her sexual deviant behaviour and/or the use of corporal punishment. Whether or not she was directly involved in the corporal punishment of the children, she does not appear to have made any appropriate attempts to stop J.C. from engaging in these behaviours. In addition, A.C. does not appear to understand the appropriateness regarding sexual practices, whether they are consensual or coerced. It is not socially appropriate to engage in bondage and sadomasochism and bestiality in a two-bedroom mobile home where children are present. It is unlikely that the children did not witness some of these behaviours. A.C. does not appear to understand this concept and this is of concern when considering her parenting abilities.

It is the consultant’s opinion that A.C. **does not currently have the capacity** to provide her children with a safe and nurturing environment. It is also the consultant’s opinion that A.C. has a degree of sexual deviance that will need to be addressed through psychotherapeutic intervention.”

Ms. Rule recommended that P.T. and C.A.T. not be placed in A.C.’s care and that A.C. be afforded psychotherapy from a trained Psychologist who is expert in sexual behaviours and in particular, paraphilias.

Ms. Rule testified that she felt that A.C. probably did the best that she could in terms of caring for the children but that her best was not good enough. Whether she took part in the deviant sexual activities with J.C. voluntarily or as a result of coercion, she failed to protect the children from exposure to this type of activity. She acknowledged that A.C. was an emotionally fragile individual and stated that she likely does not have the psychological energy needed to care for and protect her children.

Parental Capacity Assessment

A Parental Capacity Assessment was undertaken by Ms. Debra Garland whose report is dated September 18, 2002. Ms. Garland identified five concerns as a result of her assessment. They were:

- \$ That both children alleged that they had been disciplined with the “buzzer” device by both parents.
- \$ that the children suffered deficient care and physical neglect that included but was not limited to lack of nutritious food, appropriate hygiene, etc.,.
- \$ that J.C. and A.C. had been unable to meet the basic physical needs of the children for some time.
- \$ that the children had been exposed to domestic violence and varied and extensive sexual behaviour of the parents; and
- \$ that the children’s emotional needs have not been met for an extended period of time, if at all.

Regarding A.C.’s ability to meet the basic needs of the children, she concluded at page 22 of her report:

“ ... A.C. reported she was an abused and neglected child. She presents as a rather needy young woman who tries very hard to be liked. Her neediness makes her vulnerable to negative relationships and interferes with her ability to set appropriate boundaries, and limits her ability to respond to the needs of the children.

The current assessment and the documents provided have indicated that A.C. was not able to meet the basic physical needs of her children. The video filmed by Community Services graphically displays her inability to provide her sons with

a safe, clean, nurturing environment. There are reports from the school that the boys would miss a significant number of days and when there was often unkempt and wearing soiled clothing. The children had academic concerns that required support from home that did not appear to be met; this was when J.C. was both in the home and after he left.

P.T. and C.A.T. had sustained injuries that Dr. Morrison compared in similarity to those obtained from the use of a stun gun. ...”

Under the heading, “Child Management”, Ms. Garland stated:

“ A.C. and J.C. appeared to be adults so involved in their own issues and interests that the time and effort given to P.T. and C.A.T. was minimal at best.”

And further:

“ A.C. and J.C. tended to “blame” any behaviour that they did not like observed in P.T. as a result of his formative years with his grandfather. There does not appear to be any appreciation by either parent for a child moved from the only home he has ever known to a mother he knew little, and a step-father not at all. These parents attempted to have P.T. diagnosed with something several times; they did not identify with the possibility that their behaviour could have been the problem; problems were always external to them.

C.A.T. exhibited extreme temper tantrums in foster care, it is likely these also occurred prior to care. Given the limited child development knowledge and limited parenting skills of J.C. and A.C., it appears they (sic) unable to appropriately manage the children’s behaviour in a manner that was effective and respectful of the children.”

As for her ability to meet the emotional needs of the children, Ms. Garland stated:

“ A.C. has many historical family issues that have not been addressed. A.C. has been victimized repeatedly and left unprotected by her parents. Parents with unmet needs often are (sic) develop personality patterns that interfere with the ability to form and maintain genuine relations with others (Bowlby, 1973). ...

Because A.C. does not appear to have addressed childhood issues, it is likely she does not have the resources to meet her children’s emotional needs. Observations of A.C.’s interactions with her sons illustrated her difficulty/inability to see beyond her needs to those of her sons.”

Under the heading Current Parenting Abilities, Ms. Garland states:

“ A.C. has a chronic history of emotional/family disturbances; she reported being depressed but her depression appears to change dramatically depending upon the circumstances and environment in which she finds herself. A.C. does not accept responsibility for her role in the current situation, but rather blames her former husband, J.C.. Her ability to internalize tension is poor as evidenced by her inappropriate use of physical punishment, her “yelling and hollering”. A.C. does not have a stable external support system other than Community Services; services have been provided in the past though perhaps not utilized properly. The current assessment has indicated her parenting capacity to be significantly impaired.”

Ms. Garland recommended that P.T. and C.A.T. become permanent wards.

“ A.C. does not have the parental capacity to care for her sons and her ability to develop such capacity would require long-term involvement with various professionals with no guarantee that at the end of intervention she would have the capacity to care for her sons. To hold the children in a state of limbo - foster care - for an unlimited length of time would not be in their best interests and could result in severe inability on the children’s part to form and maintain secure relationships with others.”

A.C.’s counsel was critical of the conclusions of Ms. Garland in part because of the relatively brief amount of time that she spent with A.C. (as compared for example to the amount of time spent with her by her own counsellor, Ms. O’Day) but also because of her failure to contact the collaterals identified by A.C. such as the children’s teachers. Ms. Garland did not believe that contacting the collaterals would have assisted her in the preparation of her report because the information she would likely have collected would have been too subjective in her view. The Court did, however, hear from the principal of P.T.’s school and the school psychologist. The Court also received evidence from A.C.’s witnesses most of whom did not know her prior to the children being taken into care. The children’s teachers were not called as witnesses by either party and no expert evidence was called on behalf of the Respondent.

Reports of Valerie O Day

A.C. received ongoing counselling from Ms. Valerie O'Day, a registered professional counsellor. The agency had requested that Ms. O'Day focus on A.C.'s self-esteem, historical abuse and dysfunction in her family of origin, abuse from two of her previous partners and her deviant sexual history and activities. She was also asked to try to determine the degree to which the children may have witnessed domestic abuse, the parties' sexual behaviour (including bestiality) and whether the sexual activity between the parties was coerced or consensual. Ms. O'Day began meeting with A.C. in September of 2002 and by the time of trial had met with her a total of approximately 40 hours.

Ms. O'Day provided three reports dated November 27, 2002, January 27, 2003 and April 17, 2003. Her initial report provides a history of the relationship between J.C. and A.C., including how A.C. worked full-time during the last two years of the marriage primarily because J.C. "didn't like regular routine and avoided working". During those two years, the children were left primarily in the care of J.C.. That may explain why, during subsequent interviews with the children, there was an indication that the children had more of a bond with J.C. than with A.C.. According to Ms. O'Day's reports, A.C. described the relationship that she had with her husband as one where he coerced if not forced her into deviant sexual activities. Ms. O'Day stated she was convinced that A.C. was the victim of sexual abuse by J.C. and that A.C. complied with his requests out of fear of abandonment.

As to whether the children witnessed the activities between the parties, Ms.

O'Day states on page four of her November 27, 2002 report:

“ A.C. says that during the half dozen or so times that J.C. made her have sex with one of their dogs, she has no memory of the children being around. She thinks the children may well have been at school because often she and J.C. were alone during the early part of the day, particularly when she was working afternoon or evening shifts.”

On page 5 of her report:

“Her memory is that on the two or three weekend occasions they met with other consenting adults for sex, the children were probably staying with J.C.'s mother. She does admit that the children were home and asleep when she consented to a threesome with J.C. and the young woman he now lives with. A.C. claims she has no memory or knowledge of the children seeing anything directly sexual that would have disturbed them although she admits they could have heard noises associated with their sexual activities. She says their bedroom was off limits to the children and there was a lock on the door. As well, for reasons of safety, the children were forbidden to enter the abandoned house. A.C. does acknowledge that the children were exposed to verbal and physical fighting between her and J.C., especially when they were splitting up.”

Further on the same page:

“ The other limit for A.C. was finding herself displaced to a cot in the living room and relegated to the role of J.C.'s private dominatrix while he shared their marriage bed with another woman. A.C. understands herself as consenting to the sexual encounters with others and to experimenting with the threesome only as long as she was involved in the sex and as long as J.C. viewed her as his mate and sexual partner - the “true deal” as she expressed it in one of her poems. But now J.C. was turning his attention to the other woman in A.C.'s own bed, in her own home, in front of her own eyes and in front of her children. A.C. finally began to face the fact that there was something seriously wrong with her marriage. A.C. confronted J.C. and they began to fight continuously. The marriage broke down and J.C. moved out.”

When Ms. O'Day wrote her second report, she was concerned with what was then expected to be a termination of her services to A.C. and the effect that would have on A.C.'s coping skills and more immediately, how she might react if her children were taken into permanent care. At pages 2 and 3 of her report she states:

"Although she is usually able to function at a satisfactory level, A.C. is subject to the flux of her own enigmatic attitudes and erratic emotions which leave her unable to orient her emotions and thoughts in a logical way. Erroneous beliefs and interpersonal mechanisms pervade all aspects of her behaviour. Her foundation for effective intrapsychic regulations and socially acceptable interpersonal conduct seems to be deficient and she has developed a less than satisfactory hierarchy of coping strategies.

...

In her confusion she complains about being aggrieved and mistreated yet she still tolerates and perpetuates relationships that roster and aggravate her misery. Because she has a very serious depressive tendency to demean her self-worth and subject herself to the mistreatment of others, she participates in situations and engages in behaviour that she knows will provoke condemnation (neglects her children, participates in bestiality) and then complains about being misunderstood and mistreated. A.C. has gained some insight into her unconscious, self-destructive ways of thinking, feeling and behaving and into how she compulsively participates in bringing negative attention to herself. **However, she has a long way to go before she will be able, on her own, to diminish or even prevent relapse of her habitual and maladaptive methods of relating.** Continued improvement will depend on the consistent presence of an empathic, genuinely concerned therapist (the effective, healthy parent she never had)." (Emphasis added.)

In her third report, Ms. O'Day listed A.C.'s strengths and the changes that A.C. made with respect to her lifestyle and personal development over the preceding nine months. It was Ms. O'Day's opinion that A.C. was not sexually deviant - although she took part in sexually deviant behaviours. Rather, she took part in her husband's sexual fantasies because she wanted to be loved by J.C.. While acknowledging that abused women have shown a pattern of being attracted to abusive men, she expressed

optimism that A.C. would not again engage in such sexually deviant behaviour because it was highly unlikely that she would ever become re-involved with her husband, she was now involved with a gentleman who has demonstrated no similar tendencies and because she was enthusiastically and positively responding to Ms. O'Day's therapy. On page 3 of her third report, Ms. O'Day stated:

“It is possible to understand the sexually deviant behaviours A.C. sometimes willingly participated in as being a function of her husband's intense sexual preoccupations combined with her own determination to accommodate this man rather than risk her marriage and end up alone - even if there was some risk that the children might be exposed to some of it and even if she was degraded and abused herself. Now this situation no longer exists and because no one else is asking her to engage in any kind of deviant sexual behaviour, A.C. says she no longer engages in such activity and has no desire to do so.”

Services Provided

Concern was expressed on behalf of A.C. to the effect that once the Applicant had decided to seek a permanent care order, no further services were offered A.C. and her access to the children was not expanded. The agency does not deny that is the case. However, a number of services were provided to A.C. by the Minister and, prior to the Minister's involvement, by other child protection agencies.

The Children's Aid Society's plan of care dated March 12, 1996 lists numerous services (both agency services and community services) that were provided at that time. They included the provision of a family skills worker for A.C., a parental capacity

assessment including a psychological/psychiatric assessment, a home study report, individual counselling for A.C. by Mr. Pat Dougan, family skills and parenting training and day care services.

In 1999, the family, and in particular P.T. and C.A.T., were referred to Dr. John Swaine and Associates for counselling and his office was involved with the family up to and including 2000.

During the course of these proceedings, services were provided both through the agency and from community resources. They included the parental capacity assessment by Ms. Garland, the psycho-sexual assessment by Ms. Rule, tutoring for both children, victim's services through the Department of Justice for A.C., counselling for the children and counselling for A.C.. In addition, there were those services accessed directly by A.C. including her own tutoring, parenting courses and the course through Family SOS.

In total, a great many services have been provided to this family or accessed by A.C. over many years.

A.C. s Current Circumstances

After the children were apprehended, A.C. moved from what was the family residence to her own apartment. She has had relationships with three different men for different durations. The first was just a dating relationship that lasted between three and four weeks. The second was with a man with whom she cohabited for a period of

approximately a month. That relationship ended when he began to be physically abusive. The third was with L.B. who is the superintendent of A.C.'s apartment building. They have been dating for approximately 10 months. L.B. has no criminal record and no known involvement with any child protection agency.

Since the children were taken into care, A.C. engaged the services of a tutor to assist her with improving her reading level, she took a high conflict course through Family SOS and two parenting courses. She testified that she is now training to be a property manager.

She has held a number of low paying positions but is currently receiving social assistance.

She had an interest in becoming a professional wrestler and took lessons in wrestling from L.B. but says her interest in wrestling at the present time is purely for its recreational value.

She claims that she received no sexual gratification from the deviant sexual behaviour with J.C. and she says the thought of what she did now sickens her. She says she has no intention of ever engaging in such activities in the future and that she does not need a man in her life anymore.

A.C. and L.B. continue to see each other. Although they live in the same apartment building A.C. testified that they live in separate apartments. They apparently have no immediate plans to cohabit although both expressed a desire to move in that direction.

She has been exercising access to the children under agency supervision but not to the extent that she would like. She acknowledges that she does not know the children very much anymore as a result of her limited contact with them. She acknowledged too that she does not have a close relationship with P.T. and agreed that it may be better for P.T. to stay in his current foster placement. She does, however, want to maintain a relationship with him.

She had a closer relationship with C.A.T. and holds out the hope that C.A.T. will one day be returned to her care.

A.C. intends to continue with her counselling.

The Present Circumstances of the Children

Just prior to the children being taken into care, P.T.'s school principal expressed concern to the agency case worker at the time that he was chronically absent from school and when he did attend school, he was frequently dirty and smelled of cat urine and complained of being hungry. The RCMP had by this time also made a referral to

the agency advising that while investigating an altercation between A.C. and a neighbor, it was observed that the C. home was “not livable” because of the filth and debris.

After the children were taken into care, they were first placed in an emergency foster placement and then moved to a foster home where their hygiene was reported to have been poor, they exhibited poor eating habits and table manners and P.T., in particular, exhibited aggressive behaviour. Both children required a great deal of academic assistance. Both children were eventually given tutorial assistance and C.A.T. was seen by a speech language pathologist. P.T. had by this time already repeated grade one and, in spite of the tutoring, it appears that C.A.T. will have to repeat grade three.

Both children were also referred to a play therapist.

After being in the same foster home together for several months, C.A.T. was moved to a new foster home in November of 2002 because he exhibited serious behavioural management problems which affected not only his relationship with his brother but also with other children in the foster home. Arrangements were made for the boys to spend time together including, recently, overnight visits with each other at the foster home where P.T. has been placed.

A.C. has exercised supervised access to the children each week. She appears to prepare well for those visits including advanced planning of activities to do with both

of the boys. Nevertheless neither child exhibits a significant emotional attachment or bond with their mother. Even A.C. acknowledges that P.T. never had a true bond with her. At one time she says she had a close bond with C.A.T. but she admits that her relationship with her younger son is now tenuous. The state of the relationship (or lack of relationship) between the boys and their mother is supported by Ms. Garland's psychological needs assessment report and the reports of Ms. Wheeler, the children's play therapist. Ms. Wheeler stated in her April 30, 2003 report that P.T. continues to indicate a poor attachment to his mother and "has recently been referring to her in the context that he does not want the visits with her to continue".

Ms. Wheeler reports that P.T. continues to display a lot of violence in his play and in his talk which she attributes to his exposure to domestic violence. He apparently misses his brother but perhaps not as much as his brother misses him. He has settled in well with his foster parents and has expressed a desire to remain living with them. This is a plan that is supported by Ms. Wheeler. The foster parents have indicated a willingness to make themselves available for a long-term placement for P.T..

C.A.T. is having more difficulty settling in his foster placement and expresses a preference to return to his original foster placement, i.e., P.T.'s foster parents. He wants too to be united with his brother. As indicated earlier, C.A.T. will likely have to repeat grade three and is likely also that he will require ongoing counselling. Ms. Wheeler stated in her April 28, 2003 report:

“... this child is grasping to belong somewhere and currently is experiencing a feeling of displacement. C.A.T.’s discussion about his mother does not reflect that his needs were met consistently or that he felt safe in his mother’s care or that she could protect him. His attachments with her continues to present as weak/ambivalent versus one of a more secure nature. To reiterate what was discussed in a former report, it is important right now to make a permanent care plan for C.A.T. that will allow him to feel secure and to form appropriate attachments that will allow him to grow and develop to his full potential.”

P.T.’s foster parents are willing to provide a long-term placement for C.A.T. too. A decision respecting C.A.T.’s placement has been deferred pending the outcome of these proceedings.

Statutory Considerations

The following provisions of the **Children and Family Services Act** are applicable:

Purpose

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.

Paramount Consideration

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

...

Best interests of child

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

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

- (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;
- (f) the child's physical, mental and emotional level of development;
- (g) the child's cultural, racial and linguistic heritage;
- (h) the religious faith, if any, in which the child is being raised;
- (i) the merits of a plan for the child's care proposed by an agency, including a proposal that the child be placed for adoption, compared with the merits of the child remaining with or returning to a parent or guardian;
- (j) the child's views and wishes, if they can be reasonably ascertained;
- (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;
- (n) any other relevant circumstances.

...

Disposition hearing

41 (1) Where the court finds the child is in need of protective services, the court shall, not later than ninety days after so finding, hold a disposition hearing and make a disposition order pursuant to Section 42.

...

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.

Restriction on removal of child

(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.

Placement considerations

(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.

Limitation on clause (1)(f)

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

...

47 (1) Where the court makes an order for permanent care and custody pursuant to clause (f) of subsection (1) of Section 42, the agency is the legal guardian of the child and as such has all the rights, powers and responsibilities of a parent or guardian for the child's care and custody.

Order for access

(2) Where an order for permanent care and custody is made, the court may make an order for access by a parent or guardian or other person, but the court shall not make such an order unless the court is satisfied that

(a) permanent placement in a family setting has not been planned or is not possible and the person's access will not impair the child's future opportunities for such placement;

(b) the child is at least twelve years of age and wishes to maintain contact with that person;

(c) the child has been or will be placed with a person who does not wish to adopt the child; or

(d) some other special circumstance justifies making an order for access.

Discussion and Conclusion:

The burden of proof at the disposition stage rests upon the Applicant. Therefore, the Applicant must satisfy the onus that an order of permanent care would be in the children's best interests. Given that a permanent care and custody order is the most intrusive remedy under the **Act**, the onus on the Applicant is a heavy one. I am satisfied that the Applicant has met that onus.

Section 2 lists the three purposes of the **Children and Family Services Act**. The primary purpose of the **Act** is to protect children from harm. If at all possible, children should remain in the care of their parents and, if necessary, services provided to the family if that would be in the children's best interests.

P.T. and C.A.T. are two children whose needs have been all but ignored by the Respondents. Prior to being taken into care, P.T. and C.A.T. were being neglected, abused, exposed to domestic abuse and exposed to deviant and even criminal behaviour. Little, if any, importance was placed on their education. Attention to their personal hygiene was inadequate and there is a question as to whether their nutritional needs were properly attended to. A.C. exposed both children to extreme risk by forming relationships with men whom she knew had records of sexual assault on children. In the case of J.C., she shrugged off the agency's concern as was expressed back in 1994 by stating that she believed that people could change. Also, she showed no particular concern about J.C.'s background because as she stated, his assaults were on young girls, not young boys. Even in the final year before the Respondents' marriage broke down, A.C. permitted J.C. to take the children with him to Cape Breton with A. D.. This occurred after A.C. had observed J.C. physically abusing the children (choking them), after he had been physically abusive to her and after many years of sexually deviant behaviour.

Although A.C. admits in a general sense to having "failed" her children, she still distances herself from much of the responsibility for specific acts of neglect or abuse.

Instead, she casts the blame on others. She blamed J.C. for the condition of the trailer even though by the time the children were taken into care, J.C. had been gone for almost two months. She blamed the presence of all the animals on J.C. although after they had been separated for approximately two months, many of the animals remained. The boys' truancy she blamed on J.C. because he was at home with them while she was at work. While acknowledging that she did not demonstrate adequate parenting skills, she blames her own parents and the lack of support that they gave to her during her formative years.

While acknowledging that she spanked the boys, she denied using the cattle prod on the children and denied having any knowledge that the cattle prod had been used on the children by J.C.. I believe that even if she did not use the prod on the boys, she was aware that the prod was being used by J.C.. She was, in any event, aware of the agency's concern in 2001 with respect to the cattle prod. When confronted by the agency, she and J.C. denied owning such a device. She claimed that she could not say otherwise with her husband present. Yet she acknowledged that at some time during the year that followed, she had opportunities to tell the agency or to get rid of the prod. It was not until J.C. used the prod on her that she broke the cattle prod so that it became inoperable.

While she admits to taking part in deviant behaviour with her husband, she again puts the responsibility on his shoulders. She did acknowledge however that she took part in these activities willingly in order to keep her husband happy. I do not accept that

the children were not at one time or another exposed to these activities. In addition, A.C. failed to protect her children when she permitted third parties to join them in their home for similar purposes.

It is true that A.C. was herself victimized from a young age. Both as a child and as a teenager, she was sexually assaulted. She did not have a warm relationship with her parents and at times when she needed their support the most, it was not there. Since she was a teenager she formed relationships with many men, many of whom were abusive to her - including C.A.T.'s father and J.C.. Had it not been for the cravings of J.C., it is highly unlikely that A.C. would have initiated the deviant behaviour that was so prevalent during their marriage.

Although in many ways subservient to her male partners, A.C. was not without some degree of control. When C.A.T.'s father became involved with another woman, she ended their relationship. Similarly, when J.C. became involved with A.D., she told her husband to leave. When the cattle prod was used on her, she broke it. Regrettably, she did not exercise the same degree of control when her children's welfare required it. I accept that A.C. has made efforts to improve herself academically and personally. For her own good, that is to be encouraged. But, I do not believe that A.C. is a changed person and I do not believe that because the Agency's concerns have been so dramatically emphasized or because A.C. is receiving counselling, that her past behaviours are unlikely to repeat.

During A.C.'s involvement with the Childrens Aid Society in 1994 - 1995, she claimed to have changed. In her affidavit sworn October 16, 1995 she stated:

At paragraph 17:

“That my home is kept clean and so is C.A.T..”

And at paragraphs 18:

“That I have been dealing with my own issues, including the issue of sexual assault, with my own counsellor Pat Duggan, who advises me, and I do verily believe, that I've made a great deal of progress.

And 19:

“That I have participated in everything that I have been asked to ... “

In Mr. Dougan's report to the Children's Aid Society of Halifax dated August 14, 1995 there are the following passages at pages 2 and 3:

“While she does not believe [J.C.] poses any sexual or physical risk to her or her young sons, A.C. is adamant that she will not permit him or anyone to cause harm or injury to her or her children. It is my opinion that A.C. is quite genuine in her desire to protect herself and her children.

...

A.C. acknowledges that she continues to be especially reactive to suggestions that she is “not doing good with the kids”. While she verbalizes frustration with ongoing CAS involvement, she also seems to understand and accept the agency's concerns given both her and J.C.'s histories. She consistently describes herself as “overprotective” of her children and has not wavered from her stance that she would leave any relationship if she felt undue risk existed for her or her children. She is equally adamant that she would leave if her children were exposed to “too many fights”. A.C. agrees that she was unable to leave past abusive and harmful situations but attributes her behaviour to a lack of viable options and choices. She now believes she has options and the confidence and skills to use them should the need arise.

...

It is my impression that at times she is quite avoidant of dealing with difficult issues and challenging of authority. It is also my opinion that at times she is easily distracted and displays a tendency to minimize problems and to externalize blame and responsibility.

...

She has recently demonstrated increased perseverance and determination to assume more control over her life.”

A.C.'s subsequent behavior proved her to be less than “overprotective” of the children. She ignored the interests of the children when forming new relationships. In the case of J.C., when forced by the Children’s Aid Society to reflect upon the wisdom of a relationship with him, she chose him over C.A.T.’s needs or safety without hesitation. During the years that followed, she placed more importance on keeping J.C. happy than keeping the children safe and secure.

I do not consider A.C. capable of putting or willing to put at this time or at any time in the reasonably foreseeable future the needs of the children before her own.

The children lack an emotional bond with their mother. In P.T.’s case, this may be a function of the number of years that he lived apart from his mother compounded by the neglect that he suffered while in his mother’s care. C.A.T., who lived his entire life with his mother until taken into care, appears to be the child with the greater need for services at this time.

I have considered the provisions of subsection 3(2). While I do not downplay the importance of maintaining children with their parents, there are exceptional cases when

that is not possible. This is one of those cases. If the children were returned to A.C., they would be exposed to unacceptable risks. Those risks include risk of physical harm, emotional harm, the possibility of sexual abuse, exposure to domestic violence as well as physical and emotional neglect.

A.C. is barely able to meet her own needs. In spite of what may be honest intentions on her part, I do not believe that she is competent to care for, nurture and protect these children.

I have considered the restrictions placed on a permanent care order as contained in subsection 42(2). I am satisfied that less intrusive alternatives to a permanent care order have been attempted and have failed and also that anything less intrusive than a permanent care order would not adequately protect these children. I have considered also subsection 42(3). Placement with another family member, neighbor or community members has not been suggested, and it would appear that this is not possible. I am satisfied too that the circumstances that have led me to the conclusion that a permanent care and custody order is in the children's best interests, are unlikely to change within a reasonably foreseeable time, and certainly not before the maximum time limit (February, 2004).

I have considered too the provisions of subsection 47(2) but have concluded that none of the circumstances in subsection (2) apply and that access would not be in the children's best interests.

Therefore, in conclusion, I grant the application for a permanent care and custody order with no order for access.

Justice Leslie J. Dellapinna