

IN THE SUPREME COURT OF NOVA SCOTIA  
**Citation:** Nova Scotia (Minister of Community Services) v. F.  
2004 NSSF 48

**Date:** 20040429  
**Docket:** SFHC19756  
**Registry:** Halifax

**Between:**

Minister of Community Services

Applicant

v.

N.J.F. and D.N.

Respondents

**Revised Decision:** The text of the original decision has been revised to remove personal identifying information of the parties on September 29, 2008.

Publishers of this case please take note that s. 94(1) of the *Children and Family Services Act* applies and may require editing of this judgment or its heading before publication.

Section 94(1) provides:

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

**Judge:** The Honourable Justice Leslie J. Dellapinna

**Heard:** April 13, 14 and 15, 2004, in Halifax, Nova Scotia

**Counsel:** Aleta Cromwell, for the Applicant



## **By the Court:**

### **INTRODUCTION**

[1]This is an application by the Minister of Community Services for a permanent care and custody order pursuant to subsection 42(1)(f) of the *Children and Family Services Act*, S.N.S. 1990 c.5 (“the *Act*”) in relation to the children, T.F., born [in 2001] and B.D.J.F., born [in 2002].

[2]The respondent, N.J.F., is the mother of the children. The biological father of the child, T.F., is a D.H.. He was not considered a “parent” as defined by subsection 3(1)(r) of the *Act* and was not a party.

[3]D.N. is the biological father of the child, B.D.J.F.. He was a named party and took part in these proceedings off and on until providing written notice to the Court on March 12, 2004 that he was discontinuing his involvement in the proceedings. He did not take part in the trial. Whereas he was not available for cross-examination purposes, the affidavit sworn by D.N. and previously filed with the Court shall be struck.

### **BACKGROUND**

[4]N.J.F. will be 29 years of age next month. She has had three children. Her two younger children are the subjects of this proceeding. Her oldest child, J., was born on [in 1994] when she was 19 years of age. J.’s father was extremely abusive. N.J.F. ended that relationship out of concern for her son’s safety.

[5]In the Spring of 1995 she returned with her son to [...], Nova Scotia to the home of her parents for a short period of time before moving to an apartment of her own.

[6]In the Fall of 1996 the attention of the Minister of Community Services was drawn to N.J.F.. The referral information indicated that N.J.F. and the child were living “in squalor” and that there were physical hazards to the child present in the apartment including drug paraphernalia. Referral sources also indicated that N.J.F. could be violent and experienced mood swings. On December 16, 1996 J. was taken into care by the Minister. Although the Agency had a number of concerns including N.J.F.’s failure to address past abuse issues and lack of suitable housing, the Agency’s primary concern was N.J.F.’s abuse of drugs.

[7]The Minister's application pursuant to the *Act* was terminated in October, 1997 after N.J.F. agreed to her parents assuming custody of J.. N.J.F.'s access to J. was to be supervised and the consent order issued pursuant to the *Family Maintenance Act* and dated October 16, 1997 contained the following provision:

The Respondent, N.J.F., shall not abuse alcohol or non-medically prescribed drugs prior to or during any access visit. The Applicants, B.F. and M.F., may cancel or terminate any access visit if they believe on reasonable and probable grounds that the Respondent, N.J.F., is under the influence of alcohol or non-medically prescribed drugs.

[8]J. remains in the custody of his grandparents.

[9]Unfortunately, the loss of custody of her son did not cause N.J.F. to change her lifestyle. She continued to abuse drugs. She admits to being addicted to Hydromorphone commonly known by the brand name Dilaudid. It is a powerful narcotic usually prescribed to help patients deal with severe pain.

[10]The men with whom she has had relationships, such as J.'s father and B.D.J.F.'s father, were emotionally and physically abusive to her. T.F.'s father as well as B.D.J.F.'s father have been involved in the criminal justice system. Indeed D.N. was incarcerated for a period of time during the course of these proceedings. He also has abused drugs and at the time of trial was in an inpatient detox facility.

[11]N.J.F. has also been involved in the criminal justice system as a direct result of her addiction to Dilaudid. In January, 1999 she was sentenced to two years incarceration for a number of offences including a number of convictions for shoplifting on several occasions spanning the years 1996, 1997 and 1998 and for armed robbery with a weapon which offence took place in July, 1997. In addition to jail time, N.J.F. was placed on probation for two years. The terms of her probation included a provision that she cooperate with assessment and counselling for drug addiction. N.J.F. was released in May, 2000. One of the terms of her release was that she was to abstain from the use of drugs other than prescribed medications and over-the-counter drugs taken as recommended by the manufacturer.

[12]In spite of being in jail for approximately a year and a half, almost immediately after her release N.J.F.'s physician determined she was abusing Dilaudid, prescribed Methadone and recommended she enter a Methadone treatment program.

[13]Also soon after her release, N.J.F. became pregnant for T.F. who was born the following [...].

[14]When T.F. was born, he was placed in the Special Care Nursery of the Izaak Walton Killam Hospital as he was exhibiting signs of withdrawal from morphine. The Discharge Summary says N.J.F. used Dilaudid and Diclectin while she was on Methadone during her pregnancy. The Agency received a referral from the I.W.K. soon after T.F.'s birth and kept their file open on N.J.F..

[15][In 2002] N.J.F. gave birth to B.D.J.F.. A toxicology screen in relation to B.D.J.F. taken by the I.W.K. Hospital [in 2002] came back positive for Dilaudid. The child's discharge summary from the I.W.K. stated that prior to B.D.J.F.'s birth N.J.F. received little pre-natal care, that she smoked during the pregnancy, was known to have Hepatitis C and had entered a Methadone program during her pregnancy. B.D.J.F. suffered from neonatal withdrawal syndrome and was placed on a morphine dose which was gradually tapered off and discontinued [in 2002].

[16]N.J.F. agreed [in 2002] to provide a urine sample which, when tested, was positive for Dilaudid.

[17]After a risk management meeting [in 2002] the Agency made the decision to take both children into care pursuant to section 33 of the *Act* and at that time commenced these proceedings.

## **HISTORY OF PROCEEDINGS**

[18]In its Protection Application and Notice of Hearing dated September 30, 2002 the Agency applied for a finding that the children were in need of protective services under subsections 22(2)(b), (g), (j), (ja) and (k) of the *Act*. The interim hearing was completed on October 28, 2002 and a placement hearing was held before me on December 2 and 4, 2002. At the conclusion of that hearing, it was ordered that the children be returned to the care and custody of their mother subject to the supervision of the Minister on a number of conditions including that N.J.F. abstain from the use of non-prescription drugs and alcohol, that D.N. not reside with or contact or associate in any way with the children, that N.J.F. submit to random urine drug testing and that she immediately self-refer to Drug Dependency Services for the preparation of an addiction assessment and to follow up with any recommendations as to treatment. The order also included a provision that should

N.J.F. fail to comply with any of the terms and conditions of the order the Minister was entitled to re-apprehend the children.

[19]On December 16, 2002 the protection hearing was completed and the children were found to be in need of protective services pursuant to subsection 22(2)(g).

[20]On March 17, 2003 the first disposition order was granted by consent, continuing the placement of the children in the care and custody of their mother subject to the supervision of the Minister.

[21]After October, 2002 when N.J.F. was required to submit to random urine drug testing, the Agency made several efforts to collect samples from N.J.F.. N.J.F. made several requests to change the time of collection and the Agency tried to accommodate those requests. In February, 2003 the random urine drug testing was suspended by the Agency because of N.J.F.'s failure to provide urine samples as expected. On March 8, 2003, at N.J.F.'s request, the random urine drug testing was reinstated. A sample provided by N.J.F. on March 12, 2003 tested positive for Hydromorphone (Dilaudid). On April 1, 2003 agents of the Minister once again took the children into care. N.J.F. testified that the urine sample provided on March 12<sup>th</sup> was actually the urine of an unnamed third person which she had placed in a container, heated and inserted in herself in order to fool the nurse who observed the collection.

[22]On April 8, 2003 the Court ordered that the children be placed in the temporary care and custody of the Minister. Review hearings were held in May, August, November, 2003 and January, 2004 at which times the temporary care and custody orders were continued.

[23]This trial was originally scheduled to commence on March 10, 2004. However shortly prior to that date, N.J.F.'s counsel applied to the Court for an order to withdraw based primarily on her inability to get instructions from her client. That order was granted. On March 10, I made the decision that it would be in the best interests of the children to extend the statutory time lines in order to permit N.J.F. additional time to retain new counsel or alternatively, to prepare to represent herself. N.J.F. did not retain counsel but indicated at the commencement of these proceedings that she was prepared to proceed.

## POSITIONS OF THE PARTIES

[24]The applicant is seeking an order placing the two children in the permanent care and custody of the Minister. The children have been in care for over a year. The Agency argues the children require permanency. Its plan, subject to the outcome of these proceedings, is to explore adoption placements for the children.

[25]N.J.F. opposes the application and seeks the return of the children. She acknowledges her dependency on Dilaudid but says that she is in control of her life and that her drug addiction does not impair her ability to parent her children.

## LEGISLATION

[26]The following provisions of the *Act* apply.

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

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

...

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.

...

- 22(2) A child is in need of protective services where
- (a) the child has suffered physical harm, inflicted by a parent or guardian of the child or caused by the failure of a parent or guardian to supervise and protect the child adequately;
  - (b) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (a);
  - (c) the child has been sexually abused by a parent or guardian of the child, or by another person where a parent or guardian of the child knows or should know of the possibility of sexual abuse and fails to protect the child;
  - (d) there is a substantial risk that the child will be sexually abused as described in clause (c);
  - (e) a child requires medical treatment to cure, prevent or alleviate physical harm or suffering, and the child's parent or guardian does not provide, or refuses or is unavailable or is unable to consent to, the treatment;
  - (f) the child has suffered emotional harm, demonstrated by severe anxiety, depression, withdrawal, or self-destructive or aggressive behaviour and the child's parent or guardian does not provide, or refuses or is unavailable



or unable to consent to, services or treatment to remedy or alleviate the harm;

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

(h) the child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development and the child's parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the condition;

(i) the child has suffered physical or emotional harm caused by being exposed to repeated domestic violence by or towards a parent or guardian of the child, and the child's parent or guardian fails or refuses to obtain services or treatment to remedy or alleviate the violence;

(j) the child has suffered physical harm caused by chronic and serious neglect by a parent or guardian of the child, and the parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;

(ja) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (j);

(k) the child has been abandoned, the child's only parent or guardian has died or is unavailable to exercise custodial rights over the child and has not made adequate provisions for the child's care and custody, or the child is in the care of an agency or another person and the parent or guardian of the child refuses or is unable or unwilling to resume the child's care and custody;

(l) the child is under twelve years of age and has killed or seriously injured another person or caused serious damage to another persons property, and services or treatment are necessary to prevent a recurrence and a parent or guardian of the child does not provide, or refuses or is unavailable or unable to consent to, the necessary services or treatment;

(m) the child is under twelve years of age and has on more than one occasion injured another person or caused loss or damage to another persons property, with the encouragement of a parent or guardian of the child or because of the parent or guardians failure or inability to supervise the child adequately.

...

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.

(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.

(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.

(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.

...

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

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

(b) where the child was six years of age or more but under twelve years of age at the time of the application commencing the proceedings, eighteen months, from the date of the initial disposition order.

...

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.

(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 persons 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**

[27]The onus is on the applicant to establish that it is in the children's best interests to be placed in the permanent care and custody of the Agency.

[28]The main child protection issue as far as the Agency is concerned is N.J.F.'s addiction to Dilaudid and how her addiction impacts on her ability to care for her children.

[29]N.J.F. has been dependent on Dilaudid for many years and it has had a major impact on every aspect of her adult life. Her addiction played a significant role in the decision to remove J. from her custody and to place him with her parents. It has detrimentally affected her relationship with her parents. It appears to have had an impact on her ability to form relationships with others. She admits to having few friends. The men with whom she has associated and in particular the fathers of her three children, have been involved in the criminal justice system and at least two of them abused her including D.N. who physically assaulted her while she was pregnant for B.D.J.F..

[30]Her addiction has effected her financially. Her Income Assistance Worker testified that for assistance purposes she is considered to be disabled because of her drug addiction.

[31]It has impacted on her health. She has been diagnosed with Hepatitis C and as well had a foot infection in January, 1999 caused most likely from inserting needles in the veins in her foot.

[32]It has effected how she behaves and her personal freedom. She has several convictions for shoplifting and one for armed robbery which were committed to obtain funds to support her drug habit. She admitted that while these proceedings have been ongoing she has supported her drug habit by committing theft. Outstanding against her are at least a dozen shoplifting charges going back to August, 2002 when she was arrested for shoplifting while T.F. (who was then approximately 18 months old) was with her. The other charges relate to incidences in September, November and December, 2003 as well as January, 2004.

[33]The Agency was not always seeking an order for permanent care. Their original plan was one for temporary care and it was the objective of the Agency to

provide services to N.J.F. "to remedy/alleviate the conditions which placed [the] children in need of protective services". The Agency's plans of care dated February 6, 2003, March 12, 2003 and April 2, 2003 all stated:

The goal of this case plan is for the Respondents, N.J.F. and D.N. to obtain the necessary knowledge and skills to adequately parent their children and to make the necessary parenting and lifestyle changes to enable these parents to meet their children's needs.

[34]Numerous services were provided to the respondents in the hope of achieving that goal. They included both Agency and community-based services.

[35]N.J.F. was to self-refer to Drug Dependency for an assessment and to follow the recommendations of that assessment. She was to submit to random urine analysis. She was offered and provided individual counselling.

[36]N.J.F. did eventually complete the drug and alcohol assessment but was less than fully cooperative in doing so. As a result it took much longer to complete the assessment than would ordinarily be the case. I also find as a fact that she did not follow the recommendations given to her by Laura Cormier, her drug counsellor at Capital Health Addiction Prevention and Treatment Services, Cindy MacIsaac of Direction 180 or even her own doctor, Dr. Bethune, for the treatment of her drug addiction. She also consciously avoided providing urine samples for analysis purposes. Between October, 2002 and October, 2003 attempts were made to collect urine samples from N.J.F. over 80 times. On only nine occasions were samples of sufficient quantity collected from N.J.F. for testing purposes and they all tested positive for Dilaudid. On approximately 15 occasions she was available to provide a sample but claimed to be unable to provide a sample sufficient for testing purposes. The remaining attempts to collect a sample from N.J.F. were unsuccessful because she was "unavailable for collection".

[37]In September, 1997 prior to the conclusion of the proceedings involving J., N.J.F. was referred by Drug Dependency to Dr. Graeme Bethune. Dr. Bethune was one of a number of family physicians who were recruited by Drug Dependency to help in the treatment of drug addicts who would be referred to a Methadone treatment program. N.J.F. was one of those patients. It was Dr. Bethune's practice at that time to prescribe to the patient involved, if appropriate, the drug to which they were addicted until such time as the patient could get into the Methadone program offered by Drug Dependency. By doing so, it was hoped that the patient would not resort to unlawful steps to obtain drugs. Dr. Bethune had nothing to do with enrolling N.J.F. and patients like her into the program. It was left to each

patient to enrol and follow up with the program. With that goal in mind, Dr. Bethune prescribed Dilaudid to N.J.F. in September, 1997. N.J.F. did enter a in-patient detox program after meeting with Dr. Bethune but stayed for only four nights before signing herself out against the advice of her therapist.

[38]Dr. Bethune saw N.J.F. again in December, 1997. At that time he diagnosed her as being “narcotics addicted” and prescribed her Morphine Sulphate because of a shortage in Dilaudid at the time. He saw her again in April, 1998 when she tested positive for Hepatitis C.

[39]On June 3, 1998 N.J.F. was again admitted to the inpatient program at Drug Dependency Services Division. She was dismissed from the hospital on June 5 because she was suspected of having drugs on the unit.

[40]In January, 1999 N.J.F. was again prescribed Dilaudid by Dr. Bethune. It was shortly thereafter that N.J.F. was incarcerated.

[41]In June, 2000 soon after her release, N.J.F. again went to see Dr. Bethune. He again determined that she was abusing Dilaudid and prescribed Methadone. He recommended that she go to the Methadone treatment program. On July 17, 2000 he saw her again. At that time, she was pregnant for T.F..

[42]T.F. was born [in 2001] and suffered from Methadone Withdrawal Syndrome. In February and again in April, 2001 Dr. Bethune prescribed N.J.F. Methadone and in June, 2001 he increased the dosage.

[43]B.D.J.F. was born [in 2002]. He too suffered from withdrawal symptoms. The children were taken into care shortly after his birth.

[44]The Drug and Alcohol Assessment Report regarding N.J.F. was completed on April 29, 2003. The results indicated that N.J.F. had a high probability of having a substance dependence disorder. Test results showed that she was a problem risk in the Treatment Intervention Inventory for drugs and stress coping. N.J.F. indicated to Ms. Laura Cormier, the author of the Report, her desire to attend day detox. That was arranged. However, N.J.F. attended for one-half day only (April 22, 2003) and did not return. Ms. Cormier testified that the day detox program usually lasts between two and three weeks depending on the individual involved and the nature of their addiction.

[45]N.J.F. then made arrangements to attend the in-patient detox program (again). She was re-admitted on May 9, 2003 but left on May 10 having failed to complete the program.

[46]Dr. Bethune went on sabbatical from June 4 to November 18, 2003. However he still attended at this office a half day each week. He met with N.J.F. on June 6, 2003 and gave her a prescription for Methadone that was intended to last for four weeks. On June 17, 2003 N.J.F. went to Springhill for an in-patient detox program. However after learning that it would take several weeks to successfully complete the program, she did not stay.

[47]Between August, 2003 and January, 2004 she did not follow through with any of the services recommended by Drug Dependency and was not receiving any Methadone from Dr. Bethune or any other physician. She admitted that she was addicted to Dilaudid but had been unwilling to commit to the time that it would take to properly withdraw using the Methadone Treatment Program. Instead, she opted for what she hoped would be a quick remedy. That, of course, did not work.

[48]Dr. Bethune saw N.J.F. again on February 2, 2004. By that time she was taking such a high dosage of Dilaudid that Dr. Bethune was not comfortable prescribing Dilaudid or Morphine and consulted with Dr. Albert Fraser. After consulting with Dr. Fraser, Dr. Bethune prescribed Dilaudid and put N.J.F.'s name on the waiting list to enter Direction 180. Direction 180 is a Methadone Program which has been in existence for approximately three years. All N.J.F. had to do to enter the Program was to place a phone call to Ms. Cindy MacIsaac, the Director.

[49]Ms. MacIsaac testified that N.J.F. did contact her on March 1, 2004, just ten days before what was the original commencement date of the trial of this application. They met on March 9. At that time N.J.F. signed the necessary forms and provided the necessary information for Ms. MacIsaac to admit her to the program. N.J.F. was put on a waiting list for a medical examination which is part of the normal admittance procedure. The medical appointment was scheduled for April 20, 2004.

[50]N.J.F. argues that she suffers from an illness (her addiction) and that her children should not be taken from her because of an illness. Further, she argues that even though she is addicted to Dilaudid, she is functioning properly and is in control of her life. She also said that she was "comfortable" with her children coming home to her. She believes that they will be safe. She claims that she is now dealing with her addiction issues.

[51]By December, 2003 it was the Agency's perception that N.J.F. was not following through with any of the services recommended by Ms. Cormier and was not taking any steps to deal with her addiction. It was only then that the Agency altered its plan of care and gave notice to N.J.F. that an order for permanent care and custody would be sought. Even then the Agency hoped that their amended plan of care would cause N.J.F. to take remedial action. It did not. It was Dr. Bethune who put N.J.F.'s name on Direction 180's waiting list in February and N.J.F. called Ms. MacIsaac only days before the trial. Her efforts to reform are not genuine.

[52]N.J.F. is no further ahead now in dealing with her addiction than she was in September, 1997. N.J.F. herself described her situation in the years 1997 and 1998 as out of control. Her Dilaudid dosage now appears to be heavier than it was then. Also, she now has health issues which are more serious than was the case in September, 1997 and her choice of associates, including male partners, has not improved. She is resorting to crime as much now as then and the frequency of her criminal activity, if not the severity, appears to be increasing. As was the case in 1997, there appears to be a deterioration in her ability to maintain an environment appropriate for two young children.

## **CONCLUSION**

[53]N.J.F. has placed her children at risk. Their health has been effected by her abuse of Dilaudid. She has exposed T.F. to her criminal activity. She has exposed both children to domestic violence. Even though the children have not yet suffered any long lasting physical or emotional harm, it is not necessary for the Agency to wait until harm occurs. I conclude, based on the evidence of N.J.F.'s circumstances, that if the children were returned to her and she was left to her own devices, serious harm to these children is a likely event. Even though N.J.F. has already lost the custody of her oldest child and suffered through the apprehension and re-apprehension of her two younger children, she has done little, if anything, to address the Agency's concerns.

[54]N.J.F. has no appreciation for the seriousness of her condition. She denies that the children would be at any risk even if she remains addicted to Dilaudid. She asks the Court to believe that she will pursue her plan to deal with her addiction at Direction 180. She has given the Court no reason to believe that this time she will follow through.



[55]The Agency's concerns were detailed in the court documentation. Subsequent to the children's apprehension N.J.F. received, among other things, a copy of the minutes of a risk management conference held on October 2, 2002 which listed the following as the Agency's areas of concern at that time:

- N.J.F.'s abuse of Dilaudid;
- B.D.J.F.'s toxicology screen test results which were positive for Dilaudid;
- N.J.F.'s lack of a fixed address at the time and a questionable ability to provide stability to her children;
- her involvement with D.N. who at the time was on parole for a conviction for armed robbery and was a known drug user;
- that N.J.F. had been charged with shoplifting as a result of an incident in August, 2002; and
- N.J.F.'s refusal to take responsibility for her situation.

[56]Except for N.J.F. obtaining an apartment, these same concerns exist today.

[57]N.J.F. has a history of taking the initial steps in various treatment programs when forced to do so but has shown no commitment at any time to those programs.

[58]The original disposition order was made more than a year ago and, given that both children are under six years of age, the Court is left with only two disposition options under Section 42. The first is to dismiss the application and return the children to N.J.F.. The second is to grant the application and order that the children be placed in the permanent care and custody of the Agency.

[59]I find that it would be in the children's best interests to place the children in the permanent care and custody of the Minister of Community Services. N.J.F. can barely take care of herself. She cannot parent two young children in her condition. In determining what is in their best interests, I have considered subsection 3(2) and in particular subparagraphs (c), (e), (i), (l) and (m).

[60]It is important for these children, like any children, to have stability and continuity. They deserve to live in an environment where they are safe and emotionally secure. I do not believe that they will have that security if left in the care of N.J.F.. Over the past seven to eight years, the course of her life has been dictated by her drug addiction. Although it is true that she can on occasion function normally, history has shown that it also impairs N.J.F.'s judgment and that, in turn, has jeopardized the children's health and on other occasions, has placed them at substantial risk of harm.

[61]I have considered the fact that N.J.F. has been attentive and affectionate during her supervised access visits. However the problems develop when N.J.F. is not under the microscope. The risk to the children's welfare if returned to N.J.F. would be unacceptable.

[62]I therefore grant the application and order that the children be placed in the permanent care and custody of the Minister of Community Services. In so ordering, I have considered subsection 42(2) of the *Act*. I am satisfied that less intrusive alternatives have been attempted and have failed and no other less intrusive alternatives would be adequate to protect the children. I have also considered subsection 42(3). No alternate plans of care have been put before the Court by N.J.F.. Her parents, who have custody of her oldest child, are aware of these proceedings and have not stepped forward. Ms. N. has consciously withdrawn from these proceedings.

[63]The Agency's plan is to seek adoption placements for the two children. Subsection 47(2) states as follows:

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 persons 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. (Emphasis added.)

[64]Subsections 47(2)(a)(b) and (c) do not apply to this case, and I am not satisfied that special circumstances exist that would justify the making of an order for access. Therefore, there will be no provision for access by N.J.F..

J.