IN THE SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: A.C. v. Nova Scotia (Community Services), 2005 NSSC 91

Date: 20050421
Docket: SFH C 009620
Registry: Halifax

Between:

A. C.

Applicant

v.

Minister of Community Services

Respondent

Restriction on publication: **There is a restriction on publication pursuant to s. 94 (1) Children and Family Services Act**

Editorial Notice

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

Judge: The Honourable Justice Leslie Dellapinna

Heard: February 16, 2005, March 1, 22 and 30 2005 in Halifax, Nova Scotia

Counsel: Colin Campbell, counsel for A. C.
James Leiper, counsel for the Minister of Community Services
Peter Katsihtis, counsel for litigation guardian Joan Newman

Restriction on publication: Pursuant to s. 94 (1) of the Children and Family Services Act.

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."

By the Court:

[1] Ms. A. C. has applied pursuant to subsections 48 (3) and (6) (d) of the Children and Family Services Act to terminate the order of this Court placing her daughter in the permanent care and custody of the Minister of Community Services.

[2] In the alternative, she seeks to vary the permanent care order to allow her access to her daughter "with a view towards regaining custody".

[3] On January 20, 2005, leave was granted to Ms. C. to apply to terminate the permanent care and custody order but it was agreed that the Court would first hear Ms. C.'s application for access.

BACKGROUND

[4] This application centres on the child, [....], born October [...], 1990, (aka T. J. C.).

[5] T. is Ms. C.'s third child. Her first child was made a Crown ward in [...], Ontario and her second was placed in the care of the child's biological father.

[6] T. was found to be in need of protective services on April 16, 1998. It was at that time that she was removed from the care of her mother and placed in the care of the Minister of Community Services. She has remained in the care of the Minister ever since. Permanent care and custody was granted to the Minister in September, 1999.

[7] In her written decision Legere - Sers, J., identified a number of protection issues including the following:

1. A pattern of domestic violence in the home stemming from Ms. C.'s relationship with her former husband.

2. Ms. C.'s transcience and its impact on T..
3. The failure of Ms. C. and her husband to ensure that T. remained in school on a regular basis.

4. The inadequate parenting style of Ms. C. and her then husband.

[8] In summarizing the evidence before her Justice Legere - Sers noted, among other things, the comments of Mr. Martin Whitzman, a therapist who treated T., who said "T. is clearly a troubled child who requires stability and long term counselling." In her conclusions Justice Legere - Sers stated:

"T. has had a troubled, unstable, transient history since birth. The history of transience and domestic violence is documented in child protection records from other locations including Ontario, Alberta, New Brunswick and Nova Scotia. The lack of commitment to her education is documented in Ontario, New Brunswick and Nova Scotia.

Neither Mr. nor Mrs. C. have been able to successfully engage in a therapeutic relationship that will effectively address the fundamental problems associated with domestic violence, transience, their life skills and parenting. They have sporadically attended and cooperated with therapeutic intervention. They have misrepresented their status as a couple throughout these proceedings....Both have refused to abide by court ordered access conditions.

In the affidavit filed by Mrs. C. on March 8, 1999 she advises that she wishes to be reconciled with Mr. C.. The mother's intent to continue in this relationship and to continue moving across Canada exposes this child to ongoing instability, unpredictability and the explosive domestic violence evident throughout. If the child is returned the Department of Community Services will be unable to adequately supervise. The child will most certainly be removed from the Province of Nova Scotia. The documentation in this and other files indicate an inability to follow up with this family. There is no sustained commitment to her schooling.

The likelihood of change within the time frame required by legislation is minimal to non-existent.

Unfortunately this child has been subject to this instability for most of her life. She is attached to her mother, misses her and wants to go home. She displays disturbed behaviour in foster care. This is not the first time the child has exhibited disturbing behaviour while in care. She now requires long term therapeutic intervention and stability. She will not receive this in her mother's or step-father's care. Going home virtually guarantees she will continue to be at risk emotionally, physically and educationally."

[9] In June of 2000, approximately nine months after T. was placed in permanent care, Ms. C. applied to the Court to review the permanent care order and more particularly sought access to her daughter. A trial took place in October and December 2000. According to the decision of Justice Legere - Sers dated January 23, 2001, Ms. C. gave evidence of the changes in her circumstances that had occurred since the September 1999 decision. She indicated that she was prepared to begin to address her difficulties by seeking professional help. She had become the patient of a Dr. Allison, a

psychiatrist, in August 1999. She also sought the assistance of Ms. Mary Haylock who, at the trial, was qualified as an expert in adult counselling with an emphasis in counselling women who experienced domestic abuse. Ms. C. had also taken a course at the Northend Parent Resource Centre and obtained a certificate of participation in a program entitled "Productive Parent". She apparently participated in a six week parenting program and was a member of a women's support group that met every Thursday to discuss issues relating to parenting, nutrition (including a cooking class) and child development.

[10] Ms. C. gave evidence that she had terminated her relationship with her former husband early in the year 2000 and expressed an intention to pursue divorce proceedings in Ontario.

[11] Ms. C. said she had maintained residential stability during the previous nine months.

[12] According to the trial judge's summary of the evidence there is some indiction that Ms. C. had not totally resolved to remain away from her former husband. For instance, she had told Ms. Haylock that she wouldn't return to her former husband "unless he can straighten his life out".

[13] Ms. Haylock was apparently not authorized by Ms. C. to communicate with T.'s social worker at the Department of Community Services and also was not authorized to speak with Mr. Martin Whitzman.

[14] In a report provided by Dr. Allison, he said that while he had first impressions of significant anti-social personality characteristics with respect to Ms. C. he revised that impression and believed that she had "fairly significant character neurosis which could also be described as indicative of an underlying dysfunction of personality with strong borderline characteristics." Dr. Allison had no knowledge of T. or the child protection issues.

[15] In dismissing Ms. C.'s application Legere - Sers J. concluded:

> "In the permanent care and custody order, it was clear that this child was a troubled child with special needs and would require fairly significant therapeutic involvement to sustain and improve her emotional development. It was clear that this was not a short-term fix. While adoption has always been the plan, and continues to be, the identified emotional needs of this child require immediate and sustained involvement. It makes sense to encourage the emotional health of this child for the child's sake and to make viable and sustain any proposed adoption placement. It is reasonable, on the evidence, to conclude that the probability of a

successful adoption can only be enhanced if the child's emotional and developmental health is improved.

Section 48 (10) requires a change in circumstances and a finding that the proposed move is in the best interests of the child. The mother must show that her circumstances have changed sufficiently in order to be successful in this application. The access proposed must be in the best interests of the child. The mother would have to prove on the totality of the evidence on the balance of probabilities that access was in the best interests of the child whether or not adoption was the plan.

I am satisfied that adoption is certainly contemplated but that T.J.C.'s needs require stabilization and improvement in her emotional development. Achieving that can only enhance the possibility of adoption. If adoption is not a viable possibility for T.J.C. the issue of access with her mother still has to be determined to be in her best interests.

...

Ms. A.B.C. has made some progress and appears to have convinced at least Dr. Allison that she has begun the process of fundamental change. Ms. Haylock believes that there has been a change of heart. Mr. M.C. does not appear to be on the immediate scene. There are critical and fundamental changes in behavior that need to flow from these changes in attitude. There is much work to be done that requires a more prolonged period of therapy and sustained behavioral change.

There is minimal evidence to cause me to conclude that there is sufficient residential stability and behavioural changes in Ms. A.B.C.'s relationship with others to support the re-introduction of access. There needs to be a more sustained therapeutic involvement and evidence that the issues that have haunted Ms. A.B.C. for a lifetime have been addressed sufficiently to be able to focus on the child's needs.

There is no evidence in which I can conclude that the mother's changes, coupled with T.J.C.'s current emotional development and stability, would be enhanced by contact with her mother at this stage. Indeed there is evidence to the contrary from Mr. Whitzman, Ms. Bond and Dr. Curtis to suggest that re-introduction of the mother may add a complicating, unpredictable and emotional strain as T.J.C.'s caretakers move her through this most difficult period of her life.

To re-instate access with T.J.C. at this point, given her particular situation, I would have to be convinced in accordance with the burden of proof that Ms. A.B.C. has made very fundamental and sufficient changes in her behaviour such that her contact with T.J.C. and her behaviour, at least, would be predictable and consistent. In addition, the court would need to be in the position to be able to conclude in accordance with the burden that T.J.C.'s emotional development and stability would be enhanced by the consistent and predictable contact between T.J.C. and her mother and that such access would not have a detrimental effect on T.J.C.'s on-going emotional development.

Failing adoption, at some point in this child's life it may be appropriate to consider re-introduction of the mother to her. The evidence I have causes me to conclude that it is not appropriate at this time to re-introduce the mother to this child and to risk further destabilizing the foster care placement".

[16] In September, 2001 Ms. C. again applied to the Court for access to her daughter. That application was also heard by Justice Legere - Sers who wrote:

"With respect to this application for review, to introduce access with a view to transferring custody ultimately to the mother, the Applicant has not met the burden of proof. What changes that have occurred in Mrs. A.B.C.'s life have not been significant enough to place her in a position now or in the foreseeable future to re-introduce her to the child.

Had I been convinced that the changes in the mother's life were material, the other aspect to this application is the benefit to T.J.C. The overwhelming weight of evidence including the opinions of those most significantly involved in the therapeutic care of T.J.C. suggests that re-introducing access or contact between the mother and child would in fact be harmful in and of itself. It would also interfere with permanency placement.

The Agency must get on with permanency placement to increase the likelihood of long term benefit and therapeutic intervention for T.J.C. "

[17] The current application was filed with the Court approximately sixteen months after that decision.

[18] The more relevant sections of the Children and Family Services Act are as follows:

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

(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.

...

Consequences of permanent care and custody 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 childs 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 persons access will not impair the childs 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.

Variation or termination of order

(3) Any access ordered pursuant to subsection (2) may be varied or terminated in accordance with Section 48.

...

Termination of permanent care and custody order

48 (1) An order for permanent care and custody terminates when

(a) the child reaches nineteen years of age, unless, because the child is pursuing an education program or because the child is under a disability, the court orders that the agency's permanent care and custody be extended until the child reaches twenty-one years of age;

(b) the child is adopted;

(c) the child marries; or

(d) the court terminates the order for permanent care and custody pursuant to this Section.

...

Application to vary or terminate order

(3) A party to a proceeding may apply to terminate an order for permanent care and custody or to vary access under such an order, in accordance with this Section, including the child where the child is sixteen years of age or more at the time of application for termination or variation of access.

Restriction on application for order

(4) Where the child has been placed and is residing in the home of a person who has given notice of proposed adoption by filing the notice with the Minister, no application to terminate an order for permanent care and custody may be made during the continuance of the adoption placement until

(a) the application for adoption is made and the application is dismissed, discontinued or unduly delayed; or

(b) there is an undue delay in the making of an application for adoption.

...

Restriction on right to apply

(6) Notwithstanding subsection (3), a party, other than the agency, may not apply to terminate an order for permanent care and custody

(a) within thirty days of the making of the order for permanent care and custody;

(b) while the order for permanent care and custody is being appealed pursuant to Section 49;

(c) except with leave of the court, within

(i) five months after the expiry of the time referred to in clause (a),

(ii) six months after the date of the dismissal or discontinuance of a previous application by a party, other than the agency, to terminate an order for permanent care and custody, or

(iii) six months after the date of the final disposition or discontinuance of an appeal of an order for permanent care and custody or of a dismissal of an application to terminate an order for permanent care and custody pursuant to subsection (8),

whichever is the later; or

(d) except with leave of the court, after two years from

(i) the expiry of the time referred to in clause (a), or

(ii) the date of the final disposition or discontinuance of an appeal of an order for permanent care and custody pursuant to Section 49,

whichever is the later.

Powers of court on application to vary access

(7) On the hearing of an application to vary access under an order for permanent care and custody, the court may, in the child's best interests, confirm, vary or terminate the access.

On application to terminate care and custody

(8) On the hearing of an application to terminate an order for permanent care and custody, the court may

(a) dismiss the application;

(b) adjourn the hearing of the application for a period not to exceed ninety days and refer the child, parent or guardian or other person seeking care and custody of the child for psychiatric, medical or other examination or assessment;

(c) adjourn the hearing of the application for a period not to exceed six months and place the child in the care and custody of a parent or guardian, subject to the supervision of the agency;

(d) adjourn the hearing of the application for a period not to exceed six months and place the child 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; or

(e) terminate the order for permanent care and custody and order the return of the child to the care and custody of a parent or guardian or other person.

...

Matters to be considered

(10) Before making an order pursuant to subsection (8), the court shall consider

(a) whether the circumstances have changed since the making of the order for permanent care and custody; and

(b) the child's best interests.

[19] When a permanent care and custody order is granted the Court may make an order for access if such an order is considered to be in the child's best interests. Access is however the exception rather than the rule. Once

permanent care is granted the onus shifts from the Agency to the party seeking access.

[20] Similarly, when an application is made pursuant to subsection 48 (7) to vary a permanent care order as it relates to access, the onus is on the applicant to satisfy the Court that a variation is in the child's best interests. Before getting to that stage the applicant must prove that circumstances have changed since the making of the order for permanent care. The changes relied upon by Ms. C. are essentially the same changes she referred to in her previous application. Specifically, it is her evidence that her residence has now stabilized. She has been a resident of Nova Scotia for approximately seven years, although she has moved on a number of occasions within metropolitan Halifax during that time. She and her former husband have been divorced for approximately four and a half years and it would appear that she has no ongoing relationship with him. Ms. C. sought and obtained therapy from Dr. Nigel Allison for approximately three years and has taken a number of parenting related courses.

[21] It could be said that there is now a further change in circumstance in that the Agency does acknowledge that while adoption remains its plan for T., it is now unlikely that T. will be adopted.

[22] I am prepared to conclude that there have been changes in circumstances since the making of the permanent care order. The real issue is whether access by Ms. C. to T. would be in the child's best interests.

[23] Ms. C. believes that T. would be better off by having some kind of relationship with her. She does not believe that her daughter has benefited in any way by the services provided by the Agency. She believes that T.'s life has been made worse by being in the care of the Minister. She does not accept that there was ever any reason for T. being placed in permanent care and she does not accept any responsibility for the fact that T. was placed in permanent care. Ms. C. has made it clear that she does not believe that the Minister of Community Services should be involved with T. any longer and she thinks that it is inevitable that she and T. will see each other and therefore the Court should allow it to happen.

[24] Ms. C. has presented no evidence other than her own testimony. As a result there is nothing before the Court regarding how her therapy with Dr. Allison may have helped her or if or how it may have broadened her awareness of T.'s needs and circumstances and the role she can play in meeting those needs.

[25] Ann Bond, an experienced social worker with the Department of Community Services testified on behalf of the Agency. She is T.'s social worker and has been involved with T. since the Court first ordered that she be placed in the temporary care and custody of the Minister. She said that T. is still a child with special needs. According to her, consistency is important to T.'s progress. She expressed concern that if Ms. C. knew where T. was placed she would disrupt that placement. She testified of how sometimes T. can be rebellious which results in her being in conflict with caregivers, staff members of group homes and other group home residents. T. has been in four foster homes since being placed in permanent care as well as numerous respite care sites. Ms. Bond acknowledged that because of T.'s age and special needs it is unlikely that the Agency will find an adoptive home for her. It was her view that the ongoing court proceedings regarding T. also presented an impediment to adoption.

[26] The Court received a report from Dr. Carolyn Humphreys. Dr. Humphreys is a Clinical Psychologist who has been accepted as an expert in the field of psychology by both the Family Court of Nova Scotia and the Supreme Court of Nova Scotia on a number of occasions. She has been seeing T. regularly since November 2002. It is her opinion that access by Ms. C. would not be in T.'s best interests. In her report Dr. Humphreys stated:

> "It was my conclusion that T. had at least an insecure attachment relationship with her mother and likely a disorganized attachment relationship. Not only did she experience ambivalence, inconsistency and emotional unavailability in her relationship with her mother, she was also traumatized by her mother's angry verbal assaults and criticism. She was also traumatized over many years by living in a family with domestic violence. Her experience of her mother was that she was unpredictable, frightening in her anger toward T. and unresponsive to her emotional needs. From this attachment relationship T. developed a sense of herself as bad and unlovable and a belief that adults cannot be trusted.
>
> This disorganized attachment pattern shows itself in a continuing way in much of T.'s functioning. She has difficulty with relationships with both adults and peers. She finds the reciprocity required in relationships very challenging, as she likes to be in control. If she cannot be in charge, she experiences this as rejection or criticism and responds with anger and hurtful behaviour. She will also act inappropriately to try and get peer approval and this behaviour again is often hurtful to the individual she is targeting. Although she is showing the beginning development of empathy, in general she does not recognize the impact of her behaviour on others and tends to evaluate it only in terms of the resultant

consequences for her. This behaviour appears to be quite impulsive in that she wants to retaliate for a wrong done to her and does not consider other options for resolving a problem.

...

How would T. be impacted by contact with her mother, given her current functioning? Let me state clearly, that unless Ms. C. has dealt therapeutically with her own emotional and psychological problems that brought T. into care initially, and then resulted in a permanent care order, she will not have made significant and substantial changes in her own emotional awareness and functioning. This change, in my opinion, would need to be documented by a reliable mental health professional, and to have been consistent over a long period of time. Without such change, T. will be subjected to the same dynamics in the relationship as she previously experienced. One of the chief dynamics is T.'s attempt to please and take care of her mother in the hope that her mother will recognize and meet her needs. This was very apparent in T.'s statement to me that she was her mother's "last hope". By this she meant that her mother had lost her attempts to have contact with her other children and so T. was her last possibility. This was not about T.'s needs being met as a child but about her believing that she should take care of her mother's needs.

One of my concerns for T. is that she is now tending to idealize her mother, and imagining that any contact with her will be positive. She has also told me that even if her mother had some of her old behaviours, that she is old enough now to know how to take care of herself and to "protect" herself.

If T. were to have contact with her mother, it is my opinion that T. would deteriorate in her emotional and psychological functioning and the current gains will be jeopardized. She will be catapulted backward into the same experience of herself that she had when she was with or seeing her mother. The emotional distress will increase, her psychological functioning will become less stable and she will be overwhelmed by her internal confusion. As she experiences this internal destabilization, it is likely that she will show more acting-out behaviour, more aggression and a return to dissociative symptoms. It is my view that this will occur regardless of the kind of contact T. has with her mother.

Even written contact would be emotionally distressing for T., as it will trigger the same dynamics. She will be worrying about her mother, attempting to please her and take care of her. T.'s emotional energy will be focused on her mother.

> A significant concern I have about T. having any contact with her mother is the impact it will have on her willingness and ability to form trusting relationships with adults. T. has already developed a fantasy about her mother and appears to see this possible relationship as something that will "fix" things for her. As she puts psychological and emotional energy into this fantasy she has less energy and commitment for working on developing trusting relationships with the adults currently in her life. If she were to have contact with her mother, even written contact, she will undoubtedly focus on this relationship to the detriment of her everyday ongoing relationships. I anticipate that she would also develop a sense of loyalty to her mother which will impede her attempts to engage positively in these other relationships. It is likely that she will again start relating to adults using the template for relationship that she learned with her mother.
>
> **In summary, it is my opinion that any contact for T. with her mother will be psychologically and emotionally detrimental to her. It would result in a significant deterioration in T.'s functioning. T. is a child who has serious impairments in her functioning because of her early experiences. Change is slow and challenging for her. She is a vulnerable, fragile adolescent who could not cope with the emotional upheaval that contact with her mother would create. I would be extremely concerned about the likelihood that T. would respond with increasingly dangerous and self-harming behaviours to deal wither [sic] distress.**
>
> **Thus, I would not support Ms. C.'s application to have contact with her daughter, even written contact**." (emphasis added)

[27] Ms. C. has no respect for the opinions of Ann Bond or Dr. Humphreys. She considers Ms. Bond to be "evil" and biased. She said that she believes Dr. Humphreys to be "more than biased" and jealous of Ms. C.'s relationship with T.. She said she thought that Dr. Humphreys was interested only in getting paid for seeing her daughter. Ms. C. testified that if she had her way Dr. Humphreys would not be involved further in T.'s life. Ms. C. has a similar opinion of just about all other professionals who have come in contact with T. since she has been in care.

[28] Without any evidence to support her, Ms. C. seems to believe that she knows more about T.'s medical and psychological requirements than the professional practitioners who have been seeing and treating T. since she was placed in care. Not only does Ms. C. lack professional qualifications and expertise she has had no contact with T. for approximately seven years.

[29] The child's litigation guardian, Ms. Joan Newman, also expressed her opposition to the application. Ms. Newman has her Masters of Social Work

degree and has worked in the field of social work for approximately twenty-five years. She has experience both with child protection and adult protection cases. She is employed in private practice as a therapist working with individuals, families and groups and offers therapy to people of all ages. In Ms. Newman's report of December 1, 2004, she stated:

> "This Guardian is very aware, after meeting with A. C., that she is ill prepared to deal with the demands that T. places on a one-on-one relationship despite the fact that A. has made recent strides in managing her personal life, i.e., ending abusive relationships, managing her anxiety / mental health and her past alcohol abuse. A.'s own experiences as a child in care sometimes seem to cloud her abilities to accept that T. presents with special needs. While T. lists her social worker, Anne Bond, and Carolyn Humphries [sic], her therapist, as the two key people who she trusts to guide her through her future, her mother admits to "mistrusting" these same individuals. A. believes these people have a financial gain agenda by keeping T. in care and on medications. In A.'s words, "T. was used and abused" by Dr. Curtis (previous psychiatrist) and Carolyn Humphries [sic]. A. has also stated that "Carolyn keeps the therapy sessions going so she can be paid."
>
> While I have only just met A., I am concerned that her litigious nature may be her means to right wrongs from her own past and, therefore, she is unable to advocate, with any certainty, for her daughter's needs. This Guardian is equally aware that A. has not seen her daughter for six years which certainly reduces her potential to advocate for her daughter's needs."

CONCLUSION

[30] T. is fourteen years of age. I find that she continues to be a troubled child who requires stability in her life and ongoing counselling. She has expressed on more than one occasion a desire to see her mother. While that may open the door to the possibility of access, there is no requirement for access to be ordered unless the Court concludes it would be in the child's best interests. The Supreme Court in New Brunswick (Minister of Health and Community Services) v. M.L., [1998] 2 S.C.R. 534 stated at paragraph 51:

> "The decision as to whether or not to grant access is a delicate exercise which requires that the judge weigh the various components of the best interests of the child. It is up to the judge to determine which of the child's interests and needs take priority (see New Brunswick (Minister of Health and Community Services) v. D.T.P., [1995] N.B.J. No. 576 (QL) (Q.B.), at para. 41). A child's emotional

> stability is of prime importance. If the child is unduly disturbed by access, it is generally not granted....

and at paragraph 52:

> ... Every parent must place his or her child's interests ahead of the parent's own. The parent's inability to do so, and the harm suffered by the child, are factors that may result in access being prohibited. This will be the case, for example, where the parent is violent, manipulative, unstable or unable to control his or her emotions."

[31] Clearly, access should not be granted if its exercise would have negative effects on the physical or psychological health of the child. (See N.B. v. M.L., supra, paragraph 39.)

[32] I am not satisfied that access would be in T.'s best interests. To the contrary, I find that access of any kind (either in person, over the phone, or in writing) would be harmful to T..

[33] I have serious concerns regarding the applicant's own emotional and psychological stability. Whatever changes may have occurred in Ms. C.'s life since permanent care was granted, she has gained no insight into why T. required the protection offered by the Minister and no appreciation of her daughter's needs. There is little point in initiating contact between T. and her mother if there is no long range plan for the re-development of their relationship. Given the circumstances as they are at the present time, I do not believe that an ongoing relationship between T. and the applicant would be in T.'s best interests and I do not see that changing in the near future.

[34] I appreciate that given T.'s age, her curiosity about her mother and her understandable desire to be part of a family, that it is likely that at some time in the future, either before or after the permanent care order is terminated, that she will make contact with her mother on her own. It was therefore tempting to accept what may be inevitable and grant Ms. C.'s application. At least then access could take place under the supervision of the Minister which would be preferred over it occurring for the first time when the Minister was no longer responsible for T.'s care and therefore not in a position to offer supportive services. However, I do not believe that Ms. C. would cooperate with the Agency or even be supportive of the treatment that T. is receiving from Dr. Humphreys or that she may in the future receive from any other therapist selected by the Minister. In all probability she would undermine such treatment. She has said that if she

had her way Dr. Humphreys would not be involved further in T.'s life. Further, I do not believe that Ms. C. would comply with the conditions of an access order. In the past she has shown a willingness to ignore conditions imposed by the Court.

[35] I am aware that there are no guarantees of success when it comes to T.'s treatment. She has undergone psychological counselling for several years. She has made some progress but she remains emotionally immature and fragile. The Court however is not prepared to give up on her - particularly not now when she is going through such formative years which can be difficult for any child.

[36] The application is dismissed.

_____

Dellapinna J.