IN THE FAMILY COURT FOR THE PROVINCE OF NOVA SCOTIA
Citation: ***Nova Scotia (Community Services)*** v. ***M.F.*****, 2009 NSFC 16**

Date: 20090728
Docket: FAMCFSA-054568
Registry: Amherst

Between:

Minister of Community Services

Applicant

- and -

M.F. and D.F.

Respondents

Editorial Notice

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

Restriction on publication:	Pursuant to Section 94(1) of the **Children and Family Services Act**
Judge:	The Honourable Judge David A. Milner, A Judge of the Family Court for the Province of Nova Scotia
Hearing Dates:	June 1, 2, 3, 8, 9, 10, 15, and 16, 2009 at Amherst, Nova Scotia
Decision Date:	July 28, 2009
Counsel:	Cindy A. Bourgeois - for the Applicant Shawn A. Brown - for the Respondent, M.F. Kymberly Franklin - for the Respondent, D.F.

TO PUBLISHERS AND OTHER READERS OF THIS CASE:

PLEASE TAKE NOTE THAT SECTION 94(1) OF THE *CHILDREN AND FAMILY SERVICES ACT* APPLIES AND MAY REQUIRE EDITING OF THIS JUDGMENT OR ITS HEADINGS BEFORE PUBLICATION

SECTION 94(1) PROVIDES:

> 94(1) No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding pursuant to this Act, or a parent or guardian, a foster parent or a relative of the child.

INTRODUCTION

[1] This is a child protection court proceeding. The two children are a thirteen year old girl and her eleven year old brother.

[2] The children have some special needs and their parents have some cognitive limitations; however, they have managed to function together as a family in their community until the application to court.

[3] The child protection agency had been called upon over the years to assist the family and provide them with services. After the various agency workers had helped the parents address the protection concerns, the agency closed its files each time.

[4] The parents have had difficulty managing some aggressive behaviour of their daughter at home and at school. On the other hand, the daughter can be quite pleasant and mannerly.

[5] By comparison, her little brother is no problem; although sibling rivalry can work both ways.

[6] At issue are the competing plans for the children's future.

BACKGROUND SETTING

The application to court:

[7] This is a court proceeding under Nova Scotia's *Children and Family Services Act* ("the CFSA" or "the Act"). The proceeding is in the late stages of a disposition review.

[8] The applicant is the Minister of Community Services who took over from the original applicant, Family and Children's Services of Cumberland County. (For convenience, I will usually refer to both applicants as "the agency".)

[9] The respondents (“the parents”) are M.F. (“the mother”) and D.F. (“the father”). They are natural parents of the children: C.F. (“the daughter”) and S.F. (“the son”.)

[10] The daughter was eleven years old and the son nine, on the application date. They were initially living with their mother under supervision by the agency. Since February 21, 2008, both children have been in the temporary care and custody of the agency.

[11] The agency is seeking an order placing both children in its permanent care and custody, with no access, so the children can be adopted.

[12] The parents are seeking to regain custody of both children.

Cognitive limitations:

[13] Both the parents and the children have limited intellectual abilities, but they have functioned together as a family for most of the children’s lives. The parents contend they are capable of providing adequate guidance and direction for the children, and of minimizing risk of harm.

[14] The agency submits that the parents are unable to maintain adequate parenting skills, and to protect the children from harm, partly because of their limitations.

[15] The children struggle in school, and are both in individually-designed educational programs. Such special planning is normal procedure in the school system, for children with special needs. It is difficult, however, for the parents, who have their own special needs, to provide adequate home support.

Problematic behaviour:

[16] The daughter sometimes has been aggressive towards her brother. She often fought with him while they were together and has actually bitten him on occasion.

[17] When they were both living at home and attending the same school, the authorities felt it best to keep the two children apart. The daughter was also frequently aggressive towards other students, and was a major discipline problem at the school.

[18] The parents have had difficulty in being consistent and effective with discipline, especially in relation to the daughter. She sometimes plays one parent off against the other to get her own way. It even seems sometimes as though she is the parent in charge of the home.

[19] The agency is especially concerned about the daughter's propensity for sexualized behaviour. When she has the opportunity, she will sometimes dress in revealing clothing, not appropriate for her age. It is not clear to me how frequently this happens or where she gets the clothes. The mother, however, appears to be aware of the problem and does not condone the daughter's actions.

[20] The daughter has also displayed sexualized behaviours at school, such as asking boys to be her boyfriends, and running her fingers through their hair - all of which is considered to be sexual harassment.

[21] If such behaviour by the daughter becomes directed towards older boys or men, it is feared that she will be at risk of serious harm from sexual predators. Of particular concern to the agency is an adult male cousin of the daughter, who they believe has a record for sex-related offences. The agency is concerned that the parents have not been able to control the daughter's behaviour, or do not understand that it is a problem.

[22] Although the specifics are not clear, it appears to be acknowledged by the parents that the daughter was involved in an inappropriate encounter, of a sexual nature, with an adult uncle (the mother's brother). This appears to have happened several years ago when she was very young. Whether that unfortunate experience is linked to the daughter's sexualized behaviour is a question which might best be left for trained professionals to consider.

[23] In her present foster home, the daughter tends to be careless about her personal hygiene, and her foster mother has to constantly remind her to shower. The mother says this was not a problem before the children were taken into care.

Asking for help:

[24] Over the years since the birth of each child, the parents have asked the agency for help with problems. The agency has also received referrals from the community about concerns with their parenting abilities.

[25] The agency has provided services and assistance, including counselling to help the parents understand the risks and how to protect children from sexual assault. The agency has opened and closed protection files over the years, as the issues were dealt with.

[26] There has never been a court application under the CFSA until this one, about two years ago.

[27] While asking for help could be interpreted as a sign of weakness, it can also be seen as insight by the parents, and a positive sign that they are prepared to deal with problems rather than deny or hide them.

[28] Nevertheless, the agency still has concerns that the daughter will be at risk and that her parents will not appreciate and protect against the risk.

Special needs of the children:

[29] Both children have special needs relating to their intellectual limitations. This is being addressed in the school setting by the professional educators - administrators, teachers and educational assistants.

[30] There has been a request to the school board for a psycho-educational assessment in relation to the daughter. The school authorities are eagerly awaiting the assessment to help them in meeting the daughter's educational needs, and in planning for her future in school.

[31] It seems the assessment has been pending for quite some time now; however, there are great demands on the resources of the education system. While the assessment in not related to this court proceeding, it would probably be helpful if that information were available.

[32] Individualized educational programs have been designed to meet the special needs of these children. Hopefully, there will always be enough teachers and educational assistants to help prepare students with special needs to become well-functioning adult citizens.

[33] While the children have been in the temporary care of the agency, and living in separate foster homes, they have been attending different schools. The foster parents have been involved in working with the educators on behalf of the children - as were the parents when the children were both living in their care.

Parenting plans:

[34] As I understand it, the agency considers the parents do not have the level of cognitive ability for them to acquire and maintain the skills needed to be responsible parents for these children. The agency therefore seeks an order for permanent care for the children. They ask that there be no access granted to the parents - so that adoption can be more readily considered.

[35] The foster parents of the son have already indicated they would be interested in adopting him. While it is understood that adoption can only happen if the agency is given permanent care and custody, it should also be understood that the court should not be comparing parents with foster parents. [See: *Family and Children's Services of Cumberland County and M.W. and L.G. and Minister of Community Services and D.A.H. and D.L.H.*, 2008 NSFC 10]

[36] The issue in child protection court proceedings, at this stage, is whether particular parents are adequate - not whether others would make better parents.

[37] The parents' plan is to continue to raise both children in their own home. If they need help in carrying out their plan, they would ask for help, as they have at different stages of the children's lives so far. Besides the agency, with whom they are still willing to work, they would find support in their own community - from friends and neighbours, and their church.

[38] In particular they eagerly await the establishment of a new community service organization, which is being planned, and which would provide a wide range of programs for families in their community.

[39] They would try to continue to have their children enjoy special olympics, and they would introduce the daughter to girl guides.

[40] They would resume their children's participation in church activities.

Concerns about family violence:

[41] To the extent that domestic violence has been an issue in this family, it appears to have been mostly the problem presented from time to time by the daughter's aggressive and controlling tendencies.

[42] The mother and father, however, have also been exposed to services which deal with the issue from their own perspectives. The father at least broached the subject at a family resource centre; however, his cognitive limitations seem to have been a barrier for him.

[43] It appears that the mother, more so than the father, has benefitted from the services. She testified that she worked intensively with transition house personnel in helping her understand the nature and dynamics of violence and abuse. She is familiar and comfortable with the staff, and feels that it would be easy for her to follow up with services or seek help at the transition house in the future, if necessary.

[44] The mother also testified that her relationship with the father is sound, and has never been better than it is now.

Looking on the bright side:

[45] On a positive side, the mother and father appear to have been good parents over the years in many respects, and good citizens of their community.

[46] Despite her problematic behaviour, I have learned that the daughter has an attractive personality, engages easily in conversation, can be very friendly and respectful of others, and she seems capable of being a well-mannered child in any setting.

[47] The son does not seem to have any significant behavioural problems. He has been repeatedly described as a “sweet” little boy.

[48] The family household is clean and neat, and is well maintained, inside and out. The mother sees to it that the house is immaculate inside. The father sees that the lawn is kept mowed around their house, and he helps the mother with meals.

[49] The mother is a good cook, and she prepares excellent meals for the family. She is also skilled at sewing and intricate needlepoint work, which she likely is capable of passing along to her children. Besides her homemaking responsibilities, she still manages to play soccer with the children.

[50] Besides soccer, the family also enjoys playing indoor games. Although they have been criticized for playing cards during their supervised access visits, it appears that cards and other household games are important in expressing the overall integrity of this family.

[51] While they were still living at home, the father regularly walked with the children to and from school. Despite their own intellectual limitations, the parents support and are involved in their children’s educational pursuits.

[52] The parents, particularly the mother, have actively involved the children in their church from an early age.

[53] When the children were living at home they enjoyed participating two or three times a week in church activities, which included attendance at services of worship, and classes in religious precepts and social values. This appears to have been downplayed or overlooked by the agency while the children have been living in foster care.

THE NATURE OF EVIDENCE

Generally:

[54] Information which judges are permitted to use in making legal decisions in court cases is called “evidence.” Judges do not, and should not, know anything about the facts of a case from their own experience. They rely on observations from the experiences of others, who present evidence by testifying in court as witnesses.

Hearsay evidence:

[55] Because judges do not have first-hand information based on their own observations, it is important that witnesses do. If they do not have first-hand evidence, they should not be allowed to give second-hand evidence based on what someone has told them. We usually call the second-hand information “hearsay”, and it is not admissible as evidence.

[56] If the hearsay information is to be given to the court it would have to come from the source, a first-hand witness: who would give the information as evidence under oath; who could be challenged through cross examination by counsel; and who could be observed by the judge who could assess credibility.

Written hearsay:

[57] If someone gives you information in writing, that does not automatically make the information more accurate and reliable than if they simply told you about it. Hearsay in any form is inadmissible as evidence to prove something in court.

Admissible hearsay in business records:

[58] It is sometimes impossible, inconvenient, or expensive to arrange to bring a first-hand witness to court. This can be especially so in relation to the activities of a business whose operations have continued over long periods of time, while employees have come and gone.

[59] If a business is required to keep records of business transactions, as soon as they happen, such records are likely to be accurate - depending on the nature of the business, and the nature of the recording system and the particular entries.

Therefore, many jurisdictions have enacted legislation permitting business records to be admitted in court as evidence of the events and transactions recorded.

[60] Section 23 of the *Evidence Act* provides for the admissibility of business records in Nova Scotia.

[61] The *presence* in the business records of information showing that a transaction had happened would be admissible as evidence towards proving the transaction had taken place. Similarly, the *absence* of information showing that an alleged transaction had happened, could be admitted for purposes of proving that a transaction had not taken place - if the court were satisfied that the business's procedures would have required that such a transaction be recorded.

[62] Section 23 allows for admissibility of the records, but it also allows the judge to assess the weight which should be given to the evidence, depending on particular circumstances, including the lack of personal knowledge of the witness testifying as to the records.

[63] Where the "business" in question is a child protection agency, its records deal with complex circumstances in the ongoing lives of individuals and their families, their interaction with others including agency social workers, often covering long periods of time.

[64] The recorded information is itself often second-hand, in what are called "referrals" from others, including conversations which are also recorded. The recorded information often includes expressions of what the recorder, or the referral, call "concerns."

[65] Keeping records is of course important in the operation of a child protection agency, for purposes other than to have evidence for court purposes when a recording worker might later be unavailable as a witnesses.

[66] The records are important for a new social worker assigned to a family's file to help understand a family's background, as the agency continues to assist that family in the future. They can be also be a valuable source of information for outside professionals who are asked to provide assessments and services for the agency.

[67] They can be conveniently used to provide meaningful disclosure to parents and their lawyers for purposes of preparing for court proceedings, as opposed to being actually offered in court as evidence.

[68] It should be remembered that, although the information can be introduced as evidence through the records and a second-hand witness, it is still permissible for the first-hand witness to testify.

[69] That witness might have extensive first-hand knowledge of the events noted in the records. That witness could therefore answer questions and clarify what might not otherwise be clear to a second-hand witness merely reading from the records.

[70] In a child protection proceeding, it is difficult for a judge to decide how much weight should be given to a written summary of events in the family's history - made by an agency worker who: never testifies under oath; and never answers questions in court about the recorded events, or about the recording itself. It is especially difficult when the witness testifying about the records, has no personal knowledge whatsoever of the events 'spoken about' in the records.

Opinion evidence:

[71] In receiving evidence on a particular topic, where ordinary witnesses would not have the knowledge necessary to form a useful opinion, and where the court needs assistance because the topic is beyond the general knowledge which the court is supposed to have, witnesses with expertise gained through formal training and professional experience can be allowed by the court to give their opinions.

[72] When the court allows such opinion to be given as evidence, we sometimes say the witness has been "qualified by the court as an expert"; however, that terminology merely means that the witness's opinion is *admissible* as evidence.

[73] Opinion evidence is admitted because it comes from an expert; however, once admitted, it should not then be given special status in the decision-making process just because the witness has expertise to support her opinion. The opinion has to be considered on its merits by the judge - without undue deference - and has to be considered together with all other evidence in the particular case.

[74] A judge should be careful not to overemphasize the expert evidence, and allow the decision to turn on the judge's opinion as to whether an expert's report is faultless or flawed, or whether one expert's opinion is better than another's. The decision should result from a careful consideration of *all evidence* which has been admitted in the case, including expert opinion evidence. [See: *R.* v. *W.(D.)* [1991] S.C.R. 742 (S.C.C.)]

THE PARENTAL CAPACITY ASSESSMENT

[75] Since the Toronto Parenting Capacity Assessment Project was completed in 1993, it has become common practice for social science professionals, as part of their work with families, to prepare assessments using the methodology developed by the Project's research team.

[76] These parental capacity assessments (sometimes referred to as "Steinhauer" assessments, referring to the late Dr. Paul Steinhauer, who was a prominent child psychiatrist and leading member of the Project's research team) appear to be a serious scientific effort to foretell the *future* - although the procedure purports to measure one's *present* capacity to parent.

[77] By considering the qualities of individual parents, within the structure of certain established guidelines, it is intended that an ordinary assessor - with specific training in preparing parental capacity assessments - can form a reliable basis for planning the future of individual families.

[78] Parental capacity assessments were not developed for court purposes, although they have been used in court. They were intended as a tool to be used by professionals in different social science disciplines to help determine what the needs of a particular family are, decide what services might be provided, and plan for the family's future.

[79] Child protection agencies have made use of the parental capacity assessment as a tool to help them work with families, and have trained their own employees to conduct in-house assessments. This practice would avoid having to refer the family to outside professionals, which would result in delay and significant

expense. I am aware of one case, for instance, where an agency - with the backing of the Minister - insisted on doing its own assessment for such reasons, after the parents had asked the court to order an independent parental capacity assessment, even when it was likely that the assessment might be used in court. [See: *Family and Children's of Cumberland County* v. *D.M.McE., D.M.; S.D.McE., J.F.;* and *Minister of Community Services* 2005 NSFC 34.]

[80] During the course of this proceeding, the agency retained a psychologist, outside the employ of the agency and the Minister, to prepare a parental capacity assessment.

[81] The assessment was not ordered by the court, although the court proceeding was already underway. Counsel for the respondents were not involved in selecting the assessor, in determining what historical information would be made available for use by the assessor, or in any other way.

[82] The psychologist testified in court as an expert witness, and the parental capacity assessment was admitted as an exhibit.

[83] The assessor chose to make certain recommendations in her assessment, including placement of both children in the permanent custody of the Minister.

[84] Originally she had recommended that access should continue between the children and their parents; however, following some communication from the agency, the recommendation was adjusted to provide for no continuing access.

[85] In preparing the assessment, the assessor reviewed the agency's records including the notes prepared by case workers over the years. She also conducted standard psychological testing with the parents - to the extent possible with their intellectual limitations - and she conducted extensive clinical and other interviews with the children, the parents, foster parents, teachers, case aides, and neighbours.

REPORT OF THE DAUGHTER'S GUARDIAN

[86] A guardian ad litem has been appointed for the daughter, and the guardian has prepared a report for the court. With the consent of all counsel, the report was

filed with the court during the hearing. Since then I have directed that it should be formally identified in the court records as Exhibit #13.

[87] The guardian's report provides the daughter with a clear voice in this proceeding.

[88] The daughter is well into her fourteenth year and therefore, not surprisingly, remembers and displays a strong connection with her family.

[89] The impression she appears to have made on her guardian, during their meetings, confirms the impression I formed from hearing the witnesses speak about her, and from seeing her photographs in Exhibit #12.

[90] She seems to have insight into the circumstances which brought about the court proceeding and has resulted in her being in foster care. She also appears to understand that some of her conduct, such as the fighting and biting, has been a factor; and she appears willing to work on her behaviour, with a view to changing it.

[91] The daughter makes it clear that she wants to live once again with her family. If she cannot, she would very much want to maintain contact.

SILENCE OF THE FATHER

[92] The father chose not to testify as a witness in the proceeding, on the last day of a contested disposition review hearing.

[93] It is submitted for the Minister that I can and should draw an adverse inference against the father because he did not testify. I agree that I am permitted to do so; however, I decline.

[94] I think he attended most or all of the court appearances in this entire proceeding. He has been represented by his own lawyer and consented to the various court orders at every stage of the CFSA proceeding (interim order, protection order, and several disposition orders.)

[95] I know he attended court for all eight days of the only contested hearing - this latest review of disposition. He is obviously interested in the proceeding; he was able to instruct counsel; and seemed to play close attention to all of the witnesses. He elected, on the advice of his lawyer, not to be a witness himself.

[96] From his silence, in the context of all the evidence which came before (including the evidence of the mother as to the joint plan she presented through her testimony - and the parenting capacity assessment which speaks about him from different perspectives) I infer a positive impression about him, as a person and as a parent.

TIME FRAMES AND AGES OF THE CHILDREN

Generally:

[97] As a child moves through childhood and towards adulthood, the law takes account of increasing maturity and growing independence from authority figures, including parents. As children mature they become more responsible for themselves. To some extent this varies with individual children, their level of maturity, and their degree of emancipation. For example, at a certain stage of maturity, a particular child will be able to make decisions about medical treatment without the need for parental advice or consent.

[98] On the other hand, a specific chronological age is sometimes significant. For instance, the age of majority in Nova Scotia nineteen years; however. a young person can vote at eighteen, obtain a drivers licence at sixteen, and be charged with a criminal offence at twelve.

[99] Ages and time are important under the CFSA. The preamble to the Act recognizes that children have a sense of time that is different from that of adults and court proceedings should recognize those differences. For a one-year-old, a year is a lifetime. For a teenager it is increasingly less.

Children between six and twelve:

[100] Section 45 of the CFSA establishes time frames and limits on court proceedings, which depend somewhat on the ages of the children involved.

[101] When a child is between six and under twelve years old, the total duration of all disposition orders is eighteen months from the date of the first disposition order.

[102] A "disposition order" under the CFSA means a court order which is made at or following the "disposition hearing", whereas an order made at the interim hearing, at the protection hearing, or any other time before the disposition hearing is called an "interim" order. Disposition orders include supervision orders, and orders for temporary care and custody.

[103] When eighteen months has expired, a child who is still under twelve years must either be returned to the parents and the court proceeding discontinued, or, if the child is still considered in need of protective services, placed in the permanent care and custody of the agency. The court is not permitted to order temporary care, supervision or other services for the child or parents beyond the time limit. [See: *N.J.H., G.S. and G.C.* v. *The Minister of Community Services* (2006), 241 N.S.R. (2d) 148 (N.S.C.A.); and also: *Minister of Community Services v. B.F., B.W. and Mi'Kmaq Family and Children's Services of Nova Scotia* (2003), 219 N.S.R. (2d) 41 (N.S.C.A.)]

Children over twelve:

[104] Under the CFSA, when a child is twelve years of age or more, she can be made a party to a court proceeding and have the same standing in court as a parent, and have her own lawyer. [Section 37(2)]

[105] Section 45 guides the court in how to respect the passage of time in the unique circumstances of each child's life.

[106] Where a child was already older than twelve years, or became twelve during a CFSA court proceeding and was the subject of an order for temporary care and custody, the eighteen months maximum time does not apply. If it were otherwise appropriate, the adolescent child could then be the subject to further orders for

temporary and custody, and ongoing services to be provided by the agency beyond the eighteen months.

[107] The maximum *duration* of any order for temporary care and custody is then twelve months; however, there is no limit set on the *number* of further orders for temporary care and custody.

[108] Professor D.A. Rollie Thompson in *The Annotated Children and Family Services Act* (at pages 227- 229) discusses these provisions, which he says allow "rolling" one-year orders for temporary care and custody.

[109] Such orders for temporary care and custody could continue to be made for a child - with annual or more frequent reviews by the court - from age twelve until the age of majority.

[110] In the course of a review, the court could later decide to return a child to the parents on some basis, or place the child in the permanent care and custody of the agency.

Becoming twelve:

[111] If a child is between six and twelve years of age, section 45(1) of the CFSA fixes the maximum duration of eighteen months for all disposition orders, where there has been an order for temporary care and custody.

[112] Under section 45(2)(c), the maximum duration of an order for temporary care and custody is fixed at twelve months, where a child is twelve years of age or more.

[113] Section 45(3) provides:

> Where a child ***that*** [*sic*] ***is the subject of an order for temporary care and custody becomes twelve years of age***, the time limits set out in

> subsection (1) no longer apply and clause (c) of subsection (2) applies to any further orders for temporary care and custody. [Emphasis added.]

[114] Since this proceeding began on August 28, 2007, the daughter lived initially with her mother under agency supervision pursuant to the following orders: first, the interim order of August 31, 2007; second, the protection order of October 12, 2007; and third, under the disposition order of January 4, 2008.

[115] The daughter celebrated her twelfth birthday while living with her mother, under a supervision order, on February *, 2008. Up until then, she had never been in the temporary care and custody of the agency; however, that changed two days later - February 21, 2008 - when she and her brother were taken into care by the agency.

[116] By operation of Section 33(4), when a child is taken into care, an agency automatically acquires temporary care and custody of the child, which continues until a court orders otherwise.

[117] On March *, 2008 - ***fifteen days after her twelfth birthday*** - the daughter became "the subject of an order for temporary care and custody" for the first time. That order confirmed the agency's temporary care and custody, which continues to this day.

[118] The daughter has therefore been in the temporary care and custody of the agency, continuously for seventeen months - and she is now approximately thirteen years and five months old.

[119] A generous reading of Section 45(3) could mean that if a child is both over twelve and the subject of an order for temporary care and custody, the court can make further orders for temporary care, and each lasting as long as twelve months, subject to review by the court.

[120] We might also keep in mind how a birthday is sometimes celebrated and observed during times other than the precise anniversary of a birth date. (*e.g.* Victoria Day, and the Twelve Days of Christmas.)

[121] A narrow interpretation of the same section, however, could require that the child must actually celebrate her twelfth birthday while the subject of an order for temporary care and custody, before the court could use the flexibility provided by further orders for temporary care.

[122] Such a narrow interpretation, it seems to me, would be too literal and legalistic an interpretation, for a statute aimed at the welfare of children.

CONCLUSION AND DISPOSITION

[123] Parents occupy a position of special privilege and responsibility in their children's lives.

[124] Parents are expected to provide security and direction for their children from an early age. Parents should be capable of discharging their responsibility.

[125] If they need help along the way, it will usually be available upon request, from the helping agencies in the community.

[126] As children grow older they ordinarily come under the influence of others besides their parents. Parents should therefore be ever vigilant in monitoring their children's activities. They should encourage positive influences while guarding against potential risks.

[127] It has been said there is no occupation more important in society than being a parent. An occupation filled with challenge and satisfaction, it should be taken seriously. It is, however, an occupation which should not lightly be taken away.

[128] The events and experiences which have led to this court proceeding, have taken place over the lifetimes of two children - a span of over thirteen years.

[129] Much of what has happened in the lives of the children would be considered uneventful, if bad things were all that mattered. Most of the good things which have happened with these children would have gone unnoticed, or been taken for granted.

[130] Whenever the alarm bells sound, and they should be sounded in appropriate circumstances, professional service providers bring their attention and expertise to bear on the particular situation. Our society relies on professionals in different disciplines: police, health care providers, school administrators, and social workers to help. We also depend on ordinary citizens, who are parents, neighbours, and friends.

[131] The ordinary citizens, and indeed all citizens, are expected to respect and observe the standards set by our laws, including our criminal laws. There is no guarantee that all citizens will always respect the law, but we should generally be able to trust that most will.

[132] Parents play a key role in a healthy society, because they direct the little societies we call "families", which form the foundation of the larger society. They influence the future course of the children entrusted to their care. They have both responsibility and privilege in the children's lives. If they are able to satisfactorily discharge the responsibility of parenthood, they are permitted to continue enjoying the privilege.

[133] In this case, I have considered all the evidence: from ordinary witnesses trained only in the experiences of life; and also witnesses who are professionals trained in the social sciences.

[134] The lead social worker who testified for the agency is the professional who had responsibility for the agency's file at the time of the hearing. He had been preceded by many other social workers: who had investigated referrals made over a long period of time; who worked with the parents over a long period of time; and who did not testify in court. He was continually in the unenviable position of having to answer questions which could only be answered by reading what the others before him had recorded in the file notes. The evidence was of course admissible as I have discussed; however, it was difficult for me to decide what importance should be given to much of the information, introduced only through historical recordings.

[135] I recognize that much has happened during the children's lives over those long periods of time, which was never the subject of agency referrals, and therefore never recorded in the agency's records. Most of that time was likely filled with parenting experience, which would be considered adequate and satisfactory. While

there has been some difficulty - much of which was drawn to the agency's attention by the parents themselves - the problems have been addressed with services, and might well have been reflected upon again by the parents during the court proceeding.

[136] Their lawyers have assisted the parents by explaining the requirements and procedures under the CFSA, and in preparing for court.

[137] I have considered all the evidence, including the oral testimony of witnesses, and the written or printed evidence entered as exhibits, including the photographs.

[138] The opinion evidence, including its expression in the parental capacity assessment, has been weighed in the balance with all the other evidence.

[139] The mother's evidence left me with the impression that her parenting abilities might surprise her I.Q. She also seemed quite comfortable in handling the stress of testifying in court, even under cross examination.

[140] She appears to have unique talents which she has been able to apply, with her individual personality, for the benefit of both children. I consider that she should be permitted to continue.

[141] The father is a different and unique person with his strengths and weaknesses. I consider him to be capable of providing meaningful input and support for the family.

[142] I consider these parents, M.F. and D.F. have the skills and the will, to a sufficient degree, to permit them to continue as parents in the lives of their children, C.F. and S.F.

[143] I consider that the son is not now in need of protective services and he should therefore be returned to his parents' home, as soon as is practicable. I order that the proceeding, as it relates to him, be discontinued.

[144] The mother and father, in my opinion, are able at this time to provide a safe and secure home for him and are capable of providing effective and adequate parenting.

[145] The parents should continue to be monitored by the court, however, to the end of this proceeding - with the focus of attention now to be on their daughter. I feel that it would be best for her to continue to be in the temporary care and custody of the Minister, until otherwise ordered.

[146] The daughter should continue to have services provided for her by the Minister, such as those recommended for her in the parental capacity assessment.

[147] It appears to me there should be some specific attention given to her anger, impulsiveness, and aggression. It would probably be helpful if she could be provided with individualized appropriate counselling aimed at modifying her behaviour in these areas.

[148] There is also the worrisome sexualized behaviour, and the likelihood that the daughter was sexually abused by an adult many years ago. Some form of counselling would seem to be appropriate to assist the daughter in these areas, including some information about appropriate conduct, and the nature of harassment, inappropriate conduct - and associated risks.

[149] I request and authorize that the guardian *ad litem* continue to be involved in the proceeding, if she is able and willing to do so, to help identify and select appropriate counselling to address these issues for the daughter, and also to explain to her the ongoing proceedings from time to time.

[150] The daughter should continue to have access with her parents and her brother, and at least some of the access should occur in the parents' home. The timing and frequency will have to recognize the distance between the daughter's foster home and the parents' home. Transportation should be arranged and paid for by the Minister.

[151] As I see it, access during weekends would work best - perhaps every second weekend. If it could be arranged for the daughter to attend church services with her mother, her father and her brother, and then perhaps join them for a meal before returning to the foster home, that would seem to be meaningful and appropriate, at least for a while.

[152] Access would only need to be minimally supervised, perhaps merely by the case-aide worker delivering and picking up the daughter, with a few notes about

the trip to enter in the agency records. The parents and others present during the access would likely take note also of how the daughter and her family got along.

[153] If the access goes well, I would suggest it should be increased to include access overnight at the parents' home after a couple of months. I would ask counsel to help their clients work on sorting this out. If the parties all agree on a more precise schedule than I have drawn, that schedule could be included in the order.

[154] The order would have to reviewed within twelve months. There might be variations made to the order, before that, to allow for new terms and conditions. This could happen informally, with agreement of the parties through their counsel, or by the court after an application to vary or review.

[155] In any event, I ask that counsel for the Minister ensure that the order is reviewed within the twelve months provided by the Act.

[156] I thank the guardian *ad litem* for her help in the course of assisting the daughter. My judicial assistant will provide a copy of the decision directly to the guardian.

[157] I also thank all counsel for their assistance, and ask them to work together in preparing an order which summarizes the effect of this decision.

David A. Milner
A Judge of the Family Court
For the Province of Nova Scotia