# IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *J.C. and J.L.* v. *Director of Child and Family Services,* 2006 YKSC 55

Date: 20061019
Docket No.: S.C. No. 06-A0054
Registry: Whitehorse

Between:

**J.C. and J.L.**

Petitioners

And

**THE DIRECTOR OF CHILD AND FAMILY SERVICES**

Respondent

**Publication of the name of a child, the child's parent or identifying information about the child is prohibited by section 173(2) of the *Children's Act*.**

Before: Mr. Justice R.S. Veale

Appearances:

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|---|---|
| Jennifer Reid | Counsel for J.C. |
| Sheri Hogeboom | Counsel for J.L. |
| Lee Kirkpatrick | Counsel for the Director of Family and Children's Services |

## REASONS FOR JUDGMENT

### INTRODUCTION

[1] This is an application by a mother and father to set aside a warrant, obtained without notice, authorizing the apprehension of their newborn child under section 121(4) of the *Children's Act*, R.S.Y. 2002, c. 31. The warrant was issued on July 18, 2006, the child was apprehended on July 24, 2006 and this application to set it aside was heard on July 27, 2006. The teenage parents allege that the facts provided to the justice of the

peace in support of the warrant were both misleading and incomplete. I dismissed the application while expressing concern about the lack of disclosure made by the director of Family and Children's Services (the director). The following are my reasons.

**THE FACTS**

[2] The mother and father are 17 and 16 years old, respectively. The director was notified of the mother's pregnancy on May 31, 2006. The intake social worker, who conducted an investigation to determine whether the child was in need of protection, had some difficulty in getting a response from the mother and father. She spoke to the mother and father on June 12, 2006, and arranged a meeting on June 15, 2006, to discuss their plans for the unborn child. In the meantime, the social worker was advised by an anonymous referent that the mother was “cognitively delayed and has suspected mental health issues”. This information was confirmed by a person at the teen parent centre. The healthy families worker had been working with the mother and father. She had concerns about their ability to care for themselves and did not expect them to attend their appointment on June 15th. She found the young parents to be vague, not trusting and not forthcoming with information.

[3] The intake social worker spoke with one of the mother's doctors on June 13, 2006. The doctor reported that she considered the mother’s pregnancy to be high risk. She stated that the mother was too immature to raise a child and would require someone to be with her constantly if the mother were to take the child home.

[4] The public health nurse also had numerous concerns about the ability of the mother and father to parent. She too was concerned about the immaturity of the mother and father and especially the refusal of the mother to answer questions about her drug

and alcohol use. It was previously reported by the person at the teen parent centre that the mother stopped using drugs and alcohol when she learned that she was pregnant at five months.

[5] The meeting took place on June 15, 2006 and appears to have been led by the intake social worker. The mother and father presented as very friendly but extremely immature. The intake social worker expressed the concerns that had been reported to her. The parents reported that they were “not even scared” of having their own child as they had done a lot of babysitting. The parents were not able to give any details on how they would care for the child but indicated that the baby was due in five weeks.

[6] The mother and father advised that they would be moving into their own residence, but one would not be provided to them until the child was born. In the meantime, the parents indicated that they would live with the mother's father. That statement caused great concern to the social worker because the mother's father had a history of child sexual abuse. The mother and father acknowledged the history but stated that he was a “good guy” now. The parents refused the social worker’s offer to find alternative accommodation as a department of the federal government was making those arrangements for them.

[7] The social worker who swore the affidavit then stated that she had not heard from the mother and father since the June 15th meeting. She also stated that the intake social worker left a message with the mother and father on June 19, 2006, requesting that they contact her. The social worker set out some past history with the mother. The mother has been physically and sexually abused by the man she thought was her biological

father. Her own mother is low functioning and has an estranged relationship with her daughter. The teenage mother also has a history of slashing her arms and legs.

[8] The social worker then reported that the mother and father missed a meeting with her on July 12, 2006. The mother and father also missed another meeting set for July 13, 2006. I do not find the mother's excuse for not attending these meetings to be satisfactory.

[9] On July 12, 2006, the healthy families worker reported that she had seen the mother that day. She reported that the mother was very upset about the possible apprehension of her baby and had been scratching her arms and legs to the point of bleeding.

[10] The maternity ward staff at the hospital advised the on-call social worker that the child was born on July 16, 2006. The nurse reported that the mother was being very appropriate with the baby and trying to feed him. The father was present.

[11] On July 17, 2006, the mother was struggling with breast-feeding and having the child suck on her fingers instead of breast-feeding.

[12] The affidavit concluded with the following:

> "[The mother] is 17 years old and [the father] is 16 years old. [The father] works part-time [locally] and allegedly was kicked out of school for drug use. Given [the mother's] history of emotional stability, their age and lack of maturity, their inability to follow through with plans, commitments and expectations, their alleged drug and alcohol abuse issues, their current plan to reside with a known child sexual abuser, and their low functioning, I believe that [the child] should be placed in the director's care until further assessment of [the mother's and the father's] plans can be made."

[13] The director's plan was to apply for a three-month temporary care and custody order focusing on the goal of family reunification, assessing the ability of the mother and father to parent, and ensuring a safe residence.

[14] However, the social worker who swore the affidavit failed to report that the mother and father had attended a second meeting with the intake social worker on June 22, 2006. The mother stated that the intake social worker said that she was going to take their baby from the hospital because they had not developed a plan requested at the earlier meeting. There were no further details about this meeting and the social worker gave no explanation as to why she failed to disclose it in the application for a warrant without notice.

[15] At this review hearing, a registered nurse who worked at both the hospital and the teen parent centre confirmed in an affidavit that she was present at the June 22, 2006 meeting. She stated that she was not really told what the purpose of the meeting was. She stated that there was some discussion about concerns about drinking during the mother's pregnancy. The registered nurse stated that as far as she knew, the mother did not drink during this pregnancy. She reported that it was a short meeting and the intake social worker requested a further meeting with the mother and father to set up the safety plan, but there was no detailed discussion about the safety plan. The nurse assisted at the birth of the baby and reported that she had no concerns about the mother's ability to look after the baby "with the supports she has in place". The nurse reported that the mother was able to change and feed the baby with no problems. She concluded:

> "That I am supportive of [the child's] return to [J.C and J.L.] in an environment where they have assistance from their family,

> and the community supports remain in place. [J.C.] has been doing very well at looking after [the child] and is open and willing to accept whatever advice or support offered."

[16] In her affidavit at the review hearing, the mother recognized that she needs assistance in parenting her child. She stated that she and the father planned to move in with "one of our families so they can support us in our effort to become the best parents we can for [our child]".

[17] I would be remiss if I did not acknowledge the unspoken social context underlying this dispute. I would expect from a First Nation perspective, there are too many First Nation children in care and the director is too quick to intervene. I would expect from the director's perspective, failure to act may have unacceptable consequences of physical abuse or, in the worst case scenario, the death of a child. See *R.* v. *Ellis,* 2005 YKSC 61. I raise these unspoken perspectives as they indicate a wide gap in perceptions. They do not provide any factual basis for this decision.

**THE LAW**

[18] I am going to discuss the general principles applied in child protection proceedings, the specific sections of the *Children's Act* applicable to this case, the standard of review and the disclosure principles in the child protection context.

**General Principles**

[19] The leading Supreme Court of Canada decisions in child protection proceedings are *New Brunswick* v. *G.(J.)*, [1999] 3 S.C.R. 46 and *Winnipeg Child and Family Services* v. *K.L.W.,* 2000 SCC 48. Both cases deal with slightly different issues than those arising in the case at bar. Nevertheless, they contain a number of general principles that are useful guidelines.

[20] In *New Brunswick* v. *G.(J.),* the Court considered the parent's right to state-funded counsel when the state intervened to apprehend a child. The focus was on whether the parent's right to security of the person guaranteed by section 7 of the *Charter* was infringed when the parent did not have counsel at the child protection hearing. The Court concluded that the combination of stigmatization and disruption of family life constituted a restriction on the security of the person. In the context of that case, the guiding principle was expressed at paragraph 70 as follows:

> "… The state may only relieve a parent of custody when it is necessary to protect the best interests of the child, provided that there is a fair procedure for making this determination."

[21] The Supreme Court concluded that fairness required that the parent, in some circumstances such as indigency, be provided with state-funded counsel to ensure a fair custody hearing.

[22] In *K.L.W.*, the precise issue was whether the state could apprehend a child without prior judicial authorization in "non-emergency" circumstances. The statute permitted the apprehension of a child without prior judicial authorization. L'Heureux-Dubé J., writing for the majority, concluded that where there was serious harm or risk of serious harm to the child, the lack of prior judicial authorization would not necessarily offend the principles of fundamental justice (paragraph 117).

[23] L'Heureux-Dubé J. also noted in passing, at paragraph 129, that parents could challenge the agency's decision to apprehend a child by bringing an action immediately by way of prerogative writ for return of the child without waiting for the "reasonable and probable grounds hearing". That is precisely the action brought by the parents in the case at bar, although unlike *K.L.W.*, the director had previously obtained prior judicial

authorization, albeit without notice to the parents, as permitted by section 121(4) of the *Children's Act*. To that extent, the dissent of McLachlin C.J. and Arbour J. has some relevance as they examined the procedural safeguards required to obtain a judicial warrant to apprehend a child without parental notice.

[24] For convenience, I will summarize some of the general principles from the majority judgment in *K.L.W.:*

1. the mutual bond of love and support between parents and their children deserves the greatest respect (paragraph 72);
2. parents must be accorded a large measure of freedom from state interference to raise their children as they see fit (paragraph 72);
3. it must also be recognized that children are vulnerable and require protection from harm (paragraph 73);
4. as children cannot exercise their rights independently in circumstances of abuse and neglect, the state has the statutory duty and power to intervene to protect children (paragraph 75);
5. despite that fact that apprehension is an interim child protection measure, it involves the physical removal of a child from the parents and potentially leads to a lengthy separation from the parents (paragraph 79);
6. in balancing these potentially conflicting objectives, the majority agreed with the observation of the Alberta Court of Appeal that child protection legislation is a child welfare statute not a parent's right statute (paragraph 80);

7. the majority was reluctant to import procedural protections from the criminal context as the state's protective purpose in apprehending a child is clearly distinguishable from the state's punitive and protective purpose in the criminal context of seeing justice done with respect to a criminal act (paragraph 98).

[25] L'Heureux-Dubé J. stated that the time and delay in preparing for a prior judicial authorization, on the facts of the case, could have imposed a risk of serious harm on the baby. She concluded that an "emergency" threshold for apprehension without prior judicial authorization was inappropriate while acknowledging the existence of such a legislative practice in some jurisdictions.

[26] L'Heureux-Dubé J. observed that courts often defer to the agency's assessment in a without notice proceeding for judicial authorization. As the result, she found that the without notice authorization provided only "limited enhancement of the fairness of the apprehension process".

[27] In contrast, the dissenters relied on paragraph 79 of *G.(J.)* which states:

> "Few state actions can have a more profound effect on the lives of both parent and child. Not only is the parent's right to security of the person at stake, the child's is as well. Since the best interests of the child are presumed to lie with the parent, the child's psychological integrity and well-being may be seriously affected by the interference with the parent-child relationship."

[28] Arbour J., at paragraph 24, acknowledged that in an application for a warrant without notice, a judge may defer to the applying agency but could raise concerns resulting in a request for more information. Further, if the concerns are "profound enough, and the child is not at any immediate risk of harm, the matter might be

adjourned for an adversarial hearing." Thus an independent judicial scrutiny ensures that the child protection agency can articulate the grounds in a non-emergency situation. The warrantless apprehension of children in emergency situations was conceded as necessary by all parties. As stated earlier, some jurisdictions, including the Yukon, require prior judicial authorization except in emergency situations.

[29] Arbour J. found there was ample time to apply for judicial authorization before apprehension when the mother and child remained in the hospital under medical supervision (paragraph 38). She also found that any immediate danger could be addressed by using the "telewarrant procedure".

[30] Arbour J. concluded at paragraph 41:

> "… [A without notice] application to an independent and impartial judicial officer would provide some assurance to families experiencing a dramatic disruption to their lives at the hands of the state that this disruption is being conducted in a manner that is procedurally fair and constitutionally sound."

**The *Children's Act***

[31] Section 1 of the *Children's Act* (the *Act*) provides that the interests of the child shall be the paramount consideration in proceedings under the *Act*. It also provides that when the rights or wishes of a parent and a child conflict, the best interests of the child shall prevail.

[32] Section 2(2) provides that the rules of equity shall not prevail over the provisions of the *Act*. For example, it is a rule of equity that a person must make full and frank disclosure in applications without notice. Therefore, a failure to fully disclose could be interpreted to prevail over the best interests of the child. Section 2(2) prevents such an interpretation.

[33] Part 4 of the *Act* deals with child protection.

[34] The policy of the director and the implementation of that policy are clearly articulated in ss. 108 and 109 of the *Act* as follows:

> **108** It is the policy of the Minister and the director to supply services as far as is reasonably practicable to promote family units and to diminish the need to take children into care or to keep them in care.
>
> **109** For the implementation of the policy described in section 108, the director shall take reasonable steps to ensure the safeguarding of children, to promote family conditions that lead to good parenting, and to provide care and custody or supervision for children in need of protection.

[35] Although these sections do not state that "the best interests of the child are presumed to lie with the parents" as set out in paragraph 79 of *G.(J.)*, it is implicit that the family unit is to be respected and promoted.

[36] Section 118 of the *Act* sets out the circumstances where a child is in need of protection. In this case, the ultimate issue is whether the parents are "unable to provide proper or competent care, supervision or control over the child."

[37] The *Act* provides three procedures that the director may utilize to take a child into care pending a judicial determination that a child is in need of protection.

**1. A Warrant Application With Notice**

[38] Under section 120(1), the director, who has reasonable and probable grounds to believe and does believe a child "might be in need of protection", may give notice to the parent requiring the parent to appear before a judge to determine whether the child is in need of protection or whether further investigation is required. The operative word is "might" be in need of protection. This suggests a situation where the director has suspicions or concerns about a child that may indicate the child is in need of protection

or should be made available to the director for investigation. It is not a situation where the director has subjective and objective reasonable and probable grounds that the child is in need of protection. Appropriately, it requires notice to the parents and an adversarial hearing which would permit the parents to respond before the child could be taken into care. The ultimate decision would be made after a fair hearing before an independent and impartial judge.

**2. A Warrant Application Without Notice**

[39] The second procedure to apprehend a child is under section 121(4) of the *Act* which provides that the director (or an agent or peace officer) may apply for a warrant to take a child into care if the director "has reasonable and probable grounds to believe and does believe that a child is in need of protection". Section 121(9) states that the application "may be made without notice". These applications are typically made without notice and the judge may have little choice but to defer to the agency and issue a warrant. However, at this hearing, if the judge has concerns, the application can always be changed to a hearing where the parents are notified and participate before the warrant is issued (see *K.L.W.* at paragraph 24). If the warrant is issued and the child is apprehended, section 123 requires that the concerned parent be given notice in writing of a second hearing to be held not later than 7 days after the child is taken into care. The second hearing is to determine the identity of the parents and child and, with the parents participating, to determine whether reasonable and probable grounds exist for taking the child into care. If the judge finds that the child should be taken into care, pursuant to section 123(6), the child is placed in the temporary care and custody of the director until

a further hearing is held within 2 months to determine whether the child is in need of protection.

[40] Section 167(1) provides that the application for a warrant to take a child into care under section 121(4) may be made by telephone if it is impractical for a judge to be available (a telewarrant application). Thus, there is no necessity to wait for an emergency to arise and then proceed without a warrant. In a telewarrant application, the judge records the evidence verbatim, “or in as complete and accurate a fashion as practical”, to be certified and filed.

[41] In judicial review proceedings, questions always arise about what questions were asked and the answers given in the without notice hearing. In my view, it would be appropriate to follow a similar procedure in court applications as required for telewarrant applications. Questions and answers that may be exchanged could be tape recorded or written up by the justice of the peace. This will ensure that a reviewing judge and the parents will be aware of all matters that arose in the without notice hearing. Additional evidence can be put on the record by affidavit or it can be added to the filed affidavit by a hand-written notation of the applicant duly initialled.

### 3. Apprehension Without a Warrant

[42] The third procedure to take a child into care is without a warrant where the director has subjective and objective reasonable and probable grounds to believe that the child “is in immediate danger to their life, safety or health” pursuant to s. 121(1) of the *Act*. This would be followed by the reasonable and probable grounds hearing within 7 days of the apprehension.

[43] In this case, the director applied for the apprehension of the newborn child without notice to the parents. The parents, as they are entitled, have not waited for the reasonable and probable grounds hearing and brought an application (known as a prerogative writ) to set aside the warrant. The application to set aside the warrant is based upon the failure of the director to provide the justice of the peace full and frank disclosure in the without notice application.

**The Standard of Review**

[44] The parents apply to set aside the warrant to apprehend their child issued by the justice of the peace (a writ of certiorari). Additionally, they apply for an order that the director return their child to them (a writ of mandamus). Counsel for the director did not object to the application being heard presumably based on the statement by L'Heureux-Dubé J. in *K.L.W.* that such an application was open to parents whose children were apprehended without notice. *Certiorari* is particularly appropriate in child protection warrants where the psychological and physical disruption of removing a child from a parent is so profound that the interests of justice require immediate intervention by a superior court where appropriate. It is a remedy to be exercised with great care and is always discretionary.

[45] The justice of the peace did not provide reasons for issuing the warrant to apprehend. The nature of the problem is one of mixed fact and law which would usually indicate a reasonableness standard of review. However, the addition of new facts that were not before the justice of the peace suggests that the correctness standard should be applied.

**Disclosure Principles in the Child Protection Context**

[46] In a civil action, the case law and *Rules of Court* set a very high standard for disclosure in applications without notice. An order made without notice will be set aside if the applicant has not made full and frank disclosure of relevant facts. The applicant must be shown to use “utmost good faith”. See *Gulf Islands Navigation Ltd*. v. *Seafarers International Union of North America (Canadian District)* (1959), 27 W.W.R. 652 at 654 (B.C.S.C.), aff’d 28 W.W.R. 517 (B.C.C.A.). Despite the views of their clients, lawyers must always disclose all facts that might influence the court’s decision. See *Evans* v. *Silicon Valley IPO Network*, 2004 BCCA 149. Similarly, a without notice order may be set aside on its merits whether or not a material misrepresentation was made. See *Money in a Minute Auto Loans Ltd.* v. *Price*, 2001 BCSC 864.

[47] In the criminal context, an authorization to intercept private communications may be given on the legal test set out in the *Criminal Code*. The without notice application must set out the facts “fully and frankly” as stated in *R.* v. *Araujo* (2000), 149 C.C.C. (3d) 449 (S.C.C.). In *R.* v. *Garofoli*, [1990] S.C.J. No. 115, at paragraph 56, the Supreme Court of Canada decided that:

> The reviewing judge does not substitute his or her view for that of the authorizing judge. If, based on the record which was before the authorizing judge as amplified on the review, the reviewing judge concludes that the authorizing judge could have granted the authorization, then he or she should not interfere. In this process, the existence of fraud, non-disclosure, misleading evidence and new evidence are all relevant, but, rather than being a prerequisite to review, their sole impact is to determine whether there continues to be any basis for the decision of the authorizing judge.

[48] The child protection context is quite distinct from both the civil and criminal context. Unlike the civil context, a child protection case does not deal only with the state

and the parent. The best interests of the child prevail and that may coincide with the concerns of the state or the parents as the case may be. The interests of the child are so important that in many child protection cases, the child has legal counsel. The legal test to obtain a warrant in a child protection proceeding is completely different than the test to obtain a warrant in a criminal proceeding. The state is not obtaining evidence to pursue a criminal charge; it is obtaining a warrant to remove a child from his or her parents. It can only be done if there are reasonable and probable grounds to believe the child is in need of protection and it is in the best interests of the child to be removed from his or her parents. Cases or principles in the civil or criminal context may be useful for comparative purposes, but great caution must be used as the underlying principles are so different.

[49] As discussed earlier, the purpose of issuing of a warrant is to ensure the rights of a vulnerable child to health and safety. This involves a delicate balancing of the best interests of the child both from the perspective of unnecessary apprehensions from undue state intervention and where necessary, protecting a child from his or her parents.

[50] There can be no doubt that there is a heavy obligation on the state to disclose all the evidence about the circumstances of the child and the parents in a full and frank manner. This includes material facts that both support and do not support the issuing of a warrant for apprehension. The without notice hearing must be as procedurally fair as possible. Full and frank disclosure of all material facts puts the judge or justice of the peace in the same position as the director to assess whether there are objective reasonable and probable grounds. Where the judge may have serious concerns about the issuance of a warrant, more questions may be asked and the judge may conclude

that rather than granting or refusing to issue a warrant, an adversarial hearing may be appropriate in fairness to the parents and the child.

[51] The following cases, although based upon reasonable and probable grounds hearings after warrants were issued, provide examples where non-disclosure of critical facts resulted in setting aside apprehensions of children.

[52] In *Child and Family Services of Western Manitoba* v. *K.B*., 2006 MBQB 94, the agency made a warrantless apprehension and applied for a six-month supervision order. The parents applied to have the apprehension quashed. Menzies J. concluded that the agency misled the court. The social worker told the court that the father had been informed by his son that the son had, two years earlier, sexually abused his sister (the child taken from the father). The social worker reported that the father did not believe his son and did not report the incident. The social worker deemed the child in need of protection and placed the child with her mother.

[53] The social worker did not disclose to the court that the father advised the social worker, in addition to not believing the son, that the son was a resident of a psychiatric facility and had no access to his sister at the time of the apprehension. Thus, the court decided that the agency did not have reasonable and probable grounds to believe the child was in need of protection and had no authority to apprehend her from the father.

[54] In *Children's Aid Society of the Niagara Region* v. *C.B.*, [2005] O.J. No. 3878, the society apprehended two children and a grandchild of the parents without a warrant. The society sought a six-month wardship order. The parents applied for an order to set aside the warrantless apprehension and for the return of the three children. On the facts, the social worker had received an anonymous tip and investigated it. At the moment of

apprehension, the social worker was aware that the six items alleged by the tipster were reduced to the sole ground of drug use and the growing of marijuana. The father admitted to drug use and agreed to attend a drug treatment centre for assessment.

[55] The *Child and Family Services Act*, R.S.O. 1990, c. C.11, requires that the child protection worker believe on reasonable and probable grounds that the child is in need of protection and that there is a substantial risk to the child's health and safety during the time that would be required to have a hearing.

[56] The trial judge found that the society did not address the issue of whether a warrant was necessary and there was no evidence that there would be a significant delay in obtaining a warrant. The judge concluded on the additional evidence that a warrant would not have been issued based on new evidence from community members who held the parents in high regard. The judge returned the children to the mother on a number of conditions, including further drug tests on the father. This case is useful as it provides a procedure for reviewing whether a warrant would have been granted if it had been applied for. The trial judge was prepared to consider additional evidence from both the agency and the parents. The trial judge also assessed costs against the society, a procedure not permitted under section 159 of the Yukon *Children's Act.*

[57] In my view, the approach to a judicial review of a warrant without notice to apprehend a child should be as follows:

1. the agent of the director has a heavy obligation to disclose all the evidence about the circumstances of the child and the parents in a full and frank manner including all material facts discovered in the investigation that support and do not support a warrant to apprehend the child;

2. the record from the original application for a warrant may be amplified by additional evidence from both the director and the parents;
3. in an application for judicial review, the issue continues to be whether the agent of the director has reasonable and probable grounds to believe and does believe that the child is in need of protection. In other words, does the new evidence change the original decision to issue a warrant;
4. the fact that the agent of the director is found to have misled or failed to disclose material facts is not sufficient in itself to set aside a warrant. The evidence as a whole must be evaluated from the perspective of the best interests of the child to determine if the subjective and objective test of section 121(4) has been met.

**ANALYSIS**

[58] I am going to review the decision to issue a warrant to apprehend this child firstly on the issue of whether the director proceeded in a reasonable manner pursuant to the articulated policy of the *Act*, and secondly, whether the failure to make full disclosure should result in the warrant being set aside.

[59] There is no doubt that the director has an obligation to pursue the least intrusive means of ensuring the protection and safety of children. It is for this reason that the *Children's Act* sets out three alternative methods of apprehending children:

1. the warrant application to a judge with notice to parents when the director believes a child might be in need of protection;

2. the warrant application to a judge without parental notice when the director has reasonable and probable grounds to believe the child is in need of protection; and
3. apprehension without prior judicial approval or notice to the parents when the director has reasonable and probable grounds to believe that the child is in immediate danger.

[60] In this case, the director made reasonable attempts to engage the parents and encourage them to make a plan for the health and safety of their child. This process took place over six weeks preceding the birth of the child and did not lead to concrete plans from the parents of the child to stay with family or have the necessary support to live on their own. It was clearly understood by the parents that they had to have a safety plan in place before leaving the hospital. Despite a parental wish to put a plan in place, there is no evidence that such a plan was or would be in place. Given the evidence of the mother's doctor that the mother was too immature to raise a child on her own and would need constant support, I am of the view that the director approached the issue in a measured way. While the director has a statutory obligation to support parents, the parents themselves must be capable and cooperative to put a 24-hour support plan in place. While there may have been potential, it was unfortunately never realized.

[61] I am critical of the director's failure to disclose the fact that the parents attended a meeting on June 22, 2006. Such failure to disclose can undermine the judicial process as well as embitter parents who will conclude that the without notice warrant procedure is unfair. That said, I do not find that the lack of disclosure in this case affected the basic reasonable and probable grounds that the child was in need of protection. The teenage

parents were very immature and unable to grasp the seriousness of the situation. They both had personal factors that presented serious risks for a vulnerable baby that could only be alleviated by a 24-hour support plan in a safe residence.

[62] In my view, to succeed in setting aside a judicial warrant for apprehension of a child, the applicants have the onus of establishing that the new evidence alters the reasonable and probable grounds finding upon which the decision to issue the warrant is based. As the applicants are entitled to a reasonable and probable grounds hearing pursuant to the *Children's Act* within 7 days of the apprehension of their child, the grounds to set aside the warrant must be clear and compelling.

[63] I conclude that the failure to fully disclose ultimately made no difference to the original decision of the justice of the peace to issue a warrant to apprehend this child. I confirm that the application to set aside the warrant to apprehend is dismissed.

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VEALE J.