FAMILY COURT OF NOVA SCOTIA

Citation: Nova Scotia (*Community Service)s v. E.G.*, 2016 NSFC 16

Date: 2016-06-13
Docket: Antigonish No. 091993
Registry: Antigonish

Between:

Minister of Community Services

Applicant

v.

E.G. and T.C.

Respondents

Editorial Notice:	Identifying information has been removed from this electronic version of the judgment.
Judge:	The Honourable Judge Timothy G. Daley
Heard	October 6, 7, 8, 9, 2015 December 2, 18, 2015, in Antigonish, Nova Scotia
Counsel:	Lorne MacDowell, for the Applicant Jennifer Madore, for the Respondent E.G. Coline Morrow, for the Respondent T.C. Roseanne Skoke, for D.C.

By the Court:

[1] This matter concerns two children, L.C., born November […], 2010 and A.C., born April […], 2012, and whether it is in their best interests that they be placed in the permanent care and custody of the Minister of Community Services (the Minister), whether they should instead be returned to the care of their mother, E.G., or whether they should be placed in the care of their maternal grandmother, D.G..

[2] The Minister seeks an order for permanent care and custody pursuant to the *Children and Family Services Act* (the *Act*), based upon concerns that the mother, E.G., cannot effectively parent and protect the children due to her cognitive impairments which result in inadequate supervision of them and poor parenting decisions for them, such as exposing them to the risk of domestic violence in the presence of their father, T.C.. The Minister says that E.G. has a history of prior protection proceedings involving these children and she has limited ability to parent them in a safe and effective manner and therefore would present a risk if permitted to do so.

[3] The Minister also opposes the application for standing and plan of care for the children presented by the maternal grandmother, D.G. Specifically, the Minister says that D.G. has a significant child protection history, has demonstrated risk behaviours with respect to the care of A.C. and L.C., that she lacks the insight to adequately and safely parent these children and to ensure that appropriate boundaries are set for E.G. and T.C. in the children's lives. The Minister therefore says that to place the children in the care of D.G. would be a risk to the children.

[4] E.G. seeks the return of the children into her and D.G.'s joint custody with D.G. having decision making authority over the children. E.G. said she would be in the home with D.G. and the children would assist in their care. In the alternative, E.G. supports D.G. having sole custody of the children, that E.G. would move out of the home and would have visits with the children supervised by D.G. D.G. would make all the decisions for the children including if and when access would occur and she would abide by D.G.'s directions on all issues.

[5] D.G. seeks standing in this matter and that application was heard as part of the evidence in the permanent care hearing. She seeks an order that the children be placed in her permanent care and custody with E.G. living in her home and

assisting D.G. in the care of the children but never being alone with the children and always being supervised by D.G.

[6] T.C. did not participate in the permanent care hearing nor did he present a plan of care for the children.

The Law

[7] The *Act* sets out the relevant considerations and requirements for the court to consider in a permanent care application, as set out below:

> **Purpose and paramount consideration**
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> 2 (1) The purpose of this Act is to protect children from harm, promote the integrity of the family and assure the best interests of children.
>
> (2) In all proceedings and matters pursuant to this Act, the paramount consideration is the best interests of the child.
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> …
>
> **Interpretation**
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> 3 (2) Where a person is directed pursuant to this Act, except in respect of a proposed adoption, to make an order or determination in the best interests of a child, the person shall consider those of the following circumstances that are relevant:
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> (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;
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> (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;
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> (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.

…

Child is in need of protective services

22 (1) In this Section, "substantial risk" means a real chance of danger that is apparent on the evidence.

(2) A child is in need of protective services where

(a) the child has suffered physical harm, inflicted by a parent or guardian of the child or caused by the failure of a parent or guardian to supervise and protect the child adequately;

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

…

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

…

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

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

…

Disposition hearing

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

(2) The evidence taken on the protection hearing shall be considered by the court in making a disposition order.

(3) The court shall, before making a disposition order, obtain and consider a plan for the child's care, prepared in writing by the Agency and including

(a) a description of the services to be provided to remedy the condition or situation on the basis of which the child was found in need of protective services;

(b) a statement of the criteria by which the Agency will determine when its care and custody or supervision is no longer required;

(c) an estimate of the time required to achieve the purpose of the Agency's intervention;

(d) where the Agency proposes to remove the child from the care of a parent or guardian,

(i) an explanation of why the child cannot be adequately protected while in the care of the parent or guardian, and a description of any past efforts to do so, and

(ii) a statement of what efforts, if any, are planned to maintain the child's contact with the parent or guardian; and

(e) where the Agency proposes to remove the child permanently from the care or custody of the parent or guardian, a description of the arrangements made or being made for the child's long-term stable placement.

…

(5) Where the court makes a disposition order, the court shall give

(a) a statement of the plan for the child's care that the court is applying in its decision; and

(b) the reasons for its decision, including

(i) a statement of the evidence on which the court bases its decision, and

(ii) where the disposition order has the effect of removing or keeping the child from the care or custody of the parent or guardian, a statement of the reasons why the child cannot be adequately protected while in the care or custody of the parent or guardian. 1990, c. 5, s. 41.

Disposition order

42 (1) At the conclusion of the disposition hearing, the court shall make one of the following orders, in the child's best interests:

(a) dismiss the matter;

(b) the child shall remain in or be returned to the care and custody of a parent or guardian, subject to the supervision of the Agency, for a specified period, in accordance with Section 43;

(c) the child shall remain in or be placed in the care and custody of a person other than a parent or guardian, with the consent of that other person, subject to the supervision of the Agency, for a specified period, in accordance with Section 43;

(d) the child shall be placed in the temporary care and custody of the Agency for a specified period, in accordance with Sections 44 and 45;

(e) the child shall be placed in the temporary care and custody of the Agency pursuant to clause (d) for a specified period and then be returned to a parent or guardian or other person pursuant to clauses (b) or (c) for a specified period, in accordance with Sections 43 to 45;

(f) the child shall be placed in the permanent care and custody of the Agency, in accordance with Section 47.

(2) The court shall not make an order removing the child from the care of a parent or guardian unless the court is satisfied that less intrusive alternatives, including services to promote the integrity of the family pursuant to Section 13,

(a) have been attempted and have failed;

(b) have been refused by the parent or guardian; or

(c) would be inadequate to protect the child.

(3) Where the court determines that it is necessary to remove the child from the care of a parent or guardian, the court shall, before making an order for temporary or permanent care and custody pursuant to clause (d), (e) or (f) of subsection (1), consider whether it is possible to place the child with a relative, neighbour or other member of the child's community or extended family pursuant to clause (c) of subsection (1), with the consent of the relative or other person.

(4) The court shall not make an order for permanent care and custody pursuant to clause (f) of subsection (1), unless the court is satisfied that the circumstances justifying the order are unlikely to change within a reasonably foreseeable time not exceeding the maximum time limits, based upon the age of the child, set out in subsection (1) of Section 45, so that the child can be returned to the parent or guardian. 1990, c. 5, s. 42.

…

Duration of orders

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

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

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

from the date of the initial disposition order.

(2) The period of duration of an order for temporary care and custody, made pursuant to clause (d) or (e) of subsection (1) of Section 42, shall not exceed

(a) where the child or youngest child that is the subject of the disposition hearing is under three years of age at the time of the application commencing the proceedings, three months;

(b) where the child or youngest child that is the subject of the disposition hearing is three years of age or more but under the age of twelve years, six months; or

(c) where the child or youngest child that is the subject of the disposition hearing is twelve years of age or more, twelve months.

(3) Where a child that 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.

…

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 child's care and custody.

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

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

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

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

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

Standard of Proof

[8] It is important to recognize that this is a civil matter and, therefore, the standard of proof required is as set out by the Supreme Court of Canada in *F.H. v. McDougall*, 2008 SCC 53, at paragraphs 40 and 49, as follows:

> . . . I think it is time to say, once and for all in Canada, that there is only one civil standard of proof at common law and that is proof on a balance of probabilities. Of course, context is all important and a judge should not be unmindful, where appropriate, of inherent probabilities or improbabilities or the seriousness of the allegations or consequences. However, these considerations do not change the standard of proof.
>
> …
>
> …I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.

Burden of Proof

[9] It is also important to establish who bears the burden of proof in such matters. The burden rests squarely with the Minister in this matter to prove its case and in particular to establish it has met the requirements for a permanent care finding and order pursuant to the provisions of the *Act*.

Continuing Need for Protective Services

[10] The Minister must prove that the children in the matter, L.C. and A.C., continue to be children in need of protective services *(Catholic Children's Aid Society of Metropolitan Toronto v. C.M.*, [1994] S.C.J. No.37; 2 S.C.R. 165). That said, it is also the case that, as set out the Supreme Court of Canada in the same decision, at paragraph 42:

> The determination of whether the child continues to be in need of protection cannot solely focus on the parent's parenting ability, as did Bean Prov. Ct. J., but must have a child-centred focus and must examine whether the child, in light of the interceding events, continues to require state protection.

Substantial Risk

[11] The Minister must also prove that the children, L.C. and A.C., remain at substantial risk as it maintains that its position to seek permanent care is grounded in sections 22(2) (b),(g) and (ja) of the *Act*, each of which requires proof of substantial risk to the children.

[12] Substantial risk is defined in the Act under s.22 (1) to mean "a real chance of danger that is apparent on the evidence." Help in understanding what is meant by this is found in the decision of the Nova Scotia Court of Appeal in *M.J.B. v. Family and Children's Services of Kings County*, 2008 NSCA 64 when it held at paragraph 77:

> The Act defines "substantial risk" to mean a real chance of danger that is apparent on the evidence (s. 22(1)). In the context here, it is the real chance of sexual abuse that must be proved to the civil standard. That future sexual abuse will actually occur need not be established on a balance of probabilities (B.S. v. British Columbia (Director of Child, Family and Community Services) (1998), 160 D.L.R. (4th) 264, [1998] B.C.J. No. 1085 (Q.L.) (C.A.) at paras. 26 to 30). (emphasis added)

[13] Though that case was in the context of an allegation of risk of sexual abuse which is not applicable in this case, it does makes clear that in this matter, the Minister must prove that there is a substantial risk of physical harm (s.22(2)(b)), emotional harm (s.22(2)(g)) or physical harm by chronic or serious neglect of the parent and that the parent refuses or is unable to consent to services or treatment to remedy or alleviate the harm (s.22(2)(ja)). The Minister does not have to prove that such harm will occur in the future, only that there is a substantial risk of such harm occurring.

Services to Promote the Integrity of the Family

[14] Under s.42(2) of the *Act*, I cannot grant an order for permanent care unless I am satisfied that less intrusive measures, including those promoting the integrity of the family under s.13 of the *Act*, have been attempted and failed or refused by the parent or would be inadequate to protect the children. But this must be seen in context as noted in *Nova Scotia (Minister of Community Services) v. L.L.P.*, 2003 NSCA 1, at paragraph 25:

> The goal of "services" is not to address the parents' deficiencies in isolation, but to serve the children's needs by equipping the parents to fulfill their role in order that the family remain intact. Any service-based measure intended to preserve or reunite the family unit, must be one which can effect acceptable change within the limited time permitted by the Act. If a stable and safe level of parental functioning has not been achieved by the time of final disposition, before returning the children to the parents, the court should generally be satisfied that the parents will voluntarily continue with such services or other arrangements as are necessary for the continued protection of the children, beyond the end of the proceeding. Ultimately, parents must assume responsibility for parenting their children. The Act does not contemplate that the Agency shore up the family indefinitely.

[15] Likewise in *Family and Children's Services of King's County v. D.A.B.*, 2000 NSCA 38, the Court of Appeal found, at paragraph 51:

> The starting point for the Agency's provision of appropriate services is the identification of areas of concern. The assessments by Melissa Keddie and Dr. Hastey were critical to this process. The fact that D.A.B. refused to fully cooperate with Dr. Hastey spoke volumes both as to his commitment to the process and his lack of insight into the difficulties confronting him. It also bore upon the likelihood that D.A.B. would avail himself of services if offered. The Agency's obligation to offer services is limited to "reasonable measures". In view of D.A.B.'s refusal to fully cooperate with Dr. Hastey, his failure to accept the areas of concern identified by Melissa Keddie and his revealed inability to recognize himself as contributing to the problem, it is difficult to imagine what further services could reasonably have been offered by the Agency. (emphasis added)

Prospects for Change

[16] Under s.42 (4) of the *Act*, I cannot grant an order for permanent care unless I am satisfied that the circumstances justifying the order are unlikely to change within a reasonably foreseeable time, not exceeding the time limits under the *Act*.

[17] In this case the time limit for both children is December 15, 2015, based on s.45(1)(a) of the *Act* which allows 12 months from disposition, as the children were under six at the time the proceedings commenced.

[18] This hearing was commenced on October 6, 2015 and completed on December 18, 2015. Therefore, there was virtually no time remaining. The

timelines for both children have expired though I have extended the timeline for the purpose of completion of the hearing and the provision of this decision.

[19] As noted in G.S. v. Nova Scotia (Minister of Community Services) 2006 NSCA 20, at paragraph 20:

> Before the conclusion of the final disposition hearing which commenced in June 2005, the time limits had run out for M and P, and there were approximately three months remaining with respect to R and D. The trial judge had previously extended the time so that the evidence could be completed. Section 45 of the Act stipulates that the total duration of all temporary disposition orders for the two younger children cannot exceed 12 months from the first disposition. Once the time has expired there are only two possible dispositions, dismissal of the proceeding or permanent care. If the children are still in need of protective services the matter cannot be dismissed. The court had no jurisdiction to order either supervision or temporary care and custody of M and P. (emphasis added)

Family or Community Placements

[20] Under s.42(3) of the *Act*, I must also be satisfied whether it is possible to place the children with a relative, neighbour or other member of the children's community or extended family. But as noted in *Children's Aid Society of Halifax v. T.B.*, 2001 NSCA 99, at paragraph 30 and 31:

> Justice Cromwell's words should not be interpreted as imposing either upon the Agency or the court a statutory burden to investigate and exhaust every conceivable alternative, however speculative or fanciful. He spoke of reasonable family or community options. Neither the Agency nor the court is obliged to consider unreasonable alternatives. Their statutory obligation is nothing more than to assess the reasonableness of any family or community alternatives put forward seriously by their proponents. By "reasonable" I mean those proposals that are sound, sensible, workable, well-conceived and have a basis in fact.
>
> The onus of presenting such a reasonable alternative must surely be upon the person or party seeking to have it considered. It is haR.D.ly the responsibility of the Agency or the court to propose the alternative, provide the resources for its implementation, or shepherd the idea through to completion.

[21] I note that in this case E.G. and D.G. have presented Plans of Care. The father, T.C., did not choose to present a Plan of Care at any point throughout the proceedings. No one else in the extended family or community offered a Plan of Care.

Prior Proceedings - D.G.

[22] Evidence of prior proceedings involving D.G. was introduced and admitted by consent of the parties in these proceedings pursuant to s.96 (1) (a) of the *Act*. This was done in anticipation of the application of D.G. for standing and subsequent consideration of her plan of care for L.C. and A.C. That prior history is relevant to the proceedings.

[23] D.G.'s family became involved with the Minister in April of 1999. A referral was received regarding an incident wherein E.G. had broken a glass bottle over the head of another student. The matter was investigated and it was recommended that the family seek counselling for E.G. D.G. and her husband would not sign the release of information allowing for the school to arrange counselling. Further, D.G. and her husband would not accept any voluntary in-home supports in an attempt to remedy or alleviate the harm. As a result, child protection proceedings were commenced and a supervision order was granted in May 1999. The matter was terminated in August of that year.

[24] In March 2004 a referral was received that E.G.'s sister, who is nine years younger than E.G., had reported to the referral source that D.G. told her the previous night to "eat your soup or wear it" and the soup was thrown on the child. There was a mark on the child's face and the child reported that her mother had thrown a book at her. The matter was investigated and it was confirmed that the soup had been thrown at the child and that there was use of spanking as discipline. As a result the file was opened for services, a family support worker was involved and work began with the family in April 2004. In July 2004 the decision was made that the children were no longer at risk but that the family support worker would remain involved on a voluntary basis. The file was completed and closed in August 2004.

[25] In November 2006 a referral was received reporting that E.G. had told the referral source that her father had "beat the crap" out of her. Services were offered on a voluntary basis and the file was closed.

[26] In November 2006 a further referral was received that E.G.'s sister had said several times that there were incidents in the home involving being mean to her, cursing at her and hitting her. Investigation commenced related to domestic violence and emotional and physical abuse. A safety plan was developed whereby that child would not stay in the home until the investigation was complete. When discussed with the father, he made repeated threats to worker safety and to anyone

who attempted to attend the residence. The police were involved to speaking to the father and it was agreed the child would spend time with an extended family member until the investigation was complete.

[27] Unfortunately, the extended family member was unable to care for the child and temporary care arrangements were sought. The family agreed to enter into a temporary care arrangement in December 2006 for a two-week period. After assessing the matter, the Minister determined that the child could not be returned home at that time and discussed with the parents extending the current temporary care agreement. The parents refused to extend the agreement and wanted the child home, but not if the Agency was going to visit or if the child was going to make reports of physical or emotional abuse. As a result, a child protection proceeding commenced and the child was taken into care. Services were offered and entered into and in July 2007 the child was returned to the care of the parents under a supervision order. In September 2007 the Minister determined the risks had been reduced, the child was not at risk of harm and the matter was terminated in October 2006.

Prior Proceedings - E.G. and T.C.

[28] Evidence of prior proceedings involving E.G. and T.C. was introduced and admitted by consent of the parties in these proceedings pursuant to s.96 (1) (a) of the *Act*. That prior history is relevant to the proceedings.

[29] In May 2011 a referral was received that E.G., T.C. and L.C. were living with an uncle of T.C.'s who had been charged with sexual abuse of a child. E.G. was interviewed and clarified that they were living with T.C.'s mother and were looking for another place to reside.

[30] In January 2012 the file was opened for services due to concerns that E.G. and T.C. did not seem to understand the risk related to the uncle, perhaps because of their developmental delays.

[31] In January of 2012 after discussion with the Agency it was decided that E.G. and L.C. would live with T.C.'s aunt. E.G. struggled in parenting at that time and spent some time away from the home visiting her parents and T.C.

[32] On March 21, 2012 a further referral was received that E.G. had grabbed her younger sister by the throat and held her against a wall and held her head

against the floor. It was alleged that L.C. and T.C. were in the home during this incident.

[33] When investigated, E.G. and her sister admitted that the fight was over a piece of clothing of E.G.'s that her sister was wearing and E.G. tried to take it off her. E.G. grabbed her sister by the back of the neck and pushed her. T.C. and L.C. were at home in another room. D.G. was not home at the time.

[34] After the birth of A.C. in April 2012, E.G. and T.C. were informed that T.C.'s aunt could not provide child care and they could not live in their trailer until its condition and safety were assessed. The parents were asked to participate in SAFE Assessments with psychologist Val Rule.

[35] In August 2012 Ms. Rule reported that the couple appeared limited intellectually but the first session had gone well. T.C. demonstrated more denial about his uncle and the risk associated with him and was resistant at the beginning of the session. By August 28, 2012 Ms. Rule indicated that E.G. and T.C. remained in denial about T.C.'s uncle being a sex offender who might pose risk to their children. At that point she ended the assessment. T.C. was told that his children were not have any contact with the uncle but he could not accept that his uncle was a risk because he had "raised him". As a result of concerns regarding the parents' ability to protect the children, they were taken into temporary care in August 2012.

[36] Services were offered to the parents in the form of parenting education through a family support worker, completion of the SAFE Assessments and a psychological assessment for E.G. Interventions were complied with and the risks were found to be mitigated. The children were returned to the parents' care under a supervision order in June 2013. Services continued.

[37] On December 24, 2013 police reported an incident of domestic violence between E.G. and T.C. E.G. reported that an argument about food being thrown out led T.C. to backhander her across the face. She said she moved the children into another room but had to leave the home because T.C. continued to assault her. T.C. was therefore alone in the home with the children. T.C. then also left the home, leaving the children alone for an unspecified period of time. Members of the community observed L.C. leave the home and wander around outside without a coat while wearing his mother's shoes.

[38] The supervision order was extended due to the domestic violence incident. E.G. was involved with Naomi Society and expressed an intent to obtain sole custody of the children. In January 2014 the Minister sought termination of the proceedings based on the agreement that E.G. would obtain sole custody of the children, that she and T.C. would not have any contact in the children's presence until completion of services related to domestic violence and until approved by the court, and that if the no contact order between the parties and the children was removed, T.C.'s access with them would be arranged and supervised by a third party.

Shalyn Murphy

[39] Shalyn Murphy provided evidence in this matter. She is the adoption social worker employed by the Minister and she provided evidence by way of an affidavit and *viva voce* at the hearing.

[40] She explains that the role of an adoption social worker is a sub-specialty of child protection social work and that it is her responsibility to locate appropriate adoptive homes for children placed in the permanent care and custody of the Minister. Her role extends to screening potential families, assisting other workers in assessing the children and their needs, preparing the children for transition, and following through from placement to finalization.

[41] It was her evidence that as of September 5, 2015 the Minister's database identified 137 approved adoptive families in Nova Scotia. She review the steps taken in assessing the number of potential adoptive families for L.C. and A.C., including accounting for the fact that they are biracial, and identified six adoptive families who would be willing to adopt a sibling group with these children's characteristics.

[42] She also testified that if there were an access order which permitted access between the children and any person after permanent care and custody was ordered, it would significantly reduce the pool of prospective adoptive homes for the child. When asked about this in cross-examination, she indicated that it is nearly impossible to place children for adoption if there is an access order place. She also noted that it is not the practice of the Minister to permit access after permanent care and prior to adoption.

[43] Respecting a so-called openness agreement, Ms. Murphy noted they are not legally binding but may allow for some contact between the children and the birth

family. This is always considered in assessing the children's best interests. Normally, if openness agreements are in place, letters and phone calls are the form of contact and personal contact would be rare.

[44] It was her testimony that currently there were no situations where children in permanent care have access with the birth family.

[45] She agreed that of the six families identified as potential adoptive families for A.C. and L.C., she did not know how many would be open to access upon adoption. She did say that in her experience very few adoptive families were open to access.

[46] On redirect she confirmed that the pool of potential families was not limited to the six identified.

Joan MacDonald

[47] Joan McDonald provided evidence in this matter. She is an access facilitator employed by the Minister and she provided supervision for access in this matter. The entire collection of access facilitation notes was introduced into evidence by consent as business records. Those notes include hers and those of other access facilitators.

[48] In cross-examination Ms. McDonald testified that E.G. did ask for more intervention and help than other parents normally would. Overall her evidence indicated that E.G. was appropriate during access though sometimes she was not well prepared and did not always intervene appropriately. She agreed that E.G. responded well to "teachable moments" when Ms. McDonald intervened to assist.

Carol Carter

[49] Carol Carter provided evidence in the matter. She is employed by the Minister as an access supervisor. Her access facilitation notes were part of the collection of notes admitted by consent as business records.

[50] On cross-examination she agreed that the children were excited to see the mother during access visits and that the children and the mother seemed happy to see each other. When leaving, A.C. appeared more upset, requiring prolonged goodbyes and repeated cues to leave. A.C. would stop crying by the time Ms. Carter left with her and L.C. from the parking lot. She testified that the children

were affectionate with the mother, touching, kissing and hugging her. She also confirmed that L.C. and A.C. were affectionate with each other and it was typical of siblings.

Hazel Hiltz

[51] Hazel Hiltz provided evidence in the matter. She is an access facilitator employed by the Minister. It was her role to transport the parents, E.G. and T.C., to and from access from August through to November to 2014.

[52] It was her evidence that, from her observations, the children and their parents interacted appropriately and there were few issues. The only issue identified by her or and any other access facilitator seemed to be that L.C. would occasionally have problems with food and difficulty eating or he might bring food backup to chew after swallowing. This was something that was of concern to everyone regarding L.C. throughout this matter.

Debbie Beaton

[53] Debbie Beaton provided evidence in this matter. She is employed as a Family Support Worker by the Minister. She has a degree in special education and almost 20 years of experience in the field. She provided evidence by way of an affidavit and her *viva voce* evidence at the hearing.

[54] She was involved with E.G. and T.C. from October 2012 until the completion of work with them in December 2013. Thus her evidence was limited to the period prior to the commencement of these proceedings. Her evidence was admitted without objection.

[55] She testified that, from her own observation, conversation with the parents and her conversation with the caseworker there were apparent cognitive challenges for E.G. and T.C. She therefore presented them with a highly modified version of the program called "Positive Parenting Solutions" to accommodate their particular needs. This program provided techniques for effective parenting and forming attachments with children. She described her work with the parents which included work with E.G. on reminders and lists, communication techniques, organizational skills including reminder notes around the home and childproofing the home.

[56] She observed access visits in person and through video and provided guidance and intervention with any parenting challenges. She provided further services including a role-play video, physically practicing parenting techniques, using visual aids to remind the parents of what to do and provided E.G. frequent opportunities to practice and review the techniques during visits when the children were at home. She testified that there was improvement in visits as the parents employed the techniques.

[57] It was her evidence that the program normally takes 3 to 4 months but that this modified program took 14 months for these parents. She took into account the psychological report provided by Elaine Boyd-Wilcox in modifying the program with the family.

[58] She takes exception to a portion of the report of Dr. Gerald Hann, dealt with later in this decision, in which he indicates that after the 2013 Psychological Assessment of E.G. by Ms. Boyd-Wilcox the recommendation requiring consistent and ongoing feedback and support of the parents was never offered. She maintains that it was offered as described in her evidence.

[59] In cross-examination she agreed that once stressors increased in E.G.'s life, she needed an increased number of reminders of the techniques employed during access. This included when the couple was in dispute or in trouble in some way.

[60] Ms. Beaton confirmed that she was aware that D.G. and her husband had participated in a parenting program known as "Parenting for Prevention", attending once per week for 5 to 6 weeks. She was unaware of any of the programming for D.G. She did attend at D.G. and her husband's home at one point and noted that their mini home was neat and orderly.

[61] On redirect she confirmed that though she was unaware of all of the details of the "Feldman" approach described in the report of Dr. Hann, she did use all of the techniques recommended and referred to in that report.

Amanda Hemsworth

[62] Amanda Hemsworth provided evidence in this matter. She is a social worker employed with the Department of Community Services in the role of temporary care social worker. It was her evidence that she is responsible for case management of children in temporary care with the Minister. She became involved with this family in July 2014.

[63] In her direct evidence she confirmed that L.C. had experienced change to his placement since coming into temporary care. Initially he was placed with his sister in a foster home but because of his behavioural challenges, the foster parents could not meet his needs and he was relocated within one week. He was placed in a second foster home in July 2014 and had remained there since.

[64] A.C. was likewise placed in two locations. Her first foster placement ended when the foster family decided to close their home and she was placed in a second foster home in April 2015 and has remained there since.

[65] Ms. Hemsworth explained that the children see each other during access visits twice a week with the mother and once a week with the father (until he stopped engaging) and for birthdays and other special occasions.

[66] She described the mother's access as consistent and that she calls when she has to miss an access visit.

[67] The father's visits were more problematic. She explained that from December 2014 to January 2015 T.C. was away. In January 2015 some of his access visits were missed. Others were cancelled in July due to transportation problems. Since that time she has received no calls from him seeking access. He has not participated in the permanent care hearing in this matter though his counsel did attend and cross-examined on the evidence.

[68] Regarding L.C.'s behaviours, Ms. Hemsworth described that when he was taken into temporary care he was very busy and acting out, biting, pulling hair and throwing things, on occasion climbing out windows and exhibiting other difficult behaviours.

[69] Over time his behaviour has improved as he gained an ability to regulate himself. But issues continue and there was an increase in behavioural problems at the foster placement.

[70] Ms. Hemsworth testified that L.C. had been seen by two pediatricians, one in Antigonish and another in Truro. He was also consulted by Early Intervention. The identified issues for L.C. included his behaviours as described above, his acting out and his tantrums. It is also worthy of note in Dr. Ortiz-Alvarez's letter to Dr. McPherson transferring care dated December, 2015 he notes a diagnosis of "developmental delay with his speech more affected than other areas of his

development. I cannot rule out the possibility of at FASD. He has signs of hyperactivity."

[71] Ms. Hemsworth testified that L.C.'s language had shown signs of improvement nut that he continued to struggle with transitions, experienced temper tantrums at daycare and struggled with long rides in the car for access. He was described as a "busy boy".

[72] She confirmed that he been referred to the Hearing and Speech Clinic. His hearing was fine and he had only had some pronunciation problems and had completed work with that clinic. He was not currently being treated.

[73] She testified that A.C. had been referred to the Hearing and Speech Clinic as well. Her hearing was fine and she was on a waitlist for speech language pathology. She confirmed that the foster family was helping by working with A.C. to improve her skills. They were her advocate and were connected to services with her.

[74] She testified that overall the children were doing well. L.C. was food-focused. There had been some regurgitation by him and there was follow-up with a pediatrician and family doctor.

[75] There are also challenges with L.C.'s walking. He walks on his toes and experienced cracks in the skin between his toes which were painful for him. He was prescribed antibiotics and was followed by a pediatrician.

[76] L.C. also has a turned in eye and is being seen for that.

[77] Overall she described that he was involved with Early Intervention for his behavioural issues, that his speech was delayed and that his fine motor skills were delayed as well.

[78] It was her evidence that L.C. has special needs and would require ongoing support and services both in school and at home and throughout his adolescence. His providers would have to be supportive, capable and strong advocates for him, fighting for the supports and services required.

[79] On cross-examination, Ms. Hemsworth confirmed that during transition to a second foster home in July of 2014 L.C. experienced some behavioural issues and was confused about his place in the home. For example, he questioned why he wasn't in photos on the wall in the home and found it challenging that his mother

and the foster mother have the same first name. His behaviours included stripping naked at the foster home, wetting the bed twice, experiencing nightmares and stating that he missed his mother.

[80] She confirmed that when the children had access together they were excited to see each other at the mother's home.

[81] Regarding a speech language consultation, Ms. Hemsworth agreed that there had been a consult for that service prior to the children coming into temporary care through the pediatrician.

[82] A.C. was also experiencing behavioural problems in foster care. As noted earlier, her foster placement closed its home to foster care and she was transferred to a new foster family. She had been hitting her head on the floor but this resolved. Her sleep increased though she did cry out during the night at times.

[83] Ms. Hemsworth confirmed that A.C. was a "sensory seeker" and that this behaviour could be managed through Early Intervention services which are available close to the mother's and grandmother's home.

[84] When asked about the delay for L.C. in obtaining some services including trauma therapy and early intervention, Ms. Hemsworth testified that some services were delayed because L.C.'s long term outlook was uncertain, including an adjournment of the hearing for permanent care.

[85] When questioned further about the decision not to enroll L.C. at school as recommended by Early Intervention, Ms. Hemsworth explained that recommendation was based on a permanent care hearing anticipated to take place in August but when it was delayed to October, the decision was taken to keep him in daycare in a "school readiness" program. This was done after consultation among the workers, foster parents, the daycare and the school principal.

[86] Ms. Hemsworth again confirmed in cross-examination that L.C.'s ability to calm himself had improved as a result of Early Intervention assistance. His speech was mildly restricted in two areas but he had much improved and graduated from speech therapy.

[87] With respect to A.C., there was a suggestion that she might have mild developmental delay in her speech. This was from an assessment of December 13, 2013. Overall the evidence was that the children had certain challenges, which

were addressed, though sometimes with some delay in the appropriate services, and the children had shown great improvement. There was more work to be done for further advancement but the evidence in summary was that they were improved.

[88] With respect ongoing services for the children if they were placed with the mother or grandmother, Ms. Hemsworth confirmed that hearing and speech clinics are available in the [...] area where they reside, they can continue to see the pediatrician in Antigonish, daycare would be available and Early Intervention is available in [...] as well. She further confirmed that the Kids First Program was available in [...] and the children had been involved prior to coming into temporary care of the Minister.

[89] Regarding L.C.'s food fixation, Ms. Hemsworth confirmed it didn't occur just at access visits but also in the foster parents' home. In the foster parents' home L.C. demonstrated an ability to regulate that behaviour.

Shauna Brymer

[90] Shauna Brymer provided her evidence in this matter by way of nine affidavits and *viva voce* at the hearing.

[91] She is the child protection worker who has been involved with A.C. and L.C. throughout this matter. She was also involved with the children in the prior proceedings, which are discussed elsewhere in this decision.

[92] In her affidavit of July 10, 2014 Ms. Brymer says that the Minister became involved again with E.G. and T.C. as a result of a referral on July 2014 from a neighbour who expressed concern for the children because they had wandered into her home when they were to be in the care of E.G. The neighbour indicated the children only had socks on, were not accompanied by an adult and no one was looking after them. The neighbour said that approximately one hour prior to the children arriving at her home E.G. stated she was going to the store and proceeded to walk away.

[93] When a worker contacted the neighbour, she was informed that L.C. and A.C. were still at the neighbour's home, about an hour had passed and no one had returned looking for them and that the police were involved.

[94] When the workers arrived at the home of E.G., a police officer informed the worker that he had attended the home of the neighbour and was informed that she and her husband went to E.G.'s home and no one was there. While the officer was at E.G.'s home, she drove up and told him she lost her children. E.G. informed the police officer that she left her children in the care of their father, T.C. The officer noted that the home of the neighbour where the children ultimately arrived was on the opposite side of the road from E.G.'s home at a distance of approximately 500 meters. T.C. arrived shortly thereafter.

[95] When interviewed, E.G. confirmed she had gone to the store and left the children in the care of T.C. It is important to note that at the time of this occurrence, there was an order of this court in place such that E.G. and T.C. were not to have contact in front of the children until services were obtained, and the contact was approved by the Family Court. This was as a result of an order made pursuant to the *Maintenance and Custody Act* issued at the termination of the prior child protection proceedings in 2013.

[96] E.G. claimed that she was confused and did not realize that she had to seek a variance of the order to permit the contact. She went on to say that T.C. had moved back in with her and the children around the end of April, 2014.

[97] When interviewed, T.C. claimed they did not live together, contrary to what E.G. was saying. E.G. then told the officer that she was withdrawing her consent for T.C. to reside with her, he retrieved his belongings and left.

[98] Based on this and in the context of the prior proceedings which had been recently terminated, the children were taken into care. An order was sought and granted on the first appearance placing the children in the temporary care of the Minister and providing E.G. and T.C. with the supervised access.

[99] Ms. Brymer says that prior to a court appearance on July 15, 2014 she spoke with E.G. who told her that she and her mother, D.G., were not speaking and that her father would not be around her children and she was concerned about her father.

[100] Ms. Brymer says that she spoke with E.G. after the same court appearance and E.G. told her that after the children were taken into care she and T.C. began living together again. She also explained that she was seeking a peace bond against her father as he threatened her and T.C.

[101] Ms. Brymer testified that she had explained the conditions of the Minister's plan of care to E.G. on February 4, 2014 prior to the termination of the prior proceedings. She says that this plan clearly set out that E.G. and T.C. were not to have contact in the presence of the children and the restrictions on access for T.C. with the children. All of this was placed on the record at the time of the February 4, 2014 proceedings.

[102] Ms. Brymer notes that E.G. filed an affidavit claiming the T.C. had varied an undertaking from the Provincial Court permitting them to have access with the children and that it was to be supervised by a third-party. Despite this, T.C. was left alone with the children by E.G. when this referral began. Ms. Brymer says it is further clear from E.G.'s affidavit that T.C. and the children had been having contact in the home of E.G. since at least May 2014.

[103] Ms. Brymer notes in her affidavit of September 18, 2014 that the Minister had received recommendations from the pediatrician respecting L.C. and A.C. and would be following up with recommendations and referrals, specifically to Early Intervention, speech language pathology and occupational therapy for L.C. and the same services for A.C. in addition to physiotherapy.

[104] In her affidavit of October 27, 2014 Ms. Brymer details discussion she had with E.G. and D.G. regarding a plan of care for the children. This conversation took place after the court appearance on September 23, 2014. At that time, E.G. said she was thinking about moving back to Port Hawkesbury so she could get a job and daycare for the children. D.G. advised that she would not be able to live with E.G. but could possibly take a leave from work and take the children in with her until E.G. got them back. The importance of developing a plan for placement for discussion with the Minister was discussed. Kinship placement was discussed with D.G. and Ms. Brymer noted concerns regarding her past child protection history. A number of scenarios were discussed at that time and it was suggested that they take time to discuss this with each other and consult with counsel and then provide a plan to the Minister for review.

[105] At that time E.G. stated that she and T.C. were no longer in a relationship and he was "no longer in the picture".

[106] In that same conversation Ms. Brymer says E.G. stated that she understood the children were taken into care because T.C. had fallen asleep, not her, and that she was a good parent.

[107] In mid-October 2014 Ms. Brymer says that she spoke to E.G. who was still not ready to present a plan for placement. It was Ms. Brymer's impression that E.G. was still facing financial and logistical difficulties in putting a plan together. She was concerned with her current house and maintaining for a family.

[108] On October 24, 2014 E.G.'s plan of care was received and the Minister determined it could not support the plan, suggesting a review of the PCA prior to considering any changes to the current order.

[109] Ms. Brymer says that E.G. continued to deny responsibility for the events leading to the children coming into care despite the findings at the contested interim hearing.

[110] Around this time concerns arose respecting L.C.'s gorging on foods and then vomiting or regurgitating food at access visits and otherwise. He was referred to a clinical psychologist.

[111] In her affidavit of November 25, 2014 Ms. Brymer says that she called E.G.'s home on October 29, 2014 and E.G. confirmed that T.C. was there with her. Ms. Brymer spoke to T.C. to discuss a cancelled access visit. When she spoke to T.C. he confirmed that he had stayed E.G.'s home the night prior.

[112] On the same day Ms. Brymer spoke to the mother of T.C. who confirmed that T.C. was going to E.G.'s home about once per week, staying overnight and coming back the next day. This was confirmed in a telephone conversation Ms. Brymer had with E.G. the next day. They discussed that there wa.is nothing prohibiting T.C. from being in the home and this was a choice she would have to make. They discussed how this might affect any plan that she put forward for the children.

[113] Ms. Brymer's evidence was that the children had been referred to Early Intervention, the Nova Scotia Hearing and Speech Clinic and that appointments were being arranged.

[114] Around this time the Minister's practice changed regarding access travel and E.G. was no longer able to travel with the worker for access but rather had to take a series of buses and shuttles to reach access a long distance away from her home. With a few exceptions, she was faithful in attending for access despite this significant travel challenge.

[115] In her affidavit of December 11, 2014 Ms. Brymer confirmed receipt of the PAC from Ms. Boyd-Wilcox and that she filed a plan of care seeking continuation of temporary care of the children with the Minister.

[116] She confirmed that A.C. had been diagnosed with developmental delay and that her speech was affected more than other areas, and that she had been referred to a pediatrician in Truro. Likewise L.C. had been diagnosed with developmental delay with his speech affected more than other areas and signs of hyperactivity.

[117] Ms. Brymer also testified that access workers were noting concerns about behaviours of the children during access. E.G. struggled to intervene appropriately and the behaviours included tantrums and A.C. banging her head.

[118] In her affidavit of January 30, 2015 Ms. Brymer testified that she discussed with Ms. Boyd-Wilcox on December 16, 2014 the PAC recommendations and that the support system E.G. required did not appear to be present or available to her.

[119] Ms. Brymer says that in the telephone call with E.G. on January 7, 2015 E.G. told her that T.C. was not at her home. In a conversation with T.C. on January 20, 2015 another worker recorded that T.C. informed her that he was living with E.G. and they decided to work things out. He was told that the Minister would not be supportive of the plan for them to be together if the children were to return to the care of E.G.

[120] In her affidavit of April 22, 2015 Ms. Brymer confirmed that at the last court appearance E.G. and T.C. were considering putting forward a third-party placement plan. This potential plan was discussed with E.G. and D.G. on February 17, 2015 and Ms. Brymer was informed that they were considering such a plan which might be presented after speaking with counsel. E.G. also informed Ms. Brymer that she was taking an employability course, discussed previously, which would finish on March 20, 2015. She would be staying with T.C. at his mother's home if she were allowed to do so. Ms. Brymer noted there was no condition prohibiting them from having contact so long as the children were not present but that this would be a factor in assessing the Minister's position.

[121] Ms. Brymer says that ultimately the third-party placement plan failed as the third parties did not pursue it any further.

[122] A plan from E.G. was received on March 23, 2015. E.G.'s plan at that time was to live with her mother, have joint custody with her and to complete a second PCA through Dr. Hann.

[123] Correspondence was also received on behalf of T.C. indicating his plan was for the return of the children to himself and E.G. with various supports at the residence.

[124] Ms. Brymer says that when she tried to reach T.C. at his mother's home on March 31, 2015 he was not there and T.C.'s mother informed her that T.C. was living with E.G. at D.G.'s residence at that time.

[125] At that time the access was continuing but E.G. continued to struggle to respond appropriately to the children's behaviours and needs. She became frustrated when dealing with the children and the access facilitators had to intervene and provide direction. T.C.'s attendance at access had been inconsistent.

[126] On April 13, 2015 the Minister reviewed the matter and decided to seek permanent care and custody of the children with no access and with a plan for adoption.

[127] In her affidavit of July 9, 2015 Ms. Brymer describes ongoing difficulties for E.G. during access.

[128] She describes a conversation with E.G. on July 7, 2015 in which E.G. told her that she and T.C. were no longer together, that she spoke with Dr. Hann and that she had to separate from him for the children. She indicated she was dating someone else but he lived with his parents.

[129] In her affidavit of September, 2015 Ms. Brymer confirms the Minister had received the plan of care of D.G., had reviewed it and maintained the position regarding permanent care and that the Minister could not support the plan of D.G.. The reasons for this were as follows:

- That there is significant child protection concerns and history pertaining to D.G.'s family.
- That the children, given their significant needs, will require services; the Agency has concerns given D.G.'s history that she would follow through with the required services for the children.

- That D.G.'s plan does not adequately address the supervision required between E.G. and the children.

- That D.G.'s plan does not address concerns regarding other family members, namely E.G.'s father and siblings, and the past conflict and violence that has been present in the home between family members.

- That D.G. has demonstrated being uncooperative with the Agency in the past and has not followed Agency direction.

- That D.G.'s plan does not demonstrate an insight and understanding of the risk to the children and the reasons for the Agency involvement.

[130] With respect to recommendations made by Dr. Hann in his PCA, the risk management conference minutes of September 3, 2015 attached to Ms. Brymer's affidavit indicated as follows:

> The parental capacity assessment of Dr. Hann includes recommendations for services to E.G. regarding family skills worker services and psychotherapy. It is the position of the Agency the prior intervention completed by the family support worker utilized methods of teaching and program modifications that included concrete discussion, step by step approach, brainstorming, role-playing, visual reminders, modelling, videotaping, positive feedback and reinforcement corrective feedback.
>
> Regarding the recommendation that E.G. be referred for psychotherapy, the Agency encourages her to seek such service. It is the position of the Agency that it is not reasonably foreseeable that the suggested therapy would adequately or sufficiently addressed the presenting risks to enable E.G. to provide adequate parenting for the children before the end of the timeline.

[131] In cross-examination Ms. Brymer agreed that, with respect to the prior child protection proceedings involving E.G., T.C., L.C. and later A.C. (after her birth) she had been living at D.G.'s home from December 17, 2012 until early August 2012. It was a worker who asked D.G. if E.G. and the children could stay with her as long as needed and D.G. agreed, as did her husband.

[132] She further confirmed that there were six subsequent visits by the Agency with no concerns regarding E.G. and the children being in the home with D.G. and her husband. E.G. and the children left in July 2012.

[133] Ms. Brymer confirmed in cross-examination that she had spoken with Val Rule regarding the SAFE Assessment on January 22, 2013 and was advised by

Ms. Rule that E.G. "did extremely well", was very clear in her thinking, and was concrete, providing good analogies and logical sequencing. Ms. Rule told Ms. Brymer that she felt E.G. had "got everything" and was making the right choices. She was further informed that Ms. Rule believed E.G. should be able to protect the children if T.C. were not around but she was unsure whether E.G. and T.C. would remain separated after the Minister's involvement.

[134] When asked whether D.G. had discussed with her in September 2014 a plan to take a leave of absence to be with the children, Ms. Brymer recalled D.G. and E.G. presenting many options including a leave of absence, but nothing was firm and the plans were scattered. She explained to them that they needed to present a written plan of care for consideration and the Minister did not require one static plan.

[135] In testifying regarding the incident of July 8, 2014 that resulted in the children being taken into care a second time, Ms. Brymer confirmed that in her interview of E.G. she explained to Ms. Brymer the she and T.C. had taken the matter back to court (meaning Provincial Court) and that she now understood that T.C. could be back in the home. E.G. did not understand the difference between Family Court and Provincial Court orders and the difference it made respecting T.C. returning to the home. She also recalled hearing E.G. tell the police that she was withdrawing her consent for T.C. to be in the home and he was removed under his probation order.

[136] With respect to D.G.'s reaction to the incident, Ms. Brymer confirmed that D.G. looked T.C. in the eye and told him she was disappointed in him.

[137] Ms. Brymer testified that on July 15, 2014 E.G. told the worker that she was not speaking with D.G. That was the only reference to any falling out between E.G. and D.G. Another worker's note indicated that E.G. had said she was speaking with D.G. on July 14, 2015.

[138] Respecting Dr. Hann's recommendation in his PCA that E.G. received psychotherapy, Ms. Brymer testified that the Agency looked at the capacity of E.G. as a parent and sought permanent care on the basis that psychotherapy would not reasonably address the risks within the timeline available.

[139] To Dr. Hann's recommendation of enhanced home services, Ms. Brymer testified that there were already extensive supports in place including the family support worker, and that services had been repeatedly offered and engaged with.

[140] When asked about D.G. and when she first had contact with her, Ms. Brymer noted that she first saw D.G. on August 28, 2012 when the children were taken into care in the prior proceeding. At that time Ms. Brymer had concerns regarding D.G.'s decisions because she was aggressive in her verbal communication with workers. She exposed the children to that emotion and the language she was using. Most seriously, she took the children from the house, put them in her vehicle and tried to leave. The children were upset.

[141] Ms. Brymer confirmed that on July 8, 2014, at the time of the most recent apprehension, D.G. was outside of the home and expressed her disappointment with T.C. She was not verbally aggressive or otherwise inappropriate with the workers.

[142] In relation to the fact that E.G. resided with D.G. in 2012 after leaving the home of T.C.'s aunt, Ms. Brymer confirmed that the Agency approved of this but went on to say that they were concerned given D.G.'s history of child protection proceedings with the Minister. A recording of February 2012 confirmed that E.G. would be living with D.G., that the Agency did not know how long that would be in place but that D.G. did not have care of the children. At the time, services were being provided and accepted by E.G. Ultimately the plan of the Agency of March 30, 2012 was that after A.C.'s birth, E.G. would seek independent living arrangements while services continued. The identified risks continued to be potential sex abuse by T.C.'s uncle and E.G.'s and T.C.'s parenting skills. The SAFE Assessment was to address the sexual risks and the family support worker was working to address the parenting issues.

[143] Respecting the SAFE Assessment, Val Rule recommended a PCA be completed, yet a psychological assessment was ordered and not a PCA. Ms. Brymer recalled that a PCA was being pursued but there was an objection to a proposed assessor and they were attempting to work around the problem when the psychological assessment was ordered.

[144] Ms. Brymer confirmed that in December 2013 the Minister was supporting termination until the report of domestic violence between T.C. and E.G. They then requested termination on the basis that they did not support E.G. and T.C. in a relationship and, among other things, termination would be conditional upon E.G. and T.C. not being in the presence of the children together.

[145] Ms. Brymer went on to explain that in the domestic violence allegation, not only was there an assault on E.G. by T.C., but also both parents left the home and the children were left unsupervised in the incident.

[146] When asked the reasons for the apprehension in July 2014 Ms. Brymer again explained that it was as a result of inadequate supervision, that T.C. was in the home despite the fact he was not to be there, that T.C. was in the care of the children alone, E.G. had left the children in T.C.'s care, T.C. was sleeping, the children left the home with inadequate clothing and finally, that the parents were looking for the children yet did not call anyone in authority to assist. This was a clear breach of the conditions of the termination of the prior proceedings, presented a real risk to the children, and Ms. Brymer felt it demonstrated that E.G. could not take the parenting information provided to her and apply it on a long-term basis.

[147] This incident combined with the history of recent child protection proceedings and the psychological assessment of E.G. led to the decision to commence the proceedings.

[148] The decision to seek a PCA was on the basis of the capacity of the parents to adequately provide for the children and that the children had been in care for a long time. Ms. Brymer noted that Val Rule said she would support a PCA but never recommended one in this case.

[149] As to why D.G. was never assessed for placement by the Minister, Ms. Brymer explained that they did not have D.G.'s plan of care until August 20, 2015 and there was insufficient time to assess her before the end of the timeline.

[150] In redirect, Ms. Brymer confirmed that D.G. never formally applied for an assessment for kinship placement, never formally requested a PCA or applied, to the court for one and that E.G. had never formally requested or applied for a PCA for D.G.

Elaine Boyd-Wilcox

[151] Elaine Boyd-Wilcox provided expert opinion evidence in the matter. She conducted a Psychological Assessment on E.G. in a prior protection proceeding and was retained by the Minister to conduct a Parenting Capacity Assessment on E.G. and T.C. in these proceedings. She was qualified as a psychologist with expertise in the conduct and preparation of psychological assessments and

parenting capacity assessments and was further qualified in the field of assessment of cognitive delays and domestic violence. Her qualifications were admitted by consent and she was qualified by the court to give expert opinion evidence in these areas.

[152] A PCA Report dated December 10, 2014 prepared by Ms. Boyd-Wilcox was introduced into evidence by consent. She confirmed that as part of her assessment process, she reviewed all of the materials provided to her by the Minister prior to the preparation of the report as well as affidavits, access notes and the PCA Report of Dr. Hann filed after December 10, 2014.

[153] A Psychological Assessment Report (PAR) prepared by Ms. Boyd-Wilcox with respect to E.G. dated May 16, 2013 was also introduced into evidence by consent. This had been prepared in the course of the prior child protection proceedings involving L.C. and A.C.

[154] As part of the psychological assessment Ms. Boyd-Wilcox had E.G. complete a number of psychological tests and also conducted an interview of her. It is clear this PAR was not intended to provide an opinion with respect to E.G.'s capacity to parent A.C. and L.C., but rather to assess her psychological state and cognitive abilities. Ms. Boyd-Wilcox wrote in her summary:

> E.G.'s cognitive abilities as assessed… ranged from the average to the very low range with her overall ability likely to be in the low range. Her GIA is in the very low range but is likely an underestimation of her overall ability because of the significant relative weakness in short-term memory (0.1 percentile) and working memory (less than 0.1 percentile). These areas of weakness are consistent with E.G.'s comments that she has a very poor memory and she is likely to struggle greatly in the following areas:
>
> - Difficulty in remembering just imparted instructions or information (to allow it to be processed)
> - Easily overwhelmed by complex or multistep verbal instructions (i.e. trouble recalling sequences)
> - Trouble memorizing factual information
> - Trouble listening to and comprehending lengthy discourse
> - Difficulty with performing complex mental operations as material placed in short-term memory
>
> …
>
> There were no indications of significant mental health or substance abuse concerns with regard to E.G. on the valid testing and she did not endorse any significant mental health

> or substance abuse symptoms on the quick view symptoms screen. She has had little historic involvement with mental health services. Any coping difficulties she experiences are likely related to personality issues as described above and to her level of cognitive functioning.
> …
> Information gained during the course of this assessment was not indicative of significant mental health concerns or a concerning level of psychological/emotional distress. However, there were some indications of challenges related to interpersonal relationships and day-to-day coping that could be addressed with E.G. in therapy should she wish to participate. The therapist involved should be aware of her cognitive limitations and focus on her tendency to blame others for her problems, interpersonal relationships, and impulse control. (emphasis added)

[155] With respect to the PCA, Ms. Boyd-Wilcox conducted an extensive interview of E.G. and as noted reviewed all the materials provided by the Minister. She further conducted psychological testing of E.G., repeating some of the tests that were employed in the PAR in 2013.

[156] As well, Ms. Boyd-Wilcox repeated comments made to her by E.G. in the interview as part of the PAR of 2013 respecting her relationship with T.C. She reports that E.G. told of the following:

> … E.G. characterized her relationship with T.C. in positive terms … that they started the relationship when she was age 17, and that they currently lived together. She denied any problems in the relationship or any use of drugs or alcohol that placed strain on the relationship… She described T.C. as physically abusive, overly jealous, and as having been unfaithful. She indicated their relationship was troubled by problems with sex, excessive argument, lack of trust and lack of time spent together.

[157] In the PCA E.G. reported that T.C. engaged on at least one occasion in each in the following abusive behaviours: threw, smashed and broke object; destroyed something belonging to her; pushed her; slapped her with the palm of his hand; demanded sex whether she wanted to or not; physically forced her to have sex.

[158] E.G. reported that T.C. occasionally treated her like she was stupid; was insensitive to her feelings; said something to spite her; brought up something from the past to hurt her; called her names; refused to talk about the problem.

[159] Ms. Boyd-Wilcox also confirms T.C.'s conviction for assault on E.G. for which he pled guilty and was sentenced in June 2014 to 18 months of probation

and 24 hours of community service. As part of his probation order he was required to attend at Addiction Services and the Respectful Relationships Program.

[160] In the PCA Ms. Boyd-Wilcox provides her opinion regarding E.G.'s ability to parent the children as follows:

> Based on information obtained through the course of this assessment I concluded that E.G. does not have the capacity to parent L.C. and A.C. without a significant level of support and supervision. Involvement with the Agency has been ongoing since 2011 with L.C. and A.C. being in the Agency care first for 10 months in 2012/2013 and now again since July 2014.
>
> Although E.G. has been cooperative with direct intervention she appears to have a great deal of difficulty understanding and complying with guidelines to protect the children over the long term. She claimed that she did not understand that she and T.C. were not to be together in front of the children and that he was to be supervised with them until he addressed issues related to domestic violence. This is not necessarily surprising given her level of cognitive functioning and her specific learning difficulties but unfortunately poses significant risk to her children. It is also consistent with her concrete understanding of the issues related to risk for her children and her challenges with problem solving. I am very concerned about her ability to make appropriate judgments about situations and people that are safe for children - particularly if a situation is novel or an individual is known to her even superficially. As well I am concerned about her ability to cope with the ever-changing needs of growing children given that she functions on a concrete level intellectually (e.g. difficulty with generalization of learned skills). Her memory deficits present additional challenges because of impairment in her ability to learn and recall information such as that presented in parent education programs. She would require consistent and ongoing feedback and support to be able to parent safely and effectively.
>
> It appears that at times T.C. and his family members had provided support as has E.G.'s family but that support has not been consistent and comes with its own risk to the children (e.g. domestic violence). Unless there is an environment where E.G. can have regular open (daily) and consistent support for coaching and feedback I fear that she and her children will continue to require Agency intervention because her children will continue to be placed at risk.

[161] Ms. Boyd-Wilcox goes on to set out several strengths related to parenting for E.G., including that she clearly loves the children and is concerned about them, attends the visits regularly, has participated in several assessments, has been cooperative with the services, has ended her relationship with T.C. unless he addresses issues of domestic violence and his personal coping, and that her home

seems appropriate as an environment for the children. Further, she does not have a history of mental health problems, is aware basic child development and appropriate parenting strategies, acknowledges her learning difficulties, and there is no evidence of involvement with non-prescription drugs or alcohol.

[162] Ms. Boyd-Wilcox sets out her concerns identified in the PCA as follows:

> E.G.'s level of intellectual functioning and her memory deficits present a significant challenge in terms of her ability to benefit from intervention. She is likely to have difficulty remembering just-imparted instructions or information, to be easily overwhelmed by complex or multi-step verbal instructions, trouble remembering factual information, trouble listening to and comprehending lengthy discourse, and difficulty performing complex mental operations and short-term memory.… She is likely to struggle with coping with changing demands/circumstances (as with the changing developmental demands of a growing child). Her judgment and ability to recognize the broader consequences of her actions is likely impaired.
>
> Participation in the psychological testing administered as part of this assessment was hampered by her learning difficulties.… She appeared to take a very concrete approach to answering questions (e.g. children should always do what their parents say) which meant she appeared rigid in her parenting.
>
> She is reported to have some difficulty managing the needs of both her children at the same time. This is consistent with my observations when I was present at an access visit.…
>
> E.G. has indicated that she now understands that she and T.C. are not to be together in the presence of the children and that she is not to reside with him. She says that she will not continue the relationship until such time as he has addressed his issues… This is an admirable stance but I remain concerned that she would allow T.C. back into the home particularly if she needed support in caring for the children. I am also concerned about her ability to recognize warning signs for abuse in a new relationship. I see her as vulnerable because of her family of origin experiences and her cognitive limitations.
>
> When asked about her support system E.G. listed some community support services… and family members (her family and T.C.'s family). However, I question whether her family members would be able to provide the level of support she would need. It was noted that there were child protection concerns in her family of origin and in the past substantiated violence between her and her sister in the presence of her children.… In terms of community support services I question whether sufficient support and guidance could be provided by such agencies to ensure the safety of E.G.'s children.

> File information indicates that there have been ongoing concerns about L.C. having behavioural difficulties and some developmental delay. Test results indicate that E.G. does not recognize any behavioural difficulties. … Any special needs exhibited by L.C. and/or A.C. would further tax her already limited parenting abilities.

[163] Ms. Boyd-Wilcox then provides her opinion that T.C. does not have the capacity to parent L.C. or A.C. at this time. That said, T.C. has not participated in the permanent care hearing and has not put forward a plan of care for the children.

[164] When asked in direct examination about the affidavit of Debbie Beaton, her work with E.G. and her description of the adaptations necessary for E.G. as they work through the Positive Parenting Solutions Program, Ms. Boyd-Wilcox confirmed that if this description were accurate, it would be consistent with her opinions and recommendations respecting E.G..

[165] When asked about the concerns raised in Dr. Hann's report in which she stated that the tests conducted by Ms. Boyd-Wilcox were not predictive of parental capacity, and that E.G. would not understand many questions her items on the tests used, Ms. Boyd-Wilcox replied that all of the testing was done by oral presentation which provided an opportunity for E.G. to give feedback to the tester. She acknowledged that some testing was invalid. She did, however, explain that she never relies on testing alone and interprets the testing in the context of all of the information available to her.

[166] She also points out that the tests themselves have internal validity checks and that she considers those validity checks and the comprehension level of the person being assessed.

[167] In E.G.'s case, she did conduct cognitive testing and academic screening to assess her reading and comprehension levels.

[168] With respect to the testing not being predictive of parental capacity, Ms. Boyd-Wilcox agreed. She said the tests allow screening for issues and form part of an overall assessment of all of the information available to her. If there were mental health issues, Ms. Boyd-Wilcox explained that she would be looking to see how the person is dealing with a mental health issue and what impact, if any, is it having on that person's parenting. To Dr. Hann's comments that she did not use the Feldman procedure that he prefers, she denied this and said that she did use those procedures, though they were not expressly identified in the report.

[169] Respecting E.G.'s relationship with T.C., it was Ms. Boyd-Wilcox's opinion that it is not a healthy relationship. She noted in the PAR E.G. indicated there were no issues in the relationship, yet in the PCA she identified domestic violence as an issue. Ms. Boyd-Wilcox's opinion was that E.G. and T.C. were involved in an abusive relationship in terms of physical, sexual and emotional abuse and the risk of this continuing was high should the relationship continue.

[170] When asked if she would have a different view of the risk if it was clear that E.G. and T.C. were no longer in a relationship, Ms. Boyd-Wilcox said this would not make a difference. It is her view that E.G. is vulnerable in any relationships and would find difficulty in setting boundaries, would be vulnerable to abuse and would be at risk.

[171] When asked about the level of support and supervision that would be required in order for E.G. to parent the children, Ms. Boyd-Wilcox reinforced that E.G. would need consistent, concrete feedback, coaching and reinforcement of ideas and skills for parenting.

[172] Ms. Boyd-Wilcox indicated the person involved would have to have a good set of parenting skills, have an ability to deal with special needs and be able to identify those needs and respond in a positive way. It would be a circumstance of high stress and would require someone with high skill levels to understand cognitive issues about the mother and the children. It would be akin to that person parenting both the mother and the children at the same time.

[173] When asked about the possibility of support being provided by E.G.'s family, she identified several "red flags" including a prior child protection proceeding involving the family, the on and off relationship between E.G. and her parents over the year and that they had not been supportive of her from time to time. Having said that, Ms. Boyd-Wilcox noted that she had not conducted an assessment of the family and could not provide further opinion on this.

[174] She described E.G.'s challenge as one of judgment, recognizing when she is putting the children at risk and when to change her strategies. She must be able to identify the needs of the children and how to address them and she does not have that ability. For example, Ms. Boyd-Wilcox noted that E.G. is very open to feedback after an event is taking place, but she has no ability to evaluate risk in advance.

[175] In cross-examination Ms. Boyd-Wilcox confirms she did not assess D.G. who had not put forward a plan of care at the time of the PCA. Ms. Boyd-Wilcox acknowledged that D.G. was involved in E.G.'s life, had spent time at her home and that they had lived together for some months.

[176] Ms. Boyd-Wilcox acknowledged that the plan of care put forward by E.G., which she reviewed at the hearing, included a letter from D.G. indicating that she will support E.G. Ms. Boyd-Wilcox noted that this was what the letter said but also noted that they have experienced an on and off relationship over the years. Her impression was that the relationship was not stable but it may have just been one time that they had had a falling out.

[177] When asked what she meant by concrete thinking, Ms. Boyd-Wilcox explained it was an inability to take into account abstract ideas and issues when considering a decision or its circumstance. She describes such thinkers as having difficulty adapting to change or to new circumstances and that a person needs a strong support for this circumstance.

[178] Regarding E.G.'s vulnerability to victimization, Ms. Boyd-Wilcox agreed that she could benefit from some counselling if she chose to engage.

[179] When asked some questions about Dr. Hann’s report, she agreed that the used similar information but she simply did not use the same structure as Dr. Hann and did not record the information under the Feldman's structure.

[180] When asked about the testing, Ms. Boyd-Wilcox confirmed that the tests were administered by a psychological assistant who was responsible for accommodation on the testing, taking into account E.G.'s cognitive circumstance. Ms. Boyd-Wilcox maintained that the tester, who has a bachelor of science in psychology, was appropriately trained, had done this work for six years and had taken part in approximately 30 parental capacity assessments per year. She had been trained by Ms. Boyd-Wilcox and her partners in regards to cognitive accommodation and that she is observed from time to time by Ms. Boyd-Wilcox.

[181] The accommodation provided included reading the questions, providing for an interaction and looking for signs that the E.G. was not understanding what was being put to her. She said that the tester would not just rely on E.G. asking questions herself. There was also the use of paraphrasing for some of the questions.

[182] Returning to the testing, Ms. Boyd-Wilcox confirmed that the assistant administered all questionnaires with the exception of the Woodcock Johnson Academic and Woodcock Johnson Cognitive testing.

[183] Ms. Boyd-Wilcox confirmed she did not observe the testing done by the assistant and had no notes available to her of the specific accommodations provided for E.G.

[184] Where some tests were invalidated they were not used in the assessment. For other test, interpretation was conducted with caution as E.G. had some difficulty in understanding some test items.

[185] When asked about the possibility of conducting a custody and access assessment, and not a PCA, involving D.G., Ms. Boyd-Wilcox replied that this would take at least three months and perhaps longer.

[186] When asked in cross examination about E.G. and D.G. not getting along, Ms. Boyd-Wilcox confirmed that this was based on a report by E.G. to the Minister's workers that she and her mother were not speaking and that she would not have her father around her or to the children. This occurred in July 2014.

[187] Ms. Boyd-Wilcox was unable to find any notes in the file material available to her of any of the conflict or issues between E.G. and D.G. She undertook to review her materials that were at her office after court and she did so, confirming by correspondence that she had no other information of any conflict or issues between E.G. and D.G..

[188] When asked about E.G. and her vulnerability in relationships, Ms. Boyd-Wilcox said that E.G. was vulnerable due to her way of interacting with the world, her focus on concrete thinking, and her inability to consider future consequences. For example, she explained that if E.G. thinks that things are going well at the moment in a relationship, she's likely to restart that relationship despite anything that occurred in the past.

[189] She explained that if E.G. were involved in a long relationship, even one including domestic violence, she would find it difficult to separate from that person and might restart of the relationship. The concern would be a repeat of domestic violence. She provided her opinion that even if a relationship ended, she would still be concerned until there was a significant passage of time so that it was clear the relationship had ceased. This would at least be several months.

[190] When specifically asked in cross examination why E.G. can't parent the children, Ms. Boyd-Wilcox replied that it was due to a lack of a support system, her cognitive impairments, her relationship with T.C. and her inability to extricate from it, her concrete thinking regarding protection concerns (for example her approach to the children escaping the house was to put a lock on the door) and therefore her inability to assess risk and act on it before the risk occurred.

[191] She did confirm her opinion that E.G. could have a role in parenting if she had appropriate and strong support and supervision. This would be similar to supervised access. She could have input into decisions though there would have to be consideration of E.G.'s cognitive deficits. She agreed that E.G. was no threat to the children if she was under supervision. On redirect Ms. Boyd-Wilcox agreed that it was unlikely that significant change can be effected within the timelines under the *Act* and if she thought that it were possible, she would have made different recommendations.

Dr. Gerald Hann

[192] Dr. Gerald Hann provided expert opinion evidence in this matter. He was qualified as a psychologist with a particular expertise in the conduct of psychiatric assessments, parental capacity assessments and the assessment of cognitive developmental delay.

[193] After receipt of the PCA of Ms. Boyd-Wilcox, E.G. sought a second PCA for herself which was conducted by Dr. Hann. His report, dated June 24, 2015, was filed as an exhibit in this matter by consent. In that report Dr. Hann provides some comments with respect to the methodology and tests employed by Ms. Boyd-Wilcox which she had responded to in her *viva voce* evidence. I do not intend to spend any further time on these differences as, in many respects, Dr. Hann arrived at the same conclusion, though possibly by different methodology, as Ms. Boyd-Wilcox. Thus the issues around the use of the Feldman model, while academically interesting, are not relevant in my assessment of the evidence in this matter.

[194] In the early portions of his report, Dr. Hann begins to set out his view of how matters might move forward with the support of D.G. He notes, for example, as follows:

> The developmental needs of L.C. and A.C., in addition to the stress caused by the current child welfare proceedings and financial stressors are obstacles to

> E.G.'s parenting ability. Living with her mother and sharing expenses would be the best way to improve financial supports and reduce parental stress. A custodial arrangement with D.G., with support from E.G. would be another way to enhance her support system and reduce parental stress.

[195] Later in the report he notes:

> Given that E.G.'s mother, D.G., was present for most of the current assessment interviews and during a portion of the access visit, the undersigned was able to observe their interactions. E.G. and her mother got along well both in the office setting and during access visits. This was not feigned or artificial. It is clear that E.G. feels comfortable confiding in her mother and looks to her for support and guidance. They showed spontaneous signs of affection with each other, and with the children during observation.
>
> Despite the stress imposed on the family as a result of the child welfare proceedings, E.G. and her mother had managed to demonstrate resiliency and continue to interact positively and respectfully with professional intervention with the family. Issues with E.G.'s relationship with her mother do not represent a significant obstacle to her parenting ability, and in fact is viewed as a significant support by the undersigned. The proposed plan for D.G. to act as the custodial parent with the support of E.G. would seem to be a viable plan, based solely on their observed dynamic.

[196] Later on he notes:

> In the opinion of the undersigned, issues with social supports for E.G. do not appear to represent a significant obstacle to her ability to parent L.C. and A.C. The obstacle exists in her ability to maintain the skills over the long-term so that she can ensure the safety and well-being of the children. While this may be challenging alone, the support of D.G. could be another moderating variable.
>
> …
>
> In the opinion of the undersigned, the parenting style of E.G. represents an obstacle to her ability to parent her children. That being said, with provision of a structured teaching approach and support, she could gain a better understanding of appropriate expectations of her children… D.G., acting as custodial parent, could also help to mitigate some of the above-noted deficits.
>
> …
>
> In the opinion of the undersigned, E.G. does not have effective or consisting coping strategies and this represents a significant obstacle to the ability to parent

> L.C. and A.C. With the support of her mother, her coping strategies potentially improve and coping strategies, as an impediment to her parenting ability is reduced, but not eliminated.
>
> E.G.'s intellectual disability would prevent her from improving her coping abilities significantly. Intervention to improve her coping abilities would not be very successful, as this issue is primarily tied into her or cognitive limitations.
>
> …
>
> In the opinion of the undersigned, the developmental and behavioural challenges of the children represent significant obstacles to E.G.'s ability to parent them independently. With the support from professionals… as well as the school system… and under the direction of D.G., with assistance by E.G., the child related issues could likely be managed effectively. This cannot occur with E.G. alone.

[197] After identifying E.G.'s strengths, Dr. Hanh notes:

> Despite these strengths, the current assessment identified a significant number of impediments in her circumstances. She has a recurrent child welfare history, she possesses an unstable an unhealthy relationship with T.C., the father of the children (as she continues to allow T.C. to live in her home) despite conditions imposed by the Agency, she is unable to consistently meet the financial needs of the children, she struggles to generalize the parenting skills that she is taught, she has challenges managing the behaviour of an attending to the needs of the children when they are together, and she presents with significant cognitive limitations. There are more impediments than supports in E.G.'s case.
>
> For these cumulative reason she does not possess the prerequisite skills to parent her children independently over the long term, in the absence of a high degree of support, teaching and structure. The undersigned agrees with the previous assessor, Ms. Boyd-Wilcox that E.G. cannot parent these children independently, although the manner in which the current assessor arrived at his opinion was by utilizing a different methodology than Ms. Boyd-Wilcox.
>
> …
>
> If however, D.G. were to put forth a formal plan, in conjunction with her daughter E.G., it is the opinion of the undersigned that this plan could represent a viable option for the children and should be given due consideration by the court. If this plan was to be considered by the court it would be necessary for D.G. to be a formal party to the proceedings and be prepared to undergo any required assessments to determine her ability to meet the long-term needs of these children.

[198] In cross-examination Dr. Hann described a level of support and supervision required for E.G. as "moderately high to high". He would highly discourage any independent unsupervised access for E.G. and it should only be encouraged to help support attachment with the children and should be left up to the custodial parent respecting the degree of involvement of E.G. He went on to indicate that the custodial parent needed to understand the responsibility of parenting these children and setting limits for E.G.

[199] He also noted that support of the children, in terms of attending appointments and that all recommendations be followed, was important for their progress. Put simply, the custodial parent must do what is needed to assist children.

[200] Dr. Hann was quite clear that he was not recommending that D.G. have custody of the children and E.G. live with her as described in his report and was clear that he believes that D.G. must be assessed first before this might be considered as an option.

[201] In cross-examination by Minister's counsel Dr. Hann agreed that this was not a "battle of the experts" and that by different methodologies both experts had arrived at the same conclusions respecting E.G. He acknowledged he had not assessed D.G. and only indicated that the plan involving D.G. "could" represent a viable option.

[202] Dr. Hann agreed that if T.C. and E.G. were living together in June 2015 during his conduct of the PCA, this would be a negative predictor of success in the matter. When asked about the risk of E.G. returning to a relationship with T.C., Dr. Hann opined that there were likely unconscious factors driving her to do so, likely due to prior disruptive relationships in her life.

[203] In cross-examination Dr. Hann also was clear that he was not implying that the Agency presumed that a cognitive disability disqualified anyone as a parent.

[204] It was reviewed with Dr. Hann that the therapy recommended for E.G. in the PAR of Ms. Boyd-Wilcox was on the basis of "should she wish to participate" and that the worker had testified that she had discussed this with E.G. and she did want to participate. Dr. Hann was not aware of this.

[205] When Dr. Hann was directed to the case recording of the August 28, 2012 taking into care of the children as set out in the affidavit of Ms. Brymer of August

2012, counsel for the Minister reviewed D.G.'s behaviour at the time. He questioned whether Dr. Hann had any concerns about this. Dr. Hann indicated he had not seen this document before and that the behaviour was very concerning to him.

A.T.

[206] A. T. provided evidence in the matter on behalf of D.G. Her evidence was that she and D.G. worked together at a […]. She explained that she has always observed D.G. to be responsible and respectful, a hard worker and keeps controlled even on the hardest day. She is of good cheer and always has good relations with the staff. She has seen E.G. at work but not at home.

[207] In cross-examination, Ms. T. confirmed that she has no contact with D.G. outside of work, had never been to her home and never met or observed the grandchildren L.C. and A.C.. She knows nothing of D.G.'s personal life.

[208] As well, she testified that they have limited contact at work as she works on the floor and D.G. is in the kitchen.

E.S.

[209] E.S. provided evidence in the matter on behalf of D.G. She is D.G.'s sister-in-law and therefore E.G.'s aunt. She has known E.G. since her birth.

[210] She says that she has known L.C. and A.C. for a long time, they have been in her home and she is been in D.G.'s home. She has observed that the children are well taken care of and she has observed nothing wrong.

[211] She says she lives approximately five minutes from D.G.'s home. She will do anything to help the family including financial assistance, transportation and childcare.

[212] In describing D.G. and E.G.'s relationship, Ms. S. said she never observed any problems and they get along well. There was nothing out of the ordinary.

[213] In cross-examination Ms. S/ testified that she speaks to D.G. on the phone frequently and visits are one or two times each day or, when busy, perhaps once a week. She said that if the children were with D.G. she could visit frequently but that she must be home by 3 PM as she is has a grandson she babysits.

[214] Ms. S. confirms that she can do babysitting if D.G. must work but she has no driver's license. If D.G. dropped the children off to her she is willing to help.

[215] Regarding supervision of E.G., she says she can do this and if E.G. is being inappropriate she would intervene and that E.G. would listen. If anything was a problem she would report it to the Agency.

[216] On further cross-examination by Minister's counsel, Ms. S. confirmed that she travels with her husband for a few hours at a time but not every day. She spends a couple of hours a day doing paperwork for their export business and she is occupied from 3 PM to 7 PM babysitting her grandson.

[217] On further cross-examination, she agreed that the last visit she had with D.G. was about a week prior and approximately two weeks prior to that. Therefore she sees her every 2 to 3 weeks typically.

[218] She testified that D.G. asks for her help if something comes up. She was clear that she was not offering to care for the children full-time when D.G. was working. She would help when she could.

[219] Ms. S. testified she did not know why the children were placed in temporary care, that D.G. is upset about this but that she doesn't understand why they were taken either. D.G. has told her that E.G. is a good mother and needs guidance. Ms. S. feels that there's no problem with E.G. looking after the children alone for a time and she saw nothing of concern in her care of them.

[220] When asked about her brother and his relationship with D.G., Ms. S. testified that he is not living at the house with D.G. and that he works around the province. When asked why he was not living with D.G., Ms. S. testified that they were not getting along.

[221] Finally, Ms. S. testified that she did not discuss any of this with E.G. as she had not seen her lately nor had she seen L.C. or A.C. in approximate one year.

E.G.

[222] E.G. provided evidence in this matter. Her evidence was by way of two affidavits filed, three Plans of Care filed and her *viva voce* evidence at the hearing.

[223] In her first affidavit of July 15, 2014 she largely dealt with the incident of July 8, 2014 which resulted in the children being taken into temporary care of the Minister. She first explained that she has a learning disability and finds it difficult to read documents.

[224] E.G. explained that T.C. was arrested for assaulting her and was on an undertaking not to have any contact with her or the children. She said that T.C. had this condition changed to allow him to have contact with her on May 5, 2014. This would have been in relation to an undertaking before the Provincial Court.

[225] Ultimately T.C. was sentenced to 18 months of probation on June 30, 2014 and a condition of his order permitted him to have contact with E.G. with her consent. She believed that, based upon this, she was permitted to spend time with T.C. She understood that the Agency was no longer involved since the file had been closed.

[226] She said by that time she had completed all of the services recommended by the Agency including the SAFE Assessment, family support services and that she was engaged with community supports. She testified that she was seeking an order for sole custody of the children with third-party supervision of access for T.C.

[227] Regarding the events on July 8, 2014 she said that T.C. came to her home around 1:00 PM. The children were home. E.G. realized she needed milk so she left the home, leaving T.C. with the children. She said she was gone 20 to 30 minutes. When she returned, the front door was open, the children were gone and T.C. was asleep on the couch.

[228] She said she immediately woke T.C. to begin looking for the children. They were not in or around the house. She checked with the neighbour on the other side of the duplex who told her that she had seen them outside so E.G. asked her to drive her up the road to look for them. She looked in places where she thought they might go such as the duck pond and around the store areas. She saw an RCMP officer and ask for assistance. The officer told her that her children were safe inside a neighbour's home and that she could go get them.

[229] E.G. retrieved the children from the neighbour's home, took them back to her house and told the RCMP that T.C. was no longer welcome in her home. She waited for Agency workers to arrive.

[230] E.G. filed an affidavit of July 15, 2014 in this proceeding. That affidavit related to the application she had made under the *Maintenance and Custody Act* for sole custody of the children with supervised access to T.C. Its contents are largely the same as the affidavit reviewed above.

[231] In the first of three Plans of Care filed by E.G. dated October 23, 2014, she proposed to have the children reside with her under her care and custody and that her mother would be available as a support by stopping by every day. She proposed that T.C. have no contact with her in front of the children but that he would have supervised access with the children. To that plan was attached a letter from D.G. in which she confirmed her support of the plan and that she would be available as a support person and promised to stop in to see her and the children every day. Likewise, E.G.'s father and T.C.'s mother attach letters confirming their support of the plan and promising to assist E.G.

[232] E.G. filed a second Plan of Care dated February 27, 2015 in which she proposed that she and D.G. would have joint custody of the children with E.G. providing primary care and residence for them. They would all live with D.G. had her home pending completion of the PCA by Dr. Hann.

[233] She proposed that after completion of the PCA, she would follow the recommendations of the assessment including whether she was able to live on her own with the children or whether she should continue to reside with the children at D.G.'s home.

[234] In that plan she identified the various supports available to her consisting of her mother, her father, T.C.'s mother, Ms. S., Ms. Carter, the Kids First worker and the Early Intervention worker.

[235] In that same plan she proposed that T.C. have no contact with her and children together, but that he have supervised access with the children. She went on to propose that T.C. might have unsupervised access when the children are older, perhaps in 3 to 5 years. This will be subject to a decision by E.G. and D.G. at that time.

[236] In that plan she discussed child care, babysitting, communications, transportation, healthcare and general care issues for the children.

[237] It is this Plan of Care that E.G. asks the court to consider in these proceedings.

[238] A final Amended Plan of Care was filed by E.G. dated September 3, 2015. In that plan E.G. said that she supports D.G.'s plan to have custody of the children and that she will provide assistance to her in the care of the children. She proposed that they all live together at D.G.'s home.

[239] This plan was put forward after receipt of the PCA of Dr. Hann and E.G. says it is consistent with his recommendations in that PCA. She confirmed that the plan sees her mother with primary care of the children and that E.G. would follow D.G.'s direction respecting all aspects of the children's lives. The plan is otherwise identical to the one filed in February with the obvious modification of her mother having primary care and control of the children.

[240] It was E.G.'s evidence that she resides on her own. She said she was a participant in the Employment Readiness Program during which she learned workplace skills, first aid, food handling, traffic control and some grammar and math skills.

[241] E.G. testified that she works full-time at a local motel in Port Hastings doing housekeeping and has a second job as a traffic control flagger. She said that she had been employed with a local seafood processor for seven years prior.

[242] She acknowledged a learning disability and that she has problems with her memory.

[243] When asked about T.C., she explained that they broke up after her meeting with Dr. Hann. She said they have not been together since April 2015 and she has no desire to get back together with him. He has not been at her house since then.

[244] E.G. testified that she had seen another man but had not dated him and was not seeing anyone now. She testified that her mother does not encourage her to get back together with T.C. or to get involved with anyone else.

[245] Respecting her relationship with D.G., she testified that she trusted her, could tell her anything and doesn't hide anything from her. She acknowledged that

in July 2014 she told the worker that she was not talking to D.G., which was true, but this was the only time that she has not talked to her mother.

[246] Respecting the SAFE Assessment, E.G. testified that if T.C. passed the Assessment he could care for the children but the risk identified was his uncle.

[247] When asked about her evidence regarding T.C. being in the home when the children eloped in July 2014 and were taken into temporary care, she testified that now she understands the difference between the Family Court order and a Provincial Court order. She said, however, that she didn't always understand the difference and believed that the time of the July 2014 incident that the Provincial Court order overrode the Family Court order. She does not believe that that is the case anymore.

[248] She testified that, as a result of self-referrals, she continued in the Parenting Journey Program, the Kids Have Stress Too Program and that Early Intervention is still available to her.

[249] When asked about the testing she was involved in with Ms. Boyd-Wilcox for the PCA, she explained that checklists were read to her and she was told to stop the reader if she didn't understand it. She did stop for explanations from time to time but said she didn't always understand the explanation. She said that the assistant did not explain things the way Dr. Hann it.

[250] She said that Dr. Hann was different. She completed other tests with him and he used different techniques. Dr. Hann was more hands-on and didn't use checklists.

[251] Respecting the family support worker, she testified that the service was offered in the previous child protection proceeding but not in this proceeding. She said that she found this to be fun and helpful.

[252] Respecting access, E.G. testified that she sees the children on Tuesdays and Thursdays from 11:45 AM to 1:45 PM. To get to access in the Truro area she is up at 7 AM and takes a combination of taxis and shuttles and arrives at a local gas station at approximately 11 AM. She is then transported with her supervisor to access.

[253] When asked about L.C.'s eating difficulties, she explained that if he were in her care she would go to a pediatrician and family doctor for assistance. The same

with respect to allergies and she would follow any recommendations of specialists once consulted.

[254] When asked about the children's relationship with D.G., E.G. testified that each of them loves their grandmother. For A.C., she says that she listens to her grandmother, is never fussy, and is always happy to see her. For L.C., he is a little stubborn and seeks attention but he is always happy to see his grandmother. She says D.G. has always been there with her son and she feels she can say or do anything in front of her mother. She confirmed that D.G. can redirect the children even if L.C. might stomp his feet in protest.

[255] When asked about her own relationship with the children, E.G. first talked about A.C. She said A.C. was going through change and was moody. She treats A.C. the same as L.C. and disciplines with "timeout" and talking to her to explain things. She had observed A.C. becoming upset when E.G. was leaving access, that she would holler, scream and was vibrating.

[256] Respecting L.C., E.G. said that he is a bit older now and if he has behaviour issues she will use a firm voice without becoming mad or smiling. He will be placed in the corner on a chair and she speaks to him. He usually goes to the corner on his own and returns to speak to her when he's calm.

[257] When describing the children during access, E.G. said that they scream "mommy" and are happy. When she leaves they are crying, have sad faces, lock the door to keep her there, tug on her and otherwise don't want her to leave.

[258] When asked about the children's relationship with each other, E.G. described it as normal, that they play together, hug each other and eat together. L.C. refers to A.C. as "sissy" and A.C. refers to L.C. by his name or as a "brother".

[259] Respecting a Plan of Care, she acknowledged that she and D.G. met with Ms. Brymer in January 2015 and understood that they had to make a plan for a stable home with a parent available at all times. The idea was to present one plan.

[260] In discussing her plan of February 27, 2015 she explained that she proposes joint custody with her mother and D.G. having the decision making authority. E.G. would be there, living with D.G. and the children, and would bathe, feed and care for the children.

[261] When asked about care of the children while at work, E.G. discussed childcare for them. She noted that D.G. is going to have hand surgery and will be at home full-time with the children for that time. D.G. takes E.G. to work. They have her aunt B. who is in the picture as support and that E.G. plans to continue to work at her two jobs.

[262] When asked about when D.G.'s hand surgery is completed and her sick leave is over, she expressed that she didn't think that D.G. was going to return to work. If so, D.G. would be available full-time for the children and E.G. and would continue to work the two jobs. She said that Aunt B. would be available to babysit the kids if D.G. needed to go out or have her break.

[263] E.G. acknowledged that she needs supervision with the children and if D.G. is away and she is at home, she would have her Aunt B. present as a supervisor.

[264] Respecting education, she proposed that L.C. would attend school at […] Elementary and in the meantime he would attend an introductory program for school. There is a Step Program available Monday to Friday from 8:00 AM to approximately 2:30 PM and D.G. would transport him to and from that program.

[265] Respecting A.C., E.G. explained she will be four years old in April and attends Kids First. If her plan is approved, A.C. will continue with Kids First in [,,,] on Wednesdays from 9:00 AM to 11:00 AM. E.G. plans to take her with D.G. driving. Three workers would be there to supervise E.G.

[266] She testified that she would continue in the Parenting Journey Program which helps with how to redirect L.C. and helps her with other issues. The worker comes to her home.

[267] She plans to continue with Early Intervention which helps with L.C.'s acting out and she's taught one thing at a time. They use "hands-on" teaching methods and she finds this helpful. Unfortunately L.C. is no longer eligible based on his age but A.C. is.

[268] E.G. then set out an alternate plan of care if her first plan is not acceptable. This would have D.G. having sole custody of the children and E.G. would move out of the home. She would have visits supervised by D.G. and D.G. would make all decisions including when E.G. would have access.

[269] When asked about her relationship with T.C., she described it as not a good one, that he is not dependable, and he didn't work and she looked after him and that he was abusive, including emotional, physical, mental and sexual abuse. She set out what had happened in the incident that resulted in T.C. being charged with assault. He backhanded her in the face, the children were present and she called the police to keep children safe. She did leave the house with the children remaining behind. She said she was running down the street and feared for her own safety.

[270] She said the last time she'd seen T.C. was in April 2015 and that she does not have a relationship with him. She admitted that after the apprehension in July 2014, until April 2015, T.C. was still in her life. She said Dr. Hann made her see more clearly about this. She has had no contact with him since April 2015 except for an odd time in the shuttle or when she sees him at a local Tim Hortons but they say nothing to each other.

[271] E.G. said she's had no communication with T.C.'s mother or his family since 2014

[272] When asked about any concerns the T.C. might drop by unannounced, she felt he would not do so as he has not been in D.G.'s house since 2010. D.G. does not have a good relationship with him.

[273] E.G. said T.C. is not doing anything with the children. If he were interested in becoming involved, she would speak with the Agency and would be open to allowing three supervised access visits per week, supervised by D.G. or someone chosen by the Agency. The decisions regarding this will be left to D.G.

[274] When asked in cross-examination about her understanding of why she couldn't parent the children, E.G. explained that she can grasp most of it but can't grasp all of it. When asked about her understanding of why she can't parent alone, she said it was due to her reading problems, paying attention, difficulty understanding things, her being too friendly and nice to people, and her memory problems.

[275] When asked about her relationship with D.G., E.G. said that there were no issues. She cited as an example of D.G.'s support of her, E.G. was tormented in grade 11 and D.G. went to the School Board to get help. If E.G. needed answers regarding sex, D.G. was there to tell her. She asked D.G. if a guy she was interested in was good enough to date.

[276] Regarding concerns of any future domestic violence, E.G. testified that she had already gone to the Naomi Society for help, was not focused on any man and was focused on the children.

[277] On cross-examination by counsel for the Minister, E.G. admitted that in the psychological assessment of Ms. Boyd Wilcox in May 2013 she denied domestic violence and admits now that she was not telling the truth. She was aware that report would go to the Agency and she did not tell the Agency on her own of the domestic violence. She therefore allowed the Agency to send the children home without disclosing the physical abuse she suffered in that home.

[278] She admitted that in the PCA of Ms. Boyd Wilcox in 2014, she told her that she would not be returning to a relationship with T.C. She agreed that T.C. always seemed to be a problem, having been arrested in 2012 and 2014 and the children having been taken into temporary care on those occasions as well. Yet she admitted she began a relationship with T.C. again.

[279] E.G. admitted the T.C. was at her home in July 2015 and she discussed his helping her. He was in the home at least one night.

[280] In cross-examination E.G. agreed that T.C.'s mother was not a good grandmother and that she hadn't spoken to her since 2014. Despite this, in her plan of September 3, 2015 she said that she would use T.C.'s mother as a support. She agreed that all three Plans of Care she filed with the court say that T.C.'s mother will be a support. Her evidence was that she would like to give her a chance to do so.

[281] When asked about her plan to have B. S. look after the children as described, E.G. acknowledged that in B. S.' evidence it does not sound like she understands this to be her role.

[282] When asked about her view of the children being taken into care, E.G. said she believed that this never should have happened, that she has challenges but the children should not have been taken into temporary care. She still believes that she can look after the children on her own with a little bit of help.

D.G.

[283] D.G. provided evidence in this matter by way of two affidavits, one in support of her application for standing and custody, and her *viva voce* evidence at

the hearing. Her Plan of Care was contained within her second affidavit sworn August 20, 2015.

[284] D.G. is the maternal grandmother of L.C. and A.C. In her affidavit sworn February 27, 2015 she stated her intention to apply for joint custody of the children with E.G. under the *Maintenance and Custody Act* and stated her belief that E.G. and T.C. were in agreement with this. D.G. said that if joint custody were not supported, she would apply for sole custody of the children.

[285] She said that she works as a […]worker at a restaurant in […], typically working long shifts Monday to Thursday from 2:00 PM to 11:00 PM. On Fridays, Saturdays and Sundays she typically works noon until midnight. She says this work schedule rotates that so that she works two days and had two days off.

[286] She said that she lives alone in a three-bedroom home though her other daughter occasionally comes to live with her.

[287] D.G. described that having a very close relationship with the children, being present at their births, attending all significant events with them, and having some limited access with them since the children were taken into temporary care.

[288] She acknowledged that E.G. has intellectual challenges and requires support in some parts of her life. She credits her with graduating from high school with the assistance of an individualized plan.

[289] D.G. was also aware of T.C.'s intellectual challenges. She expressed concern about his parenting ability and said he should have supervised access. She said she is willing to transport the children and to supervise some of the visits.

[290] She said the incident of July 8, 2014, when the children were left alone with T.C. and he fell asleep, was concerning but she believes E.G. has learned from that mistake.

[291] On her proposal for care of the children, she would be assisting E.G. with parenting on a daily basis. When she is at work, E.G.'s father is willing to come to the home to help on weekends. She believed that E.G. has the support of T.C.'s mother and that she is welcome in D.G.'s home to assist. She said that her neighbour, B. S., has expressed a willingness to assist as she was only five minutes away.

[292] D.G. said that she understood it was E.G.'s plan to continue with Kids First, Early Intervention, and other supports with the children, and that the family support worker would continue to work with her on a weekly basis.

[293] D.G. acknowledged her involvement in child protection proceedings years ago involving her other daughter and said she completed the programs offered and still uses the skills she learned when she visits with L.C. and A.C..

[294] D.G. also filed an application for standing and custody in this matter and filed an accompanying affidavit sworn August 20, 2015. In that affidavit D.G. set out a Plan of Care. She proposed that she be the primary care parent, that E.G. and the children live with her and that she have full responsibility for the day-to-day care of the children, overseeing and attending to their needs.

[295] Her plan contemplated E.G. being in a supportive role for the children and D.G. being primarily responsible for their day-to-day care and well-being. She said that her supports include B. S., who has agreed to provide child care for the children on a regular basis if required or in times of emergency or on short notice. She also identified a friend and neighbour, A/C/, who would able to assist with child care if required. She confirmed that has a vehicle as well as a valid driver's license and is able to transport the children.

[296] She confirmed that L.C. can attend a local school with small class size and resources available for adjustments, if recommended. He would travel by bus or she could drive him.

[297] She is exploring options for daycare for A.C. and would use Kids First and Early Intervention as resources.

[298] D.G. said she was prepared to support A.C. and L.C. in their well-being and health but would require disclosure from their doctors and therapist to better understand their needs. She would follow the direction and advice of any of the healthcare providers.

[299] In her direct evidence, D.G. confirmed that E.G. and the children resided with her for approximately four months after they left the home of T.C.'s aunt and what she described as an abusive situation. This was with the approval of the Agency.

[300] She described her involvement in the incident of July 2014, which placed the children in the temporary care in these proceedings. She drove by that day and saw T.C. who told her that the kids had left the home. She helped to look for the children down by a lake and then returned to the house. When the children were located at the neighbour's home, she said she told T.C. that she was disappointed in him. The police and Agency workers were present and she went to work as scheduled.

[301] When asked about her behaviour in the prior proceedings involving A.C. and L.C. of January 25, 2012 when she attempted to take the children from the home in her vehicle, D.G. agreed with the description of what occurred and said that she was confused and panicked. She said the children were living there and were at no risk and no one explained to her why they were being taken. She testified that she has learning disabilities and reads at a grade seven level.

[302] When asked about her parenting style, she admitted that she used spanking and being sent to the room without toys. She had taken a parenting course and an anger management course in 2012 and 2013 and now said that there are a lot of ways to discipline a child without physical contact.

[303] When asked about E.G.'s ability to parent, D.G. testified that she could parent "so far" such as feeding, bathing and washing clothes for the children. When she had to make hard decisions, D.G. said that E.G. might not do well. She described the small decisions would be okay but the big decisions would be difficult.

[304] She reviewed the Plan of Care set out in her affidavit. She then explained that she was currently on disability as a result of hand surgery and was home full time to care for the children. She could do this for one year on her own and then she would return to work and use a sitter for the children.

[305] When asked about whether she would participate in a PCA with Dr. Hann to assess her parenting capacity, she agreed to do so.

[306] Respecting T.C., D.G. says that she would not allow him into the home, would not support a relationship between him and E.G., that he wouldn't be in her life and that there was no relationship between her and T.C.'s family.

[307] She agreed that the children are biracial but saw no issue with this, she was not prejudiced and would tell the children at the appropriate time.

[308] When asked about the of letter support she provided for E.G. to have the children, she testified that she provided this prior to the completion of both PCAs and no longer supported this position.

[309] With respect to the issue of delay in bringing her Plan of Care forward, D.G. testified that in April 2015 she learned for the first time that the Agency was seeking a plan of permanent care for the children. At that time the PCA of Dr. Hann was pending. She said that in June 2015 the PCA from Dr. Hann was received and in July 2015 at Court the Agency confirmed that they were seeking permanent care.

[310] After this, she had some delay in obtaining legal counsel. She obtained two pages of names from Legal Aid, contacted 15 to 20 lawyers and ultimately was able to retain her current counsel. As a result, she was only able to present a Plan of Care for consideration by the court a late date.

[311] Under cross-examination by counsel for the Minister, D.G. admitted that though she was proposing to be involved with the STEP Program, she didn't know any contact person there and had made no inquiries. Likewise, with Kids First she had not called about the service though she did identify a contact person. With Early Intervention, she had not made contact yet and therefore, did not discuss what would be best for the children.

[312] When asked about being off work for her surgery, she testified in cross-examination that she was aware approximately two months prior, in late September or early October, that the surgery would be upcoming. She understood she could be back to work in 2 to 3 weeks, but if the children were placed with her, she would go on employment insurance benefits. She was told by her son's girlfriend that she would qualify for benefits if the children were with her. She testified that she had not yet called employment insurance regarding this benefit and was unsure if she would qualify.

[313] Further, she testified that although she planned to use daycare upon her return to work, she had not explored any options to date. She said that if she went back to work, she would have to find someone to sit with E.G. and the children "if I can find somebody".

[314] In cross-examination D.G. testified that she did not think the children should not be in E.G.'s care. This was her evidence despite her Plan of Care presented to the court.

[315] When asked about the prior protection proceeding from 1999 when E.G. hit a child in the head with a bottle, she acknowledged that she did not support therapy for E.G. Her evidence was that this had occurred two years after grandmother's death and that E.G. was crying regarding that loss, but D.G. didn't think she needed help. It had taken a court order to put counselling in place for E.G. It was D.G.'s evidence that she didn't get help for E.G. because she thought talking to her was enough.

[316] When asked about the 2006 incident involving her other daughter coming into the temporary care of the Agency, D.G. denied that she refused services for that child. She described her as a "troubled child" and that she did the best that she could but that her daughter "wanted out into the world".

[317] When asked by Minister's counsel about the children being taken into care in August 2012 when she tried to leave with the children, D.G. described it as a bad scene and that she was angry and confused. She said she was not told why the children were being taken into care. She admitted she denied entry into the home, then blocked the hall and tried to flee and that the incident had taken approximately three hours to resolve. She described the workers as strangers and thought that her behaviour was okay because she was not told why the children were being taken into care.

[318] When asked about her relationship with her husband, D.G. said they are separated, that he smoked marijuana with T.C. outside the home, he used "the N-word" but she did not believe he was a racist. She said he did come to the home.

[319] Respecting T.C. and his domestic violence towards E.G., she denied she ever observed domestic violence. She was aware that the allegation was that T.C. had backhanded E.G. and that she was aware of this in February 2014 when the child protection proceedings were dismissed and Family Court and the judge indicated that T.C. needed help.

[320] Despite this, she testified that T.C. started to be around E.G. and the children again in the summer of 2014 and that she was aware that he was not to be around E.G. and the children together. She told E.G. to check to see if this was okay but she didn't call the Agency herself, claiming that she was busy at work and felt it was sufficient that she told E.G. to do so.

Preamble

[321] In my analysis of the evidence in this matter, I have carefully considered the preamble to the *Act* which includes a reference to a child's right to the least invasion of privacy and interference with their freedom. This is compatible with their best interests and it is important to note that children have a sense of time which is different from that of adults. I consider that children are entitled to protection from abuse and neglect and that their rights and fundamental freedoms are no less than those of adults. I also keep in mind that parents have a responsibility for the care and supervision of children and those children should only be removed from the parent's care when all other measures are inappropriate.

Best Interests

[322] I must clearly consider the best interests of L.C. and A.C. and in this analysis I keep in mind the provisions of section 3(2) of the *Act*. Not all of these factors are to be given equal weight in each case and are to be seen in the context of the circumstances of each family.

Need for Protection

[323] The Minister is seeking an order for permanent care pursuant to section 42 (1) (f) of the *Act*. The burden of proof rests squarely with the Minister to prove its case on a balance of probabilities and that burden never shifts throughout.

[324] The Minister must first prove that L.C. and A.C. are children who are still in need of protection at the date of the hearing. It is not sufficient for the Minister to rely on any earlier protection finding. I find that in this case the Minister has met the burden of proof and that the evidence is substantial that L.C. and A.C. remain in need of protection.

[325] The risks identified by the Minister when L.C. and A.C. were taken into temporary care in this proceeding included the presence of domestic violence and the significant child protection history of T.C. and E.G. as well as the fact that child protection proceedings had very recently been terminated on certain understandings.

[326] The prior proceedings evidence for E.G. and T.C. is relevant. Those proceedings began when an identified risk to the children of sexual abuse by

T.C.'s uncle came forward. There was well-founded concerns that the parents did not appreciate the nature of that risk and voluntary services were put into place.

[327] In the midst of those services E.G. committed an act of violence against her younger sister which raised concern.

[328] Also concerning was the evidence that when the parties began a SAFE Assessment with Val Rule, Ms. Rule cancelled the assessment on the basis that she remained concerned that the parties were in denial regarding the risk T.C.'s uncle presented for the children. Though that assessment was ultimately completed once temporary care proceedings began, I find this was symptomatic of parents who demonstrate an inability to appreciate the risks their behaviours and surroundings may pose to the children.

[329] During the same proceedings there was domestic violence in the relationship. This is concerning for the following reasons: the act of domestic violence itself by T.C. against E.G. is of concern; the act was carried out in front of the children; E.G. left the home and thereby left the children with T.C. immediately after that violent incident; that T.C. left the home himself, leaving the children unattended. All of this is concerning and relevant to the current proceedings as part of the history of poor decisions that exposed the children to risk not only of having witnessed domestic violence, but also being left alone and unsupervised in that very emotional circumstance.

[330] Finally, when those proceedings were terminated it was very clear in the terms of the order that T.C. would not have any contact with E.G. in the presence of the children until services were completed related to domestic violence and until approved by a court. Ms. Brymer said this was explained to both parents at that time. Despite this, when the proceedings were terminated, the parties had begun to see each other in the presence of the children.

[331] While it is true that E.G.'s explanation was that she misunderstood what was required, the very fact of that misunderstanding raised questions regarding the current level of risk for the children. The fact that neither of the parties sought out legal advice on this issue and were capable of misunderstanding that circumstance, I find, leads to the conclusion that this created a significant risk for the children.

[332] The evidence in the current proceeding that led to the Minister taking the children into temporary care is very concerning for the following reasons: on July

10, 2014 E.G. and T.C. were together in the presence of the children contrary to the Family Court order; E.G. left T.C. in care of the children and went to the store despite the risk respecting T.C. and domestic violence; when E.G. was gone T.C. went to sleep; the children eloped from the home and ultimately were found by a neighbour across the street about one half a kilometre away; upon E.G.'s return home neither she nor T.C. called the authorities for assistance.

[333] Unfortunately, despite this incident, E.G. continued to have a relationship with T.C. She did so despite the repeated cautions of workers that this would have to be taken into account in assessing the risk to the children throughout the matter. To her credit, she said she ended the relationship after she met with Dr. Hann and came to understand the risk.

[334] That said, Ms. Boyd Wilcox raised the question of whether E.G. was able to maintain that distance and the related risk that in a new relationship she would be vulnerable to domestic violence again given her cognitive limitations and behaviours.

[335] Equally concerning was that neither E.G. nor D.G. has been able to fully articulate what the protection concerns were at the time the children were taken into temporary care and what they are today. Each talked about the limitations experienced by E.G., but neither had really tied them clearly to the risks that those limitations and behaviours pose risk to the children for a variety of reasons. I find that each had demonstrated a lack of insight into the breath of risk posed by each of them in the children's lives.

[336] I also find that the child protection history involving D.G. is concerning with respect to current risk. While I will discuss this further when reviewing her Plan of Care, it bears noting at this point that the child protection history is quite significant and, given that she was identified as a key support person and she proposed that she have primary care of the children, that history cannot be ignored.

[337] It is of concern to me that E.G. has misled and minimized respecting the history of domestic violence with T.C. In the Psychological Assessment with Ms. Boyd-Wilcox prior to the termination of the prior proceedings she did not identify any concerns respecting a history of domestic violence. The proceedings were in fact terminated in part on the basis, I find, that there was no evidence of such history of violence and that therefore, she and T.C. could have contact so long as it was not in the presence of the children.

[338] Yet in the PCA of Ms. Boyd-Wilcox in this matter, she did provide significant detail respecting domestic violence. I find this to be very concerning and a circumstance which I cannot find to be attributable to her cognitive limitations.

[339] There was evidence before me that the Minister interrupted some services when the children were taken into temporary care and did not provide services for the children as quickly as one might hope. On the other hand, I am satisfied that they have received significant services throughout the matter. The standard is not one of perfection for the Minister and any temporary delay in the provision of services is not, in my view, material to the assessment of all of the evidence before me in the analysis of whether risk remains for the children. The risk to the children does not arise from a lack of services to them. The risk arises from the cognitive limitations, absence of insight and behaviours of their parents and grandmother.

[340] The opinion evidence of Ms. Boyd Wilcox and Dr. Hann is very relevant in this proceeding. I find that the expert evidence was necessary and provided great assistance to me in understanding the evidence in the context of the parents' cognitive impairment. Though each expert appears to have used a somewhat different methodology, they arrived at substantially the same conclusion.

[341] Ms. Boyd-Wilcox found that E.G. suffered from significant cognitive impairments. She arrived at this conclusion both in the Psychological Assessments conducted in the prior proceeding and the PCA she completed in this proceeding.

[342] It is also relevant that Ms. Boyd-Wilcox had been able to identify through the self-report of E.G. that there had been a significant history of domestic violence between T.C. and E.G..

[343] Put simply, Ms. Boyd-Wilcox provides her opinion that E.G. does not have the capacity to parent the children without a significant level of support and supervision. This is clearly as a result of her cognitive deficiencies and resulting lack of insight into risk and her inability to anticipate and avoid that risk.

[344] Dr. Hann arrives at essentially the same opinion. The only difference is that he suggested that D.G. might be an appropriate support person for E.G. and that it would be appropriate to have D.G. assessed for that purpose in these proceedings. Dr. Hann did not provide his opinion that D.G. was an appropriate support person, only that she might be.

[345] Having reviewed both of their opinions and reports in this matter, I accept those opinions and find that they are properly grounded in the evidence. E.G. herself admitted to her cognitive limitations though I find that she somewhat underestimated the limits that she experienced and overestimated her abilities with respect to parenting. Given that two experts in the field arrive at the same conclusion respecting her capacity to parent is persuasive for me and I am satisfied that, on the balance of probabilities, it reflects what is found in the evidence. I therefore find that E.G. is not able to parent L.C. and A.C. without significant support.

[346] I also find, consistent with the opinions of both experts, that the support required will be very significant. That support person would have to be aware of and constantly mindful of E.G.'s limitations, be able to support her in whatever parenting role she was engaged with, provide her with feedback, reminders, cues and parenting support. That person would also have had to be mindful of the special needs of the children as identified and be mindful of the fact that they are young and very vulnerable. The amount of support required would be significant for even a professionally trained support person. I will addressed later in this decision whether D.G. is a person who could provide that support.

[347] I will state briefly that, based upon the evidence and the expert opinion of both Dr. Hann and Ms. Boyd-Wilcox, I find that T.C. likewise, is not able to adequately parent these children. Given that he had not participated in the contested hearing and had not put forward a Plan of Care, I will make no further findings respecting him.

[348] Ms. Boyd-Wilcox expressed a concern that given her overall assessment of E.G., there was some risk that she would recommence her relationship with T.C. and risk exposing the children to domestic violence. Ms. Boyd-Wilcox was of the opinion that there would have to be a lengthy period of disengagement between the parties to be sure that E.G. was not at risk of returning to that relationship. I agree.

[349] I also find that her opinion regarding other relationships was helpful as well. She opined that even if E.G. did not enter a relationship with T.C. again, she was vulnerable to new relationships that might involve domestic violence and would find it difficult to extricate herself. I find that both of these opinions are well-founded in the evidence and give rise to concerns respecting the current risk to the children.

[350] Respecting the suggestion by E.G. that she was not provided adequate services, including psychological counselling, I first find that there had been significant services provided over a long period of time. The only gap might have been psychological counselling for E.G. based on what was described as a recommendation by Val Rule. However, the evidence is clear that Ms. Rule was only suggesting such counselling and only if E.G. was willing to participate. The evidence of the Minister is that E.G. expressed no interest in such counselling and this was not contradicted by E.G. in her evidence.

[351] I accepted the opinion of Ms. Boyd Wilcox, summarized in cross-examination, as to why E.G. can't adequately parent the children. She indicated it was due to a lack of a support system, her cognitive impairments, her relationship with T.C. and her inability to extricate from it, the possibility that she would re-enter that relationship, and her concrete thinking regarding protection concerns, all of which combined to lead to an inability to assess risk and act on it before the risk occurs. I find this to be a helpful summary of her opinion and I accept it.

[352] As to whether, as Dr. Hann suggests, D.G. might be an appropriate person to parent the children or to support E.G. in parenting, for reasons that I will set out below in my assessment of her application for standing, I find that she cannot act as an adequate support to E.G. in parenting the children and she cannot adequately parent them herself as proposed.

[353] It is clear to me that despite the length of the intervention by the Minister, the fact that the children have been in care for most of their lives, the services provided to the family and the assessments completed, the children remain at risk and in need of protection. I am also unable to conclude that the support of D.G. or her plan of care to parent the children is, on the balance of probabilities, satisfactory to persuade me that the risk has been mitigated anyway. I therefore find that the children remain at risk and are in need of protective services at the date of hearing.

Grounds Under Section 22 (2)

[354] I must now determine if the Minister has met the burden of proving the grounds pled pursuant to s. 22 (2). The Minister said the grounds are s. 22 (2) (b), (g) and (ja) of the *Act*. I will consider these grounds.

[355] In order for me to find that there are grounds under s. 22 (2) (b), (g) and (ja) each requires proof of substantial risk to L.C. and A.C. I must therefore find that there is a real chance of danger that is apparent on the evidence.

[356] Section 22 (2) (b) requires a finding of substantial risk of danger of physical harm that is apparent on the evidence. I do not need to find that the harm will actually occur, only that there is a real chance that will occur.

[357] I do find that such substantial risk exists. E.G.'s cognitive impairments and history of exposure of the children to domestic violence, the risk that she may re-enter a relationship with T.C., the risk that in any future relationships she may expose the children to domestic violence and a general lack of insight into the reasons for the Minister's intervention leads me to conclude that the children are at substantial risk of physical harm.

[358] I further find that the children would be in a substantial risk of physical harm were they in the care of T.C. other than during supervised access.

[359] I further find that the children would be at substantial risk of physical harm were they placed in the care of D.G.. For reasons set out later in this decision, I find that she had demonstrated a substantial lack of insight into the reasons for the intervention of the Minister, her history of protection proceedings with the Minister are sufficient to cause me concern and her plan is inadequate in addressing the needs of the children and in managing the risks posed by E.G. and T.C..

[360] Section 22 (2) (g) requires a finding of substantial risk of emotional harm of the kind described in clause (f) and the parent does not, or refuses, or is unavailable or unable to consent to services or treatment to remedy, or alleviate the harm. Clause (f) requires that emotional harm be demonstrated by severe anxiety, depression, withdrawal or self-destructive or aggressive behaviour. There is ample evidence of prior domestic violence and neglect, including the children being left unattended. I do find, on a balance of probabilities, that I have evidence before me that the children are at risk of this type of harm in the future. I find that it is unlikely that the parents or grandmother will be able to provide services or treatment to alleviate the harm as each of them lack insight into the causes of this intervention and their histories suggest risk that cannot be managed.

[361] Section 22 (2) (ja) requires a finding of substantial risk of danger of physical harm caused by chronic and serious neglect by a parent or guardian and

that the parent or guardian does not provide, or refuses, or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm. I find that the Minister has made out this ground on the evidence.

[362] I find that there is risk of physical harm due in large part to the chronic and serious neglect of the parents in addressing the needs of the children for safety over a long period of time. Neither parent, or the grandmother has demonstrated any real level of insight into the causes of the domestic violence that the children have been exposed to and, consistent with the opinion of Ms. Boyd-Wilcox, I find that there is a real risk that the children will be exposed in the future to physical harm on this ground. This, coupled with the history of the children being left unattended, leads me to conclude that this ground has been made out by the Minister.

Services to Promote the Integrity of the Family

[363] I am mindful that I am unable to grant an order of permanent care unless I am satisfied that less intrusive measures, including those promoting the integrity of the family under section 13 of the *Act*, have been attempted and failed, or refused by the parent, or would be inadequate to protect the children. Keeping that in mind, and as discussed above, I'm satisfied that the Minister has proven that all reasonable services have been provided, or made available to the parents and to the children throughout this matter. There have been some delay in provision of services to the children. I have already dealt with the suggestion that psychological counselling should have been provided to the mother. In both these and the prior child protection proceedings, services were very thorough and supportive of the family.

[364] I find that reasonable measures had been taken by the Minister to promote the integrity of the family but had been ineffective.

Reasonable Prospects for Change

[365] As to whether there are reasonable prospects for change within a reasonably foreseeable time, I find that there are no such reasonable prospects. Despite the good work done by the mother in engaging with services and exercising access, I find little progress had been made by her as a result of her cognitive impairments. While there may be some forms of therapeutic intervention or training that she

might engage in to reduce some of these risks, there is simply no time left to accomplish this.

[366] With respect to the father, he had not meaningfully engaged in services, had not appeared in the permanent care hearing and did not present a Plan for Care for the children. As a result, I find there are no reasonable prospects for change within the timeline available to him.

Family or Community Placements

[367] Pursuant to section 42 (3) of the *Act*, I must also determine whether it is possible to place A.C. and L.C. with a relative, neighbour or other member of their community, or extended family before ordering permanent care. It is at this point that I must review the application for standing and Plan of Care of D.G.

[368] The test to be applied in assessing whether standing should be granted to a party in child protection proceedings was set out in the decision of another Judge Daley in *Children's Aid Society of Halifax v. C.(T.)* (1996), 152 N.S.R. (2d) 277 (NSFC) when the Court determined that, at paragraph 7, the *Act* intends and requires that all reasonable alternatives for the child's care be exhausted before a child is permanently removed from its parents. This is accomplished by the Minister searching out those who might provide a placement (relatives, neighbours or community members), or by an individual or individuals coming forward. The Court found:

> There needs to be more than just familial connection. There must be sufficient evidence that the person who is seeking leave, has a reasonable alternative to the permanent removal of the child from his family. In deciding if there is a reasonable alternative, is the question of the welfare of the child: is there a reasonable possibility, when compared to the other alternatives, that the welfare of the child may be enhanced by granting leave and hearing the evidence of third-party?

[369] There is no question that D.G. had a direct interest in the proceedings and that there is a clear familial connection. The real question is whether or not she should be granted party status on the basis that she had presented a reasonable alternative to the permanent removal of the children from the family. In other words, is there a reasonable possibility, when compared to the other alternatives, that the welfare of L.C. an A.C. may be enhanced by granting leave and hearing the evidence and Plan of Care of D.G.?

[370] Because in this case the evidence on permanent care and standing was called together, I have reviewed D.G.'s Plan of Care in the context of the overall evidence before me. On review, I find that her Plan of Care did not present a reasonable alternative to the permanent care order requested by the Minister as her plan did not provide a reasonable possibility that A.C.'s and L.C.'s welfare would be enhanced by that Plan.

[371] I find this for several reasons. First, the Plan itself was inadequate. She claimed, for example, that she was prepared to ensure the children had adequate supports through services. Yet, on cross-examination by Minister's counsel, she admitted that she had really taken no steps at all to ensure services were available for the children. She had made no contact and had no real information available to her about the programs.

[372] As well, despite her claim that she had childcare arrange for the children on her return to work, her plan was to have her friend B. S. provide that regular babysitting. It was the evidence of Ms. S. that she would not be prepared to provide such services but would do so on an occasional basis. Again, this represented a clear lack of planning and foresight by D.G. She later admitted she had not done anything to plan for such care when she was at work saying she would have to find someone.

[373] When questioned about her plan to be off work after her hand surgery and to collect employment insurance benefits, she admitted that she had not called to inquire if she would qualify and relied on what someone had told her about this.

[374] Further D.G. had a very significant history of child welfare proceedings that had been reviewed in the evidence. There is a clear pattern of her resisting services for her own children over time which leads me to conclude that she is unlikely to properly engage with and support the children through services were they placed with her.

[375] Reinforcing this was her behaviour when the children were taken into temporary care in 2012. Over the course of three hours she obstructed the workers and the police, attempted to leave with the children and was verbally abusive and aggressive to the workers. Her excuses to why she behaved this way were clearly inadequate.

[376] It is true that during the taking into temporary care in 2014, she had not interfered as she done in 2012. Even so, and despite her claim that she now

understood what to do in such circumstances, I am left with this history and I find that it is relevant and concerning.

[377] Further, she had demonstrated very little insight into the reasons for the children coming into care in the first instance and therefore, what to do to support and protect them if placed with her. For example, she said she did not believe that children should ever have come into the temporary care of the Minister to begin with. I have already noted that she had not been able to adequately articulate the protection concerns raised by the Minister. Though she was aware that T.C. and E.G. were not to have contact in the presence of the children after termination of the prior proceedings, she did not call the Agency and left that to E.G. despite E.G.'s clear cognitive deficits.

[378] There is no question that she loves these children, but I find she does not truly appreciate the impact that the parenting of the children has had on them and the risk they have faced. I find that she does not appreciate the challenges in moving forward in parenting these children and the challenges of moving forward in working with E.G. and managing the risk she presents.

[379] It was the request of D.G. that the timeline be extended to permit a further PCA of her as suggested by Dr. Hann. For the reasons above and based on the fact that the timeline for the children has already expired, I declined to exercise whatever discretion I may have in that circumstance. I certainly appreciate that she made an effort to request this assessment and, as a result of the timing and delays involved in obtaining Dr. Hann's PCA, she was unable to present her application on this issue in time.

[380] On the other hand, the *Act* makes clear that these timelines are to be respected, the children's sense of time is different than that of an adult and that L.C. an A.C. deserved finality. For most of their lives there have been interventions by the Minister and the family has not been able to make adequate changes to ensure their safety and future. It is simply time that we allow them to move on without further delay.

[381] As a result, I dismissed the application for standing by D.G. and find that her Plan of Care is not a reasonable alternative to permanent care of the Minister.

Decision on Placement and Access

[382] After careful review of the evidence and applicable law in this matter I find that the Minister has met the burden of proof and that it is the best interests of L.C. and A.C. that they be placed in the permanent care of the Minister.

[383] As to whether access with the parents should be ordered in this matter I take into account s. 47 of the *Act* as follows:

> 47 (1) Where the court makes an order for permanent care and custody pursuant to clause (f) of subsection (1) of Section 42, the Agency is the legal guardian of the child and as such has all the rights, powers and responsibilities of a parent or guardian for the child's care and custody.
>
> (2) Where an order for permanent care and custody is made, the court may make an order for access by a parent or guardian or other person, but the court shall not make such an order unless the court is satisfied that
>
> (a) permanent placement in a family setting has not been planned or is not possible and the person's access will not impair the child's future opportunities for such placement;
>
> (b) the child is at least twelve years of age and wishes to maintain contact with that person;
>
> (c) the child has been or will be placed with a person who does not wish to adopt the child; or
>
> (d) some other special circumstance justifies making an order for access.

[384] In dealing with this section it is helpful to note the comments of the Court of Appeal in *Children and Family Services of Colchester County v. K.T.*, 2010 NSCA 72 when the Court wrote:

> **37** Before the issuance of a permanent care order, the legislative focus is on preserving the family unit. This would understandably mean that when the children are in temporary Agency care, parental access is to be encouraged so as to hopefully rehabilitate the family. However, with a permanent care order, the focus shifts. Any hope of preserving the family within the legislated time limits is presumably lost and the focus becomes a stable alternate plan. Thus, upon securing a permanent care order, the Agency under the *CFSA* effectively becomes the parent:
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> …

> **39** Therefore, from my reading of s. 47, three conclusions relevant to this appeal are clear. First, the Agency effectively replaces the natural parents. This puts the onus on the natural parents (or guardian) to establish a special circumstance that would justify continued access. Second, by virtue of ss. 47(2) (a) and (b), an access order must not impair permanent placement opportunities for children under 12. Section 47(2) (c) is consistent with this. It provides that if no adoption is planned then access will be available. This highlights the importance of adoption as the new goal and the risk that access may pose to adoption. Third, for children under 12, the "some other special circumstance" contemplated in s. 47(2) (d), must be one that will not impair permanent placement opportunities.
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> **40** Therefore, to rely on s. 47(2)(d) as the judge did in this appeal, the (special) circumstances must be such that would not impair a future permanent placement. When then would s. 47(2) (d) apply? Consider for example a permanent placement with a family member which will involve contact with the natural parent. Presuming that the adopting parents would be content with that arrangement, the adoption would not be deterred. See **Children's Aid Society of Cape Breton-Victoria v. M.H.**, 2008 NSSC 242 at para. 35.
>
> **41** In short, access which would impair a future permanent placement is, by virtue of s. 47(2), deemed not to be in the child's best interest. This represents a clear legislative choice to which the judiciary must defer.

[385] In this case the evidence was that the Minister is planning adoption for these children and that at the time of the hearing there were six families who might be suitable. I find there are no special circumstances which would permit me to order access and that access would impair the efforts for adoption. I note for completeness that I have taken into account that L.C. and A.C. are bi-racial but none of the parties have raised any issues with respect to this fact for consideration by the Court. As a result no access will be ordered.

Timothy G. Daley, JFC