FAMILY COURT OF NOVA SCOTIA

Citation: Nova Scotia (Community Services) v. M.A.B., 2013 NSFC 11

Date: 20130529
Docket: FLB CFSA-071955
Registry: Bridgewater

Between:

Minister of Community Services

Applicant

- and -

M. A. B. and B. K. B.

Respondents

- and -

J.E.B.B.

Third Party

- and -

C. H. and G. H.

Fourth Parties

Editorial Notice

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

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

Section 94(1) provides:

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

Judge: The Honourable Judge William J. Dyer

Heard: January 22, 23, 29, 30, 31, 2013, February 4, 12, 14, 2013 and May 7, 2013 at Bridgewater, Nova Scotia

Counsel: Philip S. Gruchy, for the Applicant, Minister of Community Services
Barry F. Whynot, for the Respondent, M. B.
Jennifer Rafuse and Shawn O'Hara, for the Third Party, J.E.B.B.
Thomas J. Feindel, counsel for Fourth Parties, C. H. and G. H.

By the Court:

[1] This decision follows a review of disposition hearing under the **Children and Family Services Act (CFSA)**.

Background

[2] To facilitate understanding, I will identify the parties.

[3] Family and Children's Services of Lunenburg County is the agency.

[4] M. B. is the mother of four children, W, X, Y and Z . She will be referred to by her first name, by her surname, or as "the mother", as the context requires. The children will be referred to by their first names. (*editorial note*- to be known as W, X, Y and Z)

[5] All four children were the subject of **CFSA** proceedings in 2005. When those proceedings ended in 2006, the children were not in the agency's care.

[6] The present case relates to Z, who is now 10 years old, and Y, who is now 14 years old.

[7] Y lives with the mother, subject to agency supervision. Z is in the agency's temporary care and custody and has been in foster care since taken into care in September, 2010.

[8] Y is a party to the proceedings. Throughout, he has had the benefit of independent legal counsel. A watching brief was maintained until the last full hearing. As anticipated, Y's counsel did not attend that hearing and Y did not participate. However, by agreement, an affidavit from Y was entered into evidence without the necessity of courtroom testimony.

[9] B. B. is the father of X, Y and Z. He and the mother are now divorced. Although given notice of the proceedings, Mr. B. has not actively participated in

the present case and he has not put forward a Plan of Care for Y or Z. He submitted no affidavit(s) or other evidence for consideration.

[10] C. H. and G. H. are the children's maternal grandparents and were added as parties without objection. They are referred to as the grandparents or the H.'s. They participated in the hearing and put forward what was characterized as an alternate Plan of Care.

[11] There was a long list of lay and professional witnesses. Without intending any discourtesy, I have frequently referred to them by their surnames only.

Issues

[12] The agency seeks to terminate the proceedings insofar as Y is concerned and to place Z in its permanent care and custody.

[13] The agency's September 20, 2012 Plan of Care for Z was authored by Linda Jensen, an agency Supervisor. (She did not testify.)

[14] The mother wants continuation of Y's supervision order and seeks return of Z to her care, under agency supervision. Should Z not be returned to her mother's care, the H.'s seek placement with them, under agency supervision if need be, in lieu of a permanent care and custody award.

[15] The mother submitted that the children continue to be in need of protective services as contemplated by section 22(2)(b) of the **CFSA,** and as previously determined at the disposition stage. It is common ground that such a finding would be sufficient to sustain the various potential outcomes and orders proposed by the parties for Z. However, as mentioned, Y's status must be revisited.

New Evidence

[16] After receiving the evidence and hearing the submissions of counsel, I reserved my decision. But, on the brink of a scheduled (oral) decision to conclude the review, the agency gave notice that it wanted to reopen the case and introduce

"new evidence" about intervening events which (from its perspective) were significant enough to warrant the court's attention before the decision was released. (By this time, Y had retained new counsel.)

[17] There was informal discussion which centred on **Family Court Rule** 1.04, **Civil Procedure Rules** 51.05 (b) and 82.22 (2), and the import of **Children's Aid Society of Cape Breton - Victoria v. A. L.**, [2010] N. S. J. 290 and **Griffin v. Corcoran** (2001), 193 N. S. R. (2d) 279. The upshot was an agreement that I would reopen the case and admit into evidence several affidavits tendered by the agency, and one reply affidavit by the mother, without testimony by the deponents. Counsel for the grandparents and for Y elected not to submit supplementary affidavits, and also waived examination rights. All counsel then waived their rights to further closing submissions. I (again) reserved my decision to consider the "new" and the "old" evidence.

[18] I commend counsel for achieving a consensus on the new evidence issue. It was unanticipated and somewhat novel. It easily could have devolved into a time-consuming exercise with further delay in a lengthy case. As will appear, the scope of the hearing was already widened by the introduction of evidence from a prior **CFSA** proceeding, and, more recently, the start and subsequent "rollover" of another proceeding (and its evidence) into the current one (with its evidence).

The Evidence

Social Workers

[19] Given that the agency's involvement with the family goes back to approximately 1994, and given the competing perspectives on the weight to be attached to past parenting and the agency's own role and effectiveness in providing appropriate care, supervision, and support for the children when called upon to do so, it was not surprising that the evidence from social workers was voluminous. Reduction was difficult because counsel focussed on so many details.

Robert Snair

September 15, 2010 Affidavit

[20] Robert Snair is a social worker who was employed by the agency when Z and Y were taken into care in early September 9, 2010. He recounted the history of the agency's involvement with the mother and her children dating back to 1994 and included a summary of previous involvement and legal proceedings spanning August, 2004 to December, 2006.

[21] Snair described and elaborated on what he called a pattern of chronic neglect and inadequate supervision of the children by the mother. In broad brush, he wrote as follows:

> The children have been living in an unstable home environment where there is minimal structure, routine and discipline, and where their mother is not appropriately responding to their needs. The result is children who are aggressive and undisciplined. M. B.'s lack of parenting ability and mental health issues have placed the children at risk, both physically and emotionally. The basic physical and emotional needs of the children have often not been met. The younger children have been exposed to repeated incidents of aggression and violence involving W and his mother in the family home, which has often resulted in police involvement.

[22] Snair mentioned there was at least one period of stability for the family - between December, 2006 and the Spring of 2009 - when there was what he described as minimal agency involvement. However, there was no elaboration and no credit given to the mother or others (assuming this was not fortuitous).

[23] Snair summarized the events leading up to the agency's 2010 apprehension starting at page 3 of his affidavit. Particular attention was devoted to events in late July when Z was admitted to the IWK Hospital. The mother had found Z on the floor of her room. The child appeared to be going in and out of consciousness. As discussed elsewhere, Z was taken to the emergency department of the local hospital and then transferred to the IWK where there were suspicions of the possible ingestion of drugs. There were confusing toxicology test results at the time.

[24] Snair also recounted disclosure of a drug overdose by the mother which had resulted in her hospitalization. Snair captured the final triggering events as follows:

> Throughout the Agency's involvement with this family M. B.'s mental health has been a persistent problem. She was diagnosed in 2006 with Borderline Personality Disorder and also meeting the criteria for Passive-Aggressive Personality Disorder. Ms. B. has made multiple suicide attempts, with two overdoes (sic) of prescription medication in this past year alone. The most recent suicide attempt, noted above, was made on or about September 1, 2010 and resulted in Ms. B. being in a coma in hospital for several days. The information available to the agency suggests that this suicide attempt was a reaction to the stress that Ms. B. said she was feeling as a result of ongoing conflict with neighbours. Ms. B. made no attempt to shield her children from this most recent overdose, not did she make any arrangements for their care. The children were left to provide care for their mother and seek out medical assistance for her.

September 30, 2010 Affidavit

[25] Snair's late September, 2010 affidavit clarified that when Y and Z were taken into care, their sister X was residing with her father, B. B., in [...]. X returned to Nova Scotia in late September, 2010 accompanied by a social worker employed by a [...] child protection agency. The Nova Scotia proceedings were widened to include X and she was found to be in need of protection.

February 8, 2011 Affidavit

[26] By early February, 2011 Snair was reporting that the three children remained in the agency's temporary care and custody. X had been placed at [...] in Halifax, and was supposed to be attending school. Y had been placed at [...], also in Halifax, and was supposed to be attending a specialized education program. However, as discussed elsewhere, Y refused to attend school or any other educational program, he was frequently absent from his placement, and he allegedly became involved in dangerous and destructive activities. Z had been placed in an approved foster home and was attending elementary school.

[27] Snair confirmed that the mother was continuing regular counselling with agency family therapist, Stephen Young, and that she was also attending other therapy (with her eldest son, W). Services were being managed by Stephen Young and psychologist, Dr. Valerie MacDonald. Individual counselling was continuing for both X and Z at the time.

[28] Appended to this affidavit is the agency's Plan of Care for X, Y and Z. It provided an overview of resources being provided to the family and a host of other matters as mandated by the statute.

April 26, 2011 Affidavit

[29] Snair's last affidavit confirmed that by the end of April, 2011 the three children were still in the agency's care. Reportedly, X was frequently absent from her placement at [...] and presenting all sorts of challenges. Similarly, Y's residential facility placement at [...] continued to be problematic. Z's situation, by contrast, appeared to be much more stable.

[30] Snair confirmed that the agency had received a mental health assessment from psychiatrist Dr. David Mulhall to the effect that the mother did not suffer from any major mental health illness. Snair noted that the primary psychiatric diagnosis was one of "personality disorder".

Snair's Testimony

[31] During his testimony, Snair was asked about the agency's response to Dr. Mulhall's report. He confirmed that there had been no treatment recommendations and could not recall whether Dr. Mulhall was queried about potential services to alleviate the mother's difficulties. When pressed, Snair said the only services offered to the mother were access to her children (while they were in care), some counselling or therapy, transportation services, and that a Parental Capacity Assessment was recommended. Asked to identify the therapists offered or provided to the mother from 2009 to 2011, Snair confirmed that there was just one - an in-house therapist (Stephen Young).

[32] It was on Snair's watch that Z's foster mother contacted the agency with a view to reducing the mother's contact with Z. However, Snair was unable to recall the particulars. (Unfortunately for the witness, he apparently was not provided with copies of the agency notes and his own records so that he could better prepare for the hearing.)

Archie Kennedy

[33] Archie Kennedy is a social worker employed by the agency. He assumed responsibilities from Robert Snair.

November 7, 2011 Affidavit

[34] In early November, 2011 Kennedy wrote that X was continuing to reside at [...] in Halifax and had been frequently absent from her placement without permission. At the time, it was said she could often be located at the "Occupy Nova Scotia" site in the city. This was a widely publicized and controversial protest/ political event which occurred in Halifax. Similar protests occurred across Canada, and in other countries.

[35] X decided to quit school because it was causing her too much anxiety. She agreed to consider enrollment in an alternative school, but did not attend a meeting to pursue this. She had a few counselling sessions with one Wendy Green but her frequent residential absences interrupted the sessions.

[36] At this time, Y was at [...] in Halifax. He had a brief admission and stay at the [...] from which he was discharged in late October, 2011. Within days of his discharge, he left his normal placement without permission and was reportedly staying away for extended periods. There were allegations by [...] staff that Y was involved with drug use while away from his placement. It was said that he was refusing to participate in individual counselling, at that time.

[37] No formal reports from, or about, Y's or X's Halifax placements were put in evidence. No reports about Y's secure treatment stay were introduced.

[38] By early November, 2011 Z was in an approved foster home and attending a public school. There were reports of "behavioural difficulties following access visits with her family". As a result, visits with her mother were increased and visits with her siblings were decreased. By then, telephone access had been eliminated.

[39] Also by that time, B. was continuing counselling with agency family therapist Stephen Young, and attending family therapy with W as facilitated by Young and psychologist Dr. Valerie MacDonald. Arrangements had been made for B. to see Jan Cressman for additional mental health counselling. The mother was admittedly cooperative throughout.

February 27th, 2012 Affidavit

[40] By late February, 2012, the agency had completed its review of plans for X and Y, and it was exploring ways for them to leave residential care and reside with family. The proposal was for an incremental and progressive return of the children to family, and it was proposed that B. and the H.'s share responsibility for the children. Practically speaking, there was an agreement that Y would live with the H.'s and that X would return to her mother's care.

[41] Kennedy admitted the agency anticipated that X would rebel against any boundaries and rules, that there would be conflict, and possibly a breakdown of the placement. There was lingering concern that Y would not have adequate structure at his grandparents. To address these concerns, and in preparation, access visits were expected to expand.

[42] However, the agency wanted Z to remain in an approved foster home and was not prepared to consider ending that placement.

June 11, 2012 Affidavit

[43] In mid June, 2012 Kennedy wrote that the agency had learned that the H.s were unable or unwilling to continue responsibility for Y's care and custody. As a consequence, the agency took a decision to support Y's return to his mother's care

and custody with agency support and supervision. A family support worker was arranged to assist the mother with parenting, education and support. It was recognized that X and Y would be presenting the mother with many challenges if she was to successfully parent two children on a full time basis.

[44] Kennedy confirmed that a report had been received from therapist Ken Osbourne in early June, 2012 (discussed elsewhere) and that Osbourne would be working with Z and M. B. in joint sessions in the following weeks and months.

[45] Kennedy wrote that:

> ...the agency has decided that the best approach for this family is to work cooperatively with Ms. B. to agree to the extension of the time available for disposition orders in this proceeding. The agency is proposing that this proceeding terminate and that a new proceeding be commenced, thereby extending the disposition time that will be available to the court and the parties.

[46] The latter reference is to the agreed "rollover", mentioned at the outset.

September 25, 2012 Affidavit

[47] Kennedy wrote that the respondent B. B. resides in [...] and had no involvement in the proceeding since it started in September, 2010. He noted that his co-worker Maggie Stewart was responsible for Z.

[48] Kennedy reiterated that Y and Z were taken into care (as mentioned) in early September, 2010 and were both found to be in need of protective services in mid December, 2010. He confirmed the original proceeding concluded in mid June, 2012, as agreed. The rollover included consolidation of "new" interim, protection and disposition hearings following coincidental termination of the initial child protection case.

[49] The court had reconfirmed that Y and Z were in need of protective services, approved a plan for Z to remain in temporary care and custody for three months, and authorized return of Y to his mother subject to agency supervision for three months.

[50] The June, 2012 consolidated order included terms for access between M. B. and Z, continuation of individual counselling for the mother with Dr. Gretta Taylor (weekly), provision of an agency family support worker, and individual counselling for Z (Ken Osbourne). Insofar as Y was concerned, the order provided for ongoing counselling with Michael Belgrave. Additionally, weekly therapy for the mother with Jan Cressman was approved.

[51] Kennedy wrote that it was fully anticipated that the transition for Y back to his mother's care would be difficult and that a minimum of six months would be required for the agency to determine if the mother would follow through with services, to assess her commitment to improved parenting, and to determine if her mental health status was stable.

[52] Kennedy noted that B. was adamant that she wanted Z returned to her care. However, the agency resisted on the basis that it believed she and the children required further services to ensure a successful return for Z.

[53] Kennedy expressed the agency's position at that time as follows:

> The agency was particularly concerned about a premature return of Z to her mother's care and the significant risk that Z would again need to be removed from the home environment in order to protect her from harm should Ms. B. be unable to provide the care, stability and nurturing required by Z.

[54] In late June, 2012 Kennedy introduced Family Support Worker Rosalie Carmichael to B.. Kennedy described the mother as being "very negative about my presence in her home" and that she "appeared resistant to engaging in ongoing family support sessions with Ms. Carmichael". In her evidence, B. attributed any negative behaviours displayed to him and/or Rosalee Carmichael to the stress surrounding her children's return.

[55] (I disregarded several paragraphs in this affidavit authored by Kennedy. I sustained objections about hearsay content raised by B.'s counsel and have given no weight to the offending content.)

[56] Kennedy met with B. and Y in late August, 2012. At that time, there was discussion concerning plans for Y's schooling for the upcoming academic year. B. reportedly confirmed that Y and X had both been in trouble with the law for shoplifting. Both the mother and Y reportedly confirmed that Y had been staying periodically with his grandparents, C. and G. H..

[57] As of late September, 2012 Kennedy said the agency's position with respect to long term planning for Z was the same as before the first legal proceeding was terminated and the rollover.

> Based on M. B.'s documented and ongoing challenges with parenting her children, the agency's position remains that it is in Z's best interest to be placed in the permanent care and custody of the Minister of Community Services.

[58] Kennedy acknowledged that all of the family members had significant attachment and love for one another but insisted it was also clear that the mother did not have the ability to make and maintain the changes the agency considered necessary for her to create an appropriate home environment for Z, in particular. Kennedy wrote that Z needed a stable long term plan and could not remain in limbo indefinitely. At the time, Kennedy also asserted that the mother continued to demonstrate poor decision making in relation to the supervision provided for X and Y. In his opinion, the mother continued to be unwilling or unable to put into practice the structures and limitations on those children that would be reasonable and expected or normal.

[59] Kennedy confirmed that on August 29th, 2012 an agency risk management meeting was convened and a decision was made to terminate family support services. Kennedy said that decision was based on reported observations that Ms. B.:

> . . . knows what is expected of her in order to ensure the safety of her children but whether she's able to put that knowledge into practice is still in question, given her poor decision making in regard to X and Y this summer.

[60] Kennedy said the agency decided to push forward with the permanent care and custody application as further delay was not perceived to be in Z's best interest and that (from the agency's perspective) the mother's ability to parent was unlikely to change to the point where she could adequately care for Z and protect her from future harm, in any event.

[61] With that said, Kennedy noted that the Z's access with her mother and siblings would remain the same pending court approval of a permanent care order. In the same vein, counselling and therapy would continue to be offered to the mother and her daughter.

[62] Kennedy said the agency recommended continuation of agency supervision under court order insofar as Y is concerned.

October 25, 2012 Affidavit

[63] In late October, 2012 Kennedy confirmed that Z was continuing to see Ken Osbourne for therapy and that the agency was receiving regular updates from him. Y was back with his mother, with the agency's approval.

[64] Kennedy acknowledged that he spoke to the mother before a court appearance in mid September 2012 and confirmed that she requested resumption of family support services. However, the agency took the position that she had been taught all of the skills that the family support program could offer and took the position that the real issue was her capacity to follow through with the application of the skills already taught. Kennedy said the mother was encouraged to make contact with the Parenting Journey Program, if she felt she required additional or further support. (As noted elsewhere, the mother did so)

[65] Kennedy said that in mid September, 2012 there had been referrals and allegations about youth in the community coming and going from the B. residence and being engaged in drug use while there. B. firmly denied any drug use in her residence whatsoever, to her knowledge. As indicated elsewhere, on those occasions when she returned from appointments in the city and there were teenagers at her home with the apparent blessing of X and/or Y, she asked those individuals to leave immediately. She reiterated that she was concerned about what

was happening in her absence but she was, at the time, travelling to Halifax three times weekly for professional visits and access with Z.

[66] In considering the foregoing, I observe that none of the complainants or referral sources were identified and, accordingly, the allegations were unsubstantiated. Nonetheless, some agency representatives continued to be concerned that the B. residence was a "popular hang out spot for the children from the community". I find the agency's propensity to rely on unsubstantiated rumour and innuendo did nothing to allay B.'s own suspicions that the agency's agenda and the family's fate were already sealed.

[67] Kennedy wrote about a police service referral in mid October, 2012 having to do with Y. However, I have disregarded that portion of the evidence as it was unsupported in the evidence from the police authorities.

[68] However, around the same time, Kennedy said that the mother disclosed her own concerns about Y staying at an inappropriate location and being provided with drugs and alcohol while there. Kennedy said the mother went as far as to identify other individuals who might assist with the agency's investigations.

[69] There were efforts to convene a meeting to include Kennedy, the mother and Y but that did not come to fruition before the end of October, 2012. As of the end of October, 2012 the stated position of the agency, according to Kennedy, was:

> that M. B. was unable to exercise adequate parental authority with her children. The agency does not support the return of Z to this home environment.

January 22, 2013 Affidavit

[70] Kennedy updated the family's circumstances in late January, 2013 by reaching back in time and stating that by late May, 2012 X had left her mother's home and returned to the Halifax area. Reportedly, the mother did not know precisely where her daughter was staying, and according to Kennedy, the mother did not inform the agency that X had left her care.

[71] The mother had taken steps to register X in school following her return to the family home but reportedly X only attended a few days and then stopped.

Kennedy said that the mother didn't inform the agency that X was refusing school attendance and said that she did not ask for agency help to address the issue in any event.

[72] Kennedy said that when X was returned to the home, the agency wanted to see if the mother could set reasonable limits to protect X from harm and would ensure school attendance. As far as the agency was concerned B. did not meet its expectations.

[73] Kennedy said that Y initially did well following placement with his maternal grandparents. However, he said the agency learned in late May, 2012 that Y was having overnight visits with his mother without prior agency approval. It was learned that he (once again) stopped attending school but he claimed the agency was not informed.

[74] Kennedy said that by the end of May, 2012 the H. were not prepared to continue responsibility for Y because he kept running back to his mother's home. Kennedy said that he proposed that Y spend weekends with his mother and that the H. should continue to provide a home during the week. He said that C. H. reluctantly agreed to this proposal on the understanding it would not be a long term arrangement.

[75] He again mentioned Carmichael's reception by the mother and added that she was also very negative generally about the agency's involvement and that she blamed the agency for the problems she was experiencing with her children.

[76] In late August, 2012 Kennedy said he met with the mother to discuss school placements for Y and X and to also discuss family support services. On that occasion, the mother disclosed legal difficulties Y was having. The same was said with regard to X. Kennedy said that the mother disclosed problems in making Y adhere to a regular curfew.

[77] Kennedy conceded that he had observed an improvement in the mother's presentation over the last year. He candidly attributed that improvement to the involvement of Dr. Gretta Taylor. Kennedy said that the mother was observed to be better able to interact positively with him, personally and he also acknowledged that the mother had made advances identifying and coping with her emotions.

Nonetheless, Kennedy insisted there were outstanding concerns about the mother's capacity to maintain her improvements when stressed or overwhelmed by her personal circumstances or the demands of her children.

[78] Kennedy visited the mother's new residence in mid January, 2013. Y was there and his demeanour was described in positive terms by Kennedy.

[79] M. B. discussed the involvement of C. T. of the Alternative School in [...]. There was also discussion regarding Y's school attendance and his mother's perception of observed improvements. In the same vein, B. informed Kennedy of the involvement of Donette Getson from the Parenting Journey Program.

[80] Kennedy recounted his version of the mother's short term involvement with one D.B.. B. disclosed to Kennedy an incident of domestic violence which she said prompted her to terminate the relationship with this gentleman. B. admitted to Kennedy that she had not reported the foregoing to the police or to the agency.

[81] Kennedy said that at of the end of January, 2013, and as at the hearing, his opinion was that M. B. was unable to exercise adequate parental authority with her children. He said the agency does not support return of Z to her home.

[82] Kennedy was aware of the H.s' intention to advance a so-called alternative plan for Z's care. After reviewing their plans, the agency took a decision that it would not support them.

Kennedy's Testimony

[83] Kennedy reiterated in the courtroom that the agency fears repetition of the fate for Z as befell Y and the other siblings. He reiterated that there were outstanding and unresolved concerns surrounding the mother's ability to safely and securely parent Z because of a complex combination of the mother's personal shortcomings and challenges in meeting her own needs.

[84] Kennedy ventured to say that although there have been outward appearances or signs of progress by the mother, they are not sufficient and, indeed, may be false, to the point where the agency will not support her plan for repatriation. This

was a clear attack on the mother's credibility and trustworthiness, in and out of court.

[85] Kennedy testified that the agency wants Z to have a secure home and life - elsewhere than with her mother. However, he said that the agency is prepared to support ongoing contact between mother and daughter, provided it is outside a formal court order.

[86] On cross-examination, Kennedy reaffirmed that Y and X were both "out of control" during their residential placements in Halifax. He said the agency was quite concerned about their circumstances. However, he was vague, if not evasive, on who ultimately was responsible and accountable for locating the children and returning them to their placements when they were absent without permission or when their whereabouts were otherwise unknown.

[87] Kennedy acknowledged that the agency was well aware of the BPD diagnosis attributed to the mother. However, when asked why the agency referred the mother to Jan Cressman for counselling, he was unable to speak to Cressman's qualifications or training regarding BPD and frankly stated "I didn't delve into her C.V." And he offered that his memory was unclear about why the agency settled on Cressman for the referral. Nonetheless, Kennedy did recall that the mother cooperated with counselling and services as suggested and recommended by the agency.

[88] Oddly, given its significance in the case, Kennedy said he was aware Dr. Gretta Taylor's involvement - but professed that he could recall few details regarding her engagement and her work. He could not recall the transportation arrangements for the mother to see Dr. Taylor - other than to note that the agency had agreed to pay for it.

[89] When faced with voluminous access facilitators reports (350 pages), Kennedy was also unable to recall any specific issues or concerns identified by agency facilitators. This is important because he had made sweeping, negative generalizations about the mother's parenting capacity, which presumably took into account mother/daughter interactions during dozens of visits. He struggled to find anything negative about the mother in the reports or, indeed, anywhere else, supporting his broad assertions.

[90] On another front, when asked to elaborate on the agreed "rollover" of the former proceedings into the current one, Kennedy was unable to provide any cogent explanation despite full access to agency and court records. Given that it occurred with court approval at a critical juncture, and for reasons stated on the record, the witness' memory for events and his credibility were certainly shaken.

[91] Kennedy acknowledged that the agency was getting regular reports from Ken Osbourne regarding the bonding between mother and daughter. He agreed that joint counselling sessions involving both mother and daughter were approved by the agency at Osbourne's request. When reminded that the joint sessions were ultimately terminated, Kennedy could not recall the circumstances under which that occurred. In fairness, however, I find it more likely that social worker Maggie Stewart was a key player at that stage and likely was involved in the decision making. Also, in fairness to him, there were times when he was away from his employment and therefore did not attend some meetings when critical decisions were made. Allowing that he was not a participant for several weeks during the summer of 2012, when asked why he did not take steps later to self-inform and "get up to speed" about developments in his absence, Kennedy was vague and defensive, in my opinion.

[92] During cross-examination, Kennedy unabashedly agreed with the proposition put to him that the agency really could not help Y, in any event, and that the agency had endorsed the transition from the grandparents back to his mother because there were no other viable options. He agreed that the supervision order which accompanied Y's return home was approved by the agency.

[93] Giving some credit where credit is due, Kennedy was candid about Y by essentially saying that the agency found itself "between a rock and a hard place". Unfortunately, and with respect, I find the witness was not as generous and forthcoming when it came to evaluating the mother's capacity and prospects in the face of the same challenges.

[94] Pressed on the issue of the mother's current parenting capacity and about gains or advances in recent months, Kennedy simply insisted those gains were "not global enough" to support Z's repatriation. He struggled to elaborate.

[95] Kennedy acknowledged that the return of both X and Y to the mother's home was very stressful and demanding. However, he agreed that the only extra services offered to the mother was a family support worker (Carmichael), and the professional work being done by Dr. Gretta Taylor.

[96] As mentioned elsewhere, the agency subsequently decided to end family support services and to press on with permanent care and custody for Z.

[97] Kennedy agreed that after Carmichael's services were terminated that the mother later requested reinstatement - but the request was turned down by the agency. Kennedy justified this by saying that she had been provided with family support services for several years and there was nothing more to be gained.

[98] When asked directly if the agency's final position at the hearing was "truthfully what the agency was looking for all along", Kennedy said, "yes".

[99] Kennedy was aware that the mother had self referred to the Parenting Journey Program which is not funded by the agency; but he seemed to be unaware of the service provider's objectives, policies, level and intensity of service, etcetera.

[100] As a lead worker for the agency, Kennedy was present through much of the hearing and had the benefit of Dr. Taylor's evidence. Before the referral to Dr. Taylor, Kennedy admitted that the mother was doing everything that she could regarding her BPD. After hearing Taylor's evidence, Kennedy was still sceptical about whether the treatment and the likelihood of long term improvements.

[101] Regarding access should a permanent care and custody order be granted, Kennedy reiterated that it was the agency's position that court-enshrined access would compromise or jeopardize the chances of successfully placing Z for adoption (which is the agency's goal). Kennedy conceded that termination of the mother/daughter contact would emotionally harm Z (according to the expert evidence) but opined that the benefits of a permanent adoption placement outweighed the potential harm. He described the exercise as a difficult balancing act in order to get what he described as the least detrimental outcome.

[102] Kennedy clarified that both X (while in care) and Y had short term placements at the secure treatment facility in [...]. He acknowledged those temporary placements did not have any obvious long term benefits.

[103] Kennedy agreed that the mother was always keen on Y attending school and obtaining an education. He agreed it would be difficult, if not impossible, to actually force a teenager to continue or to resume schooling if he or she decided not to.

[104] Importantly, Kennedy agreed that the statutory deadline for possible orders other than permanent care falls in the month of December, 2013. However, he asserted that Z's placement has been languishing for a long time and that the agency seeks a determination at this time and resists delaying the outcome until the time periods have been maximized under legislation.

[105] On cross-examination, regarding the mother's interest in the whereabouts of X when she was in Halifax and thought to be involved with the Occupy Nova Scotia movement, Kennedy admitted X simply would not tell her mother where she was at the time and he conceded it was presumptions on his part to suggest, as he did in his affidavit, that the mother did not want to know where her daughter was. He ultimately agreed the mother was trying to find out the precise whereabouts of her daughter at all material times, albeit unsuccessfully, and that she was at the very least maintaining text communication.

[106] As Kennedy concluded his testimony, I was left wondering if he and his colleagues have been expecting and demanding more of the mother than is reasonable given the agency's own track record (for X's and Y's care and supervision) and whether there is a double standard in play.

Kari Trethewey

[107] Kari Trethewey (formally Kari Whitfield) is a veteran child protection social worker who is familiar with M. B.'s family and who was involved with and is familiar with former proceedings by the agency under the file FLBCFSA-071955A. Exhibit 2 is a voluminous bundle of evidence from the former proceedings which

includes two previous Plans of Care for the children W, X, Y and Z which she authored in late October, 2005 and early July, 2006, respectively.

[108] I have reviewed but will not attempt to regurgitate the five affidavits that Trethewey submitted in the former proceeding. I will highlight some aspects of her affidavits which were given attention during testimony in the present case.

July 7, 2005 Affidavit

[109] This 40 page affidavit spans 195 paragraphs. It purports to set out the background circumstances which triggered the agency's involvement and the commencement of proceedings in 2005. In June of that year, a risk management conference was convened by the agency and position taken that despite agency involvement with the family over the many months and despite offerings of services, that the perceived risks to the children had not decreased and that there had been a deterioration in the mother's ability to respond to and meet the children's needs.

[110] By that time a psychiatrist, Dr. Milliken, had already offered a borderline personality diagnosis of the mother. And, perhaps not surprisingly, the agency believed there was a significant mental health component impacting on the mother's ability to benefit from services and to make the necessary changes in her parenting to reduce the risk to the children. There was concern about a reported lack of follow through by the mother with psychiatric and psychological services, and evidence that the mother was unable or unwilling to discipline and respond to the challenging behaviours of her children. Despite the depth and breadth of the many concerns at the time, the agency's opinion was that the risks to the children could be reduced by refining services under and through proceedings that would see supervision of the family. There was no perceived need to take the children into care at that time. Incidental to the proceeding, a Parental Capacity and Psychological Assessment was authorized.

December 12, 2005 Affidavit

[111] By December, 2005 B. reportedly was continuing counselling/therapy with Mary Haylock and professional assessments were still pending. The upshot of Trethewey's report at the time was that the risk of harm to the children had not significantly increased to the point that removal from the mother's home was necessary.

July 10, 2006 Affidavit

[112] In July, 2006 Trethewey was reporting that a Parental Capacity and Psychological Assessment of the mother had been carried out by psychologist Elaine Boyd (now Boyd-Wilcox). Trethewey made it clear that no follow-up treatment and/or therapy was recommended by Boyd. However, continuation of family supports and services were recommended and, according to Trethewey, were being pursued by the family.

[113] Trethewey wrote that at a risk management conference held in early June, 2006 M. B. had volunteered that she had been diagnosed with a Bi-Polar Disorder but she noted that Boyd had actually ruled out such a diagnosis. Boyd was cited as believing that the mother more likely had a Borderline Personality Disorder (BPD) and that she also met the criteria for so-called Passive-Aggressive Personality Disorder. Other observations and opinion offered by Elaine Boyd at the time are canvassed elsewhere in this decision.

[114] Trethewey wrote in July that it was the decision of the protection team that "inasmuch as the children were not at risk at present but rather more likely at risk on a long-term basis" that the mother should be given more time to make the necessary changes to successfully parent independently of the agency. Accordingly, at the time, the agency sought a further six month supervision order with enhanced services.

October 16, 2006 Affidavit

[115] Trethewey's mid October 2006 affidavit briefly reviewed the legal history to that point and confirmed that the children had remained in the sole care and

custody of their mother under agency supervision. After mapping out the reports of various professionals and observers of the family, Trethewey wrote as follows:

> Your deponent advised the group that from the Agency's standpoint there are no current protection concerns and there have been no investigations since September, 2006, regarding M. or the children; your deponent advised that things appear to be going well and that the agency appeared to be on track for terminating its involvement with M. and the children in December, 2006:
>
> **December 4, 2006 Affidavit**

[116] By early December, 2006 the statutory deadlines for the maximum involvement of the agency under a supervision order or orders was about to expire. The legal options at the time were dismissal of the proceeding or an order for permanent care and custody of the children.

[117] Trethewey wrote that the mother had been somewhat inconsistent in attending appointments with counsellor, Mary Haylock, but that was due in part to the demands of parenting. And, to her credit, the mother reportedly was attending school while juggling parenting responsibilities. That said, Haylock told the agency that she was satisfied with the progress the mother was making and that overall the mother had exhibited stabilization in her life and had demonstrated the ability to cope with things differently than in the past. The agency's family support worker was similarly reporting no concerns regarding the safety and well-being of the children.

[118] At a risk management conference in December, it was noted that the professionals involved with the family were:

> ... generally positive in their assessment of Ms. B.'s progress; none of the professionals in question have reported child protection concerns and Ms. B. is noted to be coping well with crises in her life as they arise and it was further noted that she and the children have maintained a consistent pattern of stability at home, in school and in the community; there have been no new referrals received since September 26, 2005, which have met the criteria needed to warrant investigation.

[119] Accordingly, Trethewey wrote that she advised the protection team at the time that she had come away satisfied that the children themselves have no protection concerns and that they and the mother no longer required support services. That reinforced a decision by the agency to motion for dismissal of the underlying application in early December, 2006.

[120] An end to the proceedings did not mean the mother would not have to face the accumulated evidence again. Although there were no contests as such during 2005 -2006, the agency moved to introduce the former evidence into the present proceedings. It went in by consent on the understanding that examination rights would be honoured. The result was a bloated (current) hearing as the parties waded through what had been presented years ago. A bloated decision is another obvious byproduct.

Agency Plan of Care (October 27, 2005)

This Plan of Care gives a succinct overview of agency services intended to be provided to the family to alleviate the prevailing challenges within the home and the criteria by which the agency was going to determine when its care and custody or supervision was no longer required.

Agency Plan of Care (July 6, 2006)

[121] In a similar vein, the July, 2006 Plan of Care briefly describes the services being provided to the family and the agency's expectations leading up to its eventual termination of the case.

Trethewey's Testimony

[122] During questioning about the former proceeding, Trethewey confirmed that the agency was alert to a BPD diagnosis which prompted its referral to Mary Haylock for counselling services. However, Trethewey was another witness who was unable to state Haylock's qualifications to address BPD or otherwise explain why the referral was made to Haylock.

[123] Trethewey was unfamiliar with reports of Post Traumatic Stress Disorder symptoms or diagnosis in 2006. She is generally well aware of the hallmarks of the disorder. She was alert to the mother's episodic depression and at least one suicide attempt. She recalled that the mother was struggling as a single parent with four children and few community or family supports and that she had just come out of an abusive domestic relationship. Trethewey also confirmed that the agency confined itself to referrals for services which had been recommended by Elaine Boyd in her first assessment and did not stray into other areas.

[124] Trethewey was repeatedly asked to confirm (which she did) that the agency was well aware in 2006 of the BPD diagnosis.

[125] Exhibit 13 is an excerpt from the Diagnostic and Statistical Manual of Mental Health Disorders which provides a generally accepted overview of BPD. At least five of nine of the delineated criteria must be present to confirm a diagnosis. Despite identification of BPD (which is not to be confused with Bi-Polar Disorder and other conditions), Trethewey said there was no therapeutic referral targeted at addressing or alleviating the underlying disorder.

[126] Despite the absence of a focussed referral, Trethewey took the position that the presenting difficulties were being adequately addressed by Mary Haylock during the course of her professional work.

[127] Trethewey also had knowledge of the second round of legal proceedings and volunteered that in the January - September, 2011time frame the mother had issues and difficulties during access visits which centred, principally, on the mother's ability to adequately supervise and discipline the children.

[128] When invited to point to specific examples (in Exhibit1) where the mother fell short of the agency's expectations during access visits, the witness struggled and was hard-pressed to substantiate her broad sweeping allegations. Not to overstate the point, she was not the only agency social worker who had this problem.

[129] Trethewey did acknowledge that the mother episodically requested increased access to her children - in particular, Z in recent times. Trethewey, for some reason, was somewhat reluctant to acknowledge the mother's requests for

improved access opportunities with Z, but she eventually conceded that agency records did disclose improvements in the arrangements despite some resistance from the foster parent. I should add that all of this is against the background of Trethewey's knowledge of the prior work of the agency with Y and X, including their short term placements at the secure treatment centre. She was well aware of the challenges the mother faced as the older children were repatriated and, of course, the agency's own difficulties in managing placements for those children when they were in agency care.

[130] By way of new evidence, Trethewey said that in early April, 2013 she went to the mother's home early in the day. She wanted to assess whether a safety plan had been put into place for S.A.'s infant daughter (discussed elsewhere). The agency had directed that S.A. and W B. were not to be together in the presence of their child because of "ongoing concerns about W's volatile behaviour". Trethewey said X answered the door and that Y was also there. To her, it appeared he had been sleeping on the sofa.

[131] Trethewey said she observed S.A. come out of a bedroom, later identified as Y's room. Trethewey said S.A. confirmed that she was aware of the agency's expectations with respect to contact with W.

[132] Trethewey asked to check the entire residence. This was agreed to by B.. Trethewey did not observe W on that occasion. However, in the mother's bedroom she found another young individual, one N.R., and a young male child whose name she said was E.

[133] Before leaving, Trethewey said that she observed the home to be very untidy. She did not elaborate.

Maggie Stewart

[134] Maggie Stewart is a social worker employed by the agency. She submitted an affidavit dated January 21, 2013. Stewart noted that Z has resided in two foster homes since the proceedings started. She was initially placed in the home of one E (*editorial note- to be known as E to avoid confusion with another party*) where she remained until late November, 2010. She was then transferred to another foster

home where she remained until June, 2011. And finally, Z returned to the E home where she currently resides.

[135] Stewart confirmed that shortly after Z was taken into care in early September, 2010 she was referred to therapist Ken Osbourne who provided regular therapeutic support until she moved from her first foster placement. Services with Osbourne resumed after the child's return to the first foster home in June, 2011. Stewart assumed responsibility for Z's "children in care file" in late September, 2011. Since then, she has maintained regular contact with the foster mother, and with Ken Osbourne. She said she has also had regular contact with the child, either at school or in the foster home. Based on her own observations and review of agency file materials, Stewart believes that she has developed a good sense of Z's needs and how they might best be met.

[136] According to Stewart, Z needs structure and routine in her home environment, and she does best when there are clear and consistent expectations placed on her regarding her behaviour. Stewart stated that Z needs a caregiver capable of following through on disciplinary consequences. Moreover, Stewart stated that Z needs nurturance by which she meant "loving care and attention". It is Stewart's belief that Z receives such nurturance from M. B. and the current foster mother.

[137] Objection was taken to opinions Stewart attempted to express regarding the root causes of past concerns surrounding Z and the observed, gradual improvements in her behaviour after she was taken into care. Not surprisingly, objection was also taken to hearsay references to events about which Stewart had no direct knowledge. At one stage Stewart said as follows "For the most part, my direct conversations with Z have been fairly superficial. I left the exploration of sources of fear, stress and anxiety for discussion with Mr. Osbourne".

[138] In my opinion, the objectionable portions of Stewart's evidence can be, and they have been, addressed by me more appropriately elsewhere in this decision.

[139] Stewart wrote that as a children-in-care social worker, it is her belief that all children are potentially candidates for adoption, despite the challenges in achieving that outcome for some children. She said it is the responsibility of the agency to try to place children for adoption wherever possible. She noted this is the expectation

of the Department of Community Services for children in permanent care and custody.

[140] Stewart said that it is her understanding that foster care is not meant to be a permanent home - rather temporary until a child can either go home or be adopted. According to her, adoption provides children with a sense of security and stability as a member of a family that is not available through long term foster placement.

[141] Stewart confirmed that it is the agency's intention for Z to remain in her current foster home until it is possible for her to be placed for adoption. However, she said it is also the agency's intention to maintain contact between Z and her mother and siblings "for as long as this is possible, provided it does not interfere with her prospects for adoption and remains in her best interests".

[142] In her testimony, Stewart acknowledged that she is aware of Ken Osbourne's position on mother/daughter contact and said that this is reflected in the agency's current plan albeit not intended to be captured in a court order.

[143] The witness made reference to policies or directives of the department that access, even when agreed, ought not to be embodied in court orders. The policies or directives she was referring to were not introduced into evidence.

[144] In her testimony, Stewart confirmed that she was also the child-in-care worker for both Y and X in September, 2011. She found her assignment very challenging and acknowledged that when both of those children were placed in residential settings in Metro that each child was frequently absent without permission and that Y became involved in the Youth Criminal Justice System.

[145] Stewart was aware that M. B. frequently went to the city to check on Y, in particular and had expressed concerns about him and his sister getting wrapped up in the so-called Occupy Halifax movement.

[146] Stewart also confirmed that Y had a brief stabilization placement at the [...] facility which did not prove terribly helpful.

[147] Stewart acknowledged that at one stage she met with Ken Osbourne who recommended that an access assessment be conducted and that the Parenting

Capacity Assessor perform that task. She confirmed that the agency did not follow Osbourne's advice.

[148] Stewart seemed to have limited knowledge of the mother's additional access request for Z and the resistance or interference being proffered by the foster mother.

[149] Stewart said she learned of Dr. Gretta Taylor's involvement and conceded that since the mother has been consulting with Dr. Taylor that she (Stewart) has noticed improvements in the mother's presentation, eg. better management of emotions, more effective and appropriate expression of concerns, etcetera.

[150] At the end of the day, Stewart confirmed that she was under directions to oppose court ordered access in the event a permanent care and custody order is approved for Z.

Tina Peddle

[151] Tina Peddle is an adoption worker for the Department of Community Services, Lunenburg District Office. It is her responsibility to locate appropriate adoptive homes for children placed in the permanent care and custody of the agency. Her duties include identifying and selecting potential adoptive homes, determining children's placement needs and readiness for adoption, preparing children for the transition to a new adoptive family and following through with the adoption process from placement to legal conclusion.

[152] Peddle identified Z as a child with "special emotional and behavioural needs". She cited Maggie Stewart, the child's social worker, as the source of these attributes.

[153] Peddle's affidavit speaks for itself but it canvasses various placement methods currently used. Statistically, she reported that as of December 31st, 2012 there were 121 waiting families approved for adoption in Nova Scotia. Of those, 30 families reportedly had expressed an interest in potentially adopting a female Caucasian child of 10/11 years of age. According to Peddle, departmental statistics

also indicate that from April 1st to December 1st, 2012 there were 11 children in the age category of 11 years and older who were actually placed for adoption.

[154] Peddle explained that under section 7A of the **CFSA** there is provision for Oneness Agreement. She said these are agreements for the purpose of facilitating some level of contact between adoptive parents and the child's birth relatives. She said these Agreements are not legally binding and that they have no effect on the legal status of an adoption order. She wrote, "Openness in adoption can be seen as a continuum from the sharing of non-identifying information such as letters to direct contact".

[155] Peddle's evidence was that any plan to enter into an Openness Agreement must be in the child's best interests and be child focussed. She stated an Agreement must not present a risk to a child's health, safety or well being; and will only occur if the birth family, adoptive parents and child (where appropriate) are able to support the adoption itself and contact plans.

[156] Peddle said that the Department does not maintain statistics on the types of contact which is occurring under Openness Agreements.

[157] Peddle's evidence, based on her experience, is that the most common form of contact is the provision of non-identifying letters and possibly photographs, perhaps once or twice yearly, facilitated by Department offices. She said she is aware that some adoptive families have direct personal contact with the birth family but she described these as rare.

[158] During her testimony, Peddle acknowledged that she has not been involved with a permanent care and custody case in which a final order has recognized and authorized access by a parent or other family member. She said it was difficult to say what the impact of court sanctioned access in a permanent care and custody order might be in terms of the prospect for adoption placement but she reiterated that most adoptions follow orders in which no access has been ordered. She speculated that if there is court ordered access the pool of potential adoptive parents would be smaller.

[159] In cross-examination, Peddle confirmed that she was aware of Ken Osbourne's counselling role and his opinion on potential severance of the

mother/daughter contact. Notwithstanding Osbourne's opinion, she said that the agency's position has not changed (i.e. re court sanctioned access).

[160] Peddle was unable to say how many potential adoptive families would accept a so-called high needs child at this time. Regarding statistics, she cited about children in the 11 years of age category, she was unable to give any data regarding gender. She was unable to say how many of those children have special needs and of those "11 years and older who are placed for adoption" she was unable to give an elaboration on placement in relation to specific ages.

[161] Peddle confirmed that she was not a participant in the agency team decision to seek permanent care and custody for Z.

[162] Also in testimony, Peddle acknowledged that she had not, in fact, read all of Ken Osbourne's reports - indeed, she had seen only one report in the last six months preceding the hearing and that report she saw the day before the hearing commenced.

[163] Peddle also acknowledged that although she has spoken to social worker Maggie Stewart and seen the final Plan of Care, she has not read any of the background professional reports and many affidavits introduced or proposed to be introduced at the hearing. She explained that that is because most of her work is done after an order is granted. At that stage, she may then seek access to the child protection file, consult with various professionals, etcetera, in order to facilitate potential adoption placement.

[164] When pressed in cross-examination, Peddle confirmed that she saw the agency's final Plan of Care just before the hearing commenced and that she had last spoken to social worker, Maggie Stewart, once between March, 2012 and the start of the hearing. The final contact with Stewart was reportedly to assist with preparation of Peddle's own affidavit which would be introduced at the hearing.

Simone Fournel

[165] Simone Fournel is a social worker who assumed responsibility for the agency's file in relation to the mother and Y. (Her co-worker, Maggie Stewart, has

been responsible for the agency's file in relation to Z). Her involvement started in mid-February, 2013.

[166] In late March, co-worker Heather Haughn contacted her and they discussed Haughn's work with W B. and one S.A., and their newborn child. (See below.)

[167] According to Fournel, B. disclosed that Y had stopped attending school and refused to return. The mother disclosed that she tried to get her son to go back but was unsuccessful. The mother reiterated her concern about the failure to attend. She subsequently went to B.'s residence. She met with Y who confirmed he was not attending school.

[168] There was some tension between the worker and the mother when the worker attempted to engage the mother in discussion about X's health status.

[169] B. disclosed that A. occasionally visits with the newborn but that W did not do so. The worker observed the home to be tidy.

[170] In late April, 2013 Fournel made two visits to the mother's residence. She observed two (unidentified) females at the residence, plus X. There was some attempt to discuss Y's circumstances directly with him but he refused to engage. According to the worker, the house was untidy and had a strong smell of urine. The worker characterized the visit as unproductive because, according to her, B. was angry and eventually terminated their discussions.

[171] Fournel said that the mother telephoned her later and explained that she was upset because a friend of hers had recently died. She also expressed renewed concerns about the plans for Z. Following the brief telephone conversation, Fournel returned to the B. residence. In Y's presence, there was discussion about potential options for his education. Asked directly if Y had mentioned any particular issues surrounding the school he was supposed to be attending, the worker said he simply stated he was "bored by it".

[172] The worker said that X was also present at the second visit. She said that X confirmed that she was living in Halifax but spending time in B. and, when there, staying at her mother's home.

[173] There was brief discussion with the mother about making arrangements for Y to continue to see his counsellor, Stephen Young. And, according to the worker, B. also disclosed that Y had left her residence for a few days at the end of March because he reportedly was worried about "getting beaten up" by unidentified individuals. Fournel said that the mother had contacted the police who helped her locate Y in Halifax, He was later returned to his mother's house. At the time of the second visit, the residence was "significantly more tidy".

[174] Fournel said that she met again with the mother on May 2nd, 2013. There were discussions about Y's counselling and, according to Fournel, the mother informed her that she [B.] was making plans for X to return to B. and live with her. She said the mother expressed hope that X would resume schooling and if that occurred, it might be easier for Y to regain interest.

Heather Haughn

[175] As noted**,** Heather Haughn is a social worker for the agency who is responsible for the file relating to W B., S.A., and their infant daughter, Sa., born in late March, 2013.

[176] Haughn wrote that in mid March she met with S.A.. She said S.A. provided information regarding W's living arrangements (which have been a concern in the present case). S.A. informed the worker that W was staying with his mother, two nights per week.

[177] Shortly after, Haughn said she spoke by telephone with X B.. According to Haughn, X informed her she was staying with her mother. She also said that X confirmed that W had stayed at the mother's home the previous night.

[178] Haughn met with W around mid-March. She asked him where he was living. According to her, she needed that information in order to set up transportation for him to attend visits with his newborn daughter. She said W told her he goes back and forth between his mother's home and an apartment being shared with S.A.. His actual residential schedule or routine was unclear to her.

Medical Evidence

[179] The medical evidence figured prominently at the hearing. It spans several years. I have given it more attention than usual because of its significance in the parties' respective legal positions.

Dr. John Christian Pugh

[180] Dr. John Pugh is a veteran emergency department physician. He gave evidence surrounding Z's admission to the local hospital about two and a half years ago when she presented with what he described as abnormal behaviours, altered consciousness, "divergent gaze", "episodic lashing out", etcetera. I find it unnecessary to elaborate on his examination and initial diagnosis given that Z was transferred to the IWK on his direction. Dr. Pugh's essential diagnosis was that the child may have ingested antidepressants or other prescription medications.

[181] Although there was initially concern about the risk of death, Dr. Pugh confirmed that clinical tests tended to point away from such a high risk scenario.

[182] On cross-examination, Dr. Pugh confirmed that his working hypotheses was that the child had experienced what he described as a toxic ingestion or, possibly, was experiencing some sort of seizure disorder of an unknown origin.

Dr. Kevin E. Gordon

[183] Dr. Kevin Gordon is a Pediatric Neurologist at the IWK Health Centre. Z was seen by him in late March, 2011. He had seen Z the previous July when she was transferred to the IWK following ingestion of medications at home, was admitted to the local hospital, and then transferred. That incident was described as a "single abnormal toxicological result"

[184] The working diagnosis was a toxic ingestion of substance - with a possible alternative diagnosis of a seizure disorder.

[185] Dr. Gordon's concluding 2011 comments were that there had been no recurrent events since the incident the previous July. He noted that there were no

confirmation tests done regarding the ingestion in July and, in any event, that the recovery did seem unusually quick for an ingestion.

[186] Dr. Gordon noticed that there had been no recurrences of anything resembling a seizure and he conceded it was possible that she had a "single event".

[187] Another option referred to by Dr. Gordon was a "confusional migraine". He stated that the speed of recovery would be consistent with migraine.

[188] In the final result, Dr. Gordon was unable to assign a cause for the initial episode of diminished level of consciousness which the child presented with on admission to the IWK.

[189] Dr. Gordon did not see any need for follow up assessment by him.

Dr. Amy E. Ornstein

[190] Dr. Amy Ornstein is a pediatrician and a Medical Director, Child Protection Team, IWK Health Care Centre at Halifax. She confirmed that a toxicity screen was performed while Z was an inpatient at the Centre. Although there was a request that the child be screened for tricyclic antidepressants (TCA), such tests were not done.

Dr. David R. Mulhall

[191] Dr. David Mulhall is a psychiatrist based in Kentville. Child protection worker Robert Snair referred B. to him. There was a 1.5 hour consultation in late March, 2011. Dr. Mulhall had access to some agency documents including a Parenting Capacity Assessment completed by Elaine Boyd-Wilcox in May, 2006.

[192] Dr. Mulhall's written report includes a lengthy summary of disclosures by the mother. His assessment was primarily to determine the presence of active mental illness/mental health issues. He opined that there was no evidence of a current, significant major mental illness, but believed that her primary historical psychiatric diagnosis was one of Borderline Personality Disorder (BPD).

[193] Dr. Mulhall thought that B. might derive some modest benefit from the use of low dose Bupropion to reduce what he described as emotional reactivity.

[194] He concluded it was unlikely that there would be a role for formal involvement with psychiatry and he ruled out other psychotropic medication. He also reaffirmed that she might benefit from previously recommended involvement in self-esteem programs and continuing parent management programs along with family therapy involving her children.

[195] Dr. Mulhall stressed that his assessment did not measure B.'s parenting capacity.

Dr. Richard W. Kydd

[196] Dr. Richard Kydd is B.'s personal physician. In a report authored in early May, 2012 he confirmed the following:

[197] He saw B. in early August, 2011. At the time she was treated for a medical condition with antibiotics over a ten day period. She was also given a prescription for an antidepressant that she had already been taking on a regular basis. And, she was prescribed an anti-anxiety type of medication. Both the antidepressant and anti-anxiety medications included 30 tables with five refills.

[198] B. was not seen again until early April, 2012 when an antibiotic was prescribed for a urinary tract infection.

[199] There was an annual check up in March, 2012. The patient disclosed that she had not used up all of the previously prescribed medications for anxiety and depression. She disclosed she was seeing a psychologist but did not disclose any concerning issues. Dr. Kydd was not privy to any of the psychologist's file materials.

Intensive Short-Term Dynamic Psychotherapy (ISTDP)

[200] I will not attempt a full dissertation regarding ISTDP which received a great deal of attention during the course of the hearing. I took from the evidence that it

is a type of short-term psychotherapy whose origins are largely attributable to an internationally recognized Canadian psychiatrist one Habib Davanloo.

[201] The main goal of this type of therapy is to help a patient overcome what is commonly referred to as internal resistance to experiencing ones true feelings about the past and about the present. It was said that often such feelings have been warded off because they are too painful or too frightening for the patient. By intensive therapy, it is hoped the patient will be helped to deal with or experience the suppressed feelings as much as possible. The experience of overcoming those obstacles is intended to happen as quickly as possible. The dynamic feature apparently relates to the necessity of working with unconscious feelings and forces and transference of them.

[202] My impression from the evidence is that this therapeutic technique in not unlike peeling back the layers of an onion, to use a crude analogy. That is, the therapist peels back the various layers of unconscious feelings by using very specific interventions and techniques. These are finely honed, by training and by experience, and in theory, are calculated to overcome a patient's resistance as quickly and completely as possible. By this method, it is believed, patients will sooner, rather than later, experience true feelings about the past and the present and thereby have expedited improvement in mental health and general well-being.

[203] As discussed next, Dr. Allan Abbass at Dalhousie University has done empirical research regarding the efficacy of ISTDP and has attracted a host of professional followers and advocates - including Dr. Gretta Taylor and psychologist Dr. Gerald Hann, both of whom testified.

[204] Dr. Abbass and others claim that there is empirical evidence that ISTDP is not only effective from a mental health point of view, but also cost effective in terms of delivery of health services.

[205] The evidence also suggests that ISTDP is distinct from, and perhaps markedly different from, another professionally popular therapy knows as Cognitive Behavioural Therapy (CBT). Reportedly, CBT has also been shown to be effective in numerous clinical trials particularly in dealing with depression and anxiety disorders. In the present case, there was not a lot of evidence devoted to CBT but my general impression is that both CBT and ISTDP have their adherents

and proponents who hold strong opinions regarding clinical efficacy. I mention this because the evidence suggests that CBT is perhaps the more traditional and conventional approach, and is still employed by many psychiatrists and therapists. By contrast ISTDP appears to be more on the cutting edge of treatment, even though its origins go back to the 1960's or 1970's.

Dr. Allan Abbass

[206] Dr. Allan Abbas is a professor and Director of Education at the Dalhousie University Department of Psychiatry. His December 1, 2011 report to M. B.'s lawyer was admitted by consent. Dr. Abbass did not testify.

[207] I will not dwell on those portions of the report which deal with M. B.'s extensive disclosures to Dr. Abbass about her history and circumstances. They speak for themselves. But, the salient portions of the report include the following:

[208] Dr. Abbass found no signs of cognitive perceptual disruption and no sign of psychotic process or delusion. There were no signs of cognitive impairment. He said that B. has "historically had features of borderline personality disorder" and postulated she may have "met many criteria for personality disorder". And he wrote that "some entertainment of the diagnosis of post traumatic stress disorder related to the assault at age 16 is warranted".

[209] However, Dr. Abbass finally opined that "using the broad diagnostic criteria and looking at the entire history a diagnosis of borderline personality disorder is warranted". (My emphasis.)

[210] As far as treatment of the personality disorder is concerned, Dr. Abbass strongly endorsed "the Intensive Short Term Dynamic Psychotherapy model" (ISTDP). In his words,

> We found that patients with borderline disorder could benefit with an average of about thirty-six treatment sessions and have significant improvements in a number of domains. Although all patients in this group do not benefit significantly from this treatment it is certainly warranted to try this approach since it is available and relatively brief and cost effective. We have also accumulated a large body of data on the cost effectiveness of this approach for people with personality disorders and

> have found a massive cost reduction through reduced hospitalization and medical visits after a relatively short course of this treatment.

[211] In the result, Dr. Abbass recommended from 40 to a maximum of 60, one hour treatment sessions using the ISTDP model. He went on to provide an estimate regarding cost.

Dr. Gretta Taylor

[212] Gretta Taylor is a licenced medical practitioner. She is currently a general practising hospitalist with the Department of Psychiatry, Capital Health in Halifax. Since 2010 she has also maintained a psychotherapy practice out of Lunenburg. As appears from her *curriculum vitae*, she is currently training in ISTDP and seeing patients under the supervision of Dr. Allan Abbass.

[213] Taylor's evidence was that she has employed the ISTDP method in helping between 30 and 40 patients since 2010. As mentioned, her treatment is under the close supervision of Dr. Abbass. She will not get another license, degree or diploma following completion of her supervised work. However, her training and supervised practice will continue for as long as this is deemed appropriate by Dr. Abbass.

[214] I ruled that Taylor may give expert opinion evidence regarding ISTDP for reasons stated on the record.

[215] As discussed elsewhere, it was Dr. Abbass who referred B. to Taylor for treatment. There is no cost to B. because the expense is covered under the MSI program.

[216] Taylor first saw B. in mid December, 2011. Her written reports will be found in Exhibit 3 at Tabs 21, 27 and 38, respectively. I have disregarded those portions of the reports purporting to give opinion evidence regarding B.'s fitness as a parent, for reasons stated on the record.

February 24, 2012 Report

[217] By the end of February, 2012 B. had completed over 17 hours of therapy. Taylor noted that in his referral that Dr. Abbass had entertained a diagnosis of Borderline Personality Disorder and also raised the possibility of a diagnosis of post-traumatic stress disorder connected to an assault which occurred when B. was a teenager.

[218] Taylor described in considerable detail the method employed by her during the interviews or consultations. By February 2012 Taylor had already placed B. in a "healthier category of person within the spectrum of borderline disorder". She reported that B. appeared to be organized and working hard during the sessions. Taylor referred to some "small breakthroughs of grief, relating to prior events/losses, actions taken in the past which she regrets, and with regards to being detached from herself". At the time, it was recommended that B. would benefit from at least 40, and perhaps up to 80, hours of ISTDP. In Taylor's opinion, the likely result would be increased self understanding and the patient would gain coping skills and improved ability to engage in healthier relationships.

May 16, 2012 Report

[219] By mid May, 2012, Taylor was able to confirm significant gains as self disclosed by B.. Particulars appear in the written report. After elaborating on the gains, Taylor noted that they had been made despite the fact that between January and March of 2012 B. had gradually stopped taking four different psychotropic medications all or which could have a sedating and other effects. Reportedly the patient felt no need to resume any of those medications.

August 31, 2012 Report

[220] This report was sent to the agency at the request of social worker, Archie Kennedy. By the end of August, 2012 B. had completed 60 hours of therapy with Taylor. She cited Dr. Abbass and a study or studies in the Halifax area which reportedly showed benefits in patients with Borderline Personality Disorder who used the ISTDP model.

[221] Taylor characterized B. as being very motivated in therapy, well engaged, and as having made considerable gains over the course of treatment. She noted the gains in some details and invited the social worker to discuss the same with B..

[222] Not without some irony, it was Archie Kennedy who invited Taylor to comment on B.'s parenting abilities. Although Taylor obliged, I have disregarded those portions of the August, 2012 report, as mentioned.

[223] Taylor mentioned cessation of therapy after 60 hours on the understanding that it could be resumed. According to Taylor, both she and B. thought that it was time for B. to attempt to put her gains into practice. This, coupled with the other demands on her at the time, resulted in a temporary suspension of therapeutic services.

[224] Exhibit 13 is an excerpt from the Diagnostic Criteria for Borderline Personality Disorder as found in the DSM-1V. Taylor explained how, in her opinion, the hallmarks of BPD found in her patient could be addressed or ameliorated by ISTDP.

[225] Taylor explained in her testimony that B. re-engaged in therapeutic services in September, 2012 and that they picked up where they had left off. By the time of the hearing, she was continuing to see B. approximately once weekly and over 78 hours had been devoted to therapeutic treatment.

[226] Taylor reiterated that at the present time B. continues to show signs of progress, that she continues to be motivated and that the patient is driving the process. Mindful that the maximum treatment regime of about 80 hours was fast approaching at the time of the hearing, Taylor volunteered that treatment could be continued and expected that that would occur.

[227] Taylor's opinion was that B. demonstrated sufficient hallmarks to bring her under the DSM-IV criteria for BPD but by the time of the hearing that she no longer was demonstrating the five needed criteria for such a diagnosis.

[228] Taylor said she could not rule out reoccurrence of several of the markers for BPD in the future especially if the mother was under extreme stress but she hoped that would not occur. But, her opinion was that if the patient's general anxiety

continued to decrease over time that the likelihood of reoccurrence would lessen as well.

[229] Taylor stated that the return of Y and X to the mother's home was very stressful for the mother and therefore treatment scheduling and engagement were extremely difficulty. She underlined that cessation of therapy was only for a very brief period of time - perhaps a month or so. We now know that it is only Y who is living in the home.

[230] On cross-examination, Taylor was challenged as to whether B. was really making progress or simply "putting it on" because of the critical stage of legal proceedings. Taylor firmly asserted that B. is very different from those patients who are faking or feigning progress and Taylor believes that the progress being made is real and driven by the patient herself. In her words, she does not believe that she is being sold a bill of goods.

[231] I will note at this juncture that Taylor's professional opinions on the central issues surrounding ISTDP and its potential for success in the present instance were not challenged by any expert opinion evidence on behalf of the agency. As was the case with Dr. Hann and Dr. Abbass, the likely evidence was well known by the agency long before the hearing started.

[232] Before concluding, Dr. Abbass wrote that this treatment approach begins with what is called a trial therapy. It allows one to determine the likelihood of response within a handful of treatment sessions in most cases. According to him, the trial therapy would be able to determine the likelihood of response usually within a month or two of the beginning of treatment.

[233] Dr. Abbass' assessment, treatment recommendations and prognosis were left uncontradicted.

Family Supports

Rosalee Carmichael

[234] Rosalee Carmichael provided family support services to M. B. briefly in 2006 and again in 2012. The services were canvassed by other witnesses, including Robert Snair.

[235] Given the passage of time, there is no point in dwelling much on 2006. Regarding the June to August, 2012 time frame, Carmichael's re-involvement saw focus on supervision, routine and structures, respect, and follow-through by the mother. Sessions were set up weekly and generally consisted of discussions between the worker and the mother. Apparently, there were no videos or other study materials. According to Carmichael, during the summer of 2012, the mother did not herself identify any major areas of concern or interest She perceived the client as being somewhat volatile in mood and receptiveness to the services which were being offered. However, she testified that B. was always respectful.

[236] The mother disclosed to Carmichael some of the challenges she was then facing at home with her children. According to the witness, although the mother was open to ideas and suggestions, she continued to struggle with follow-through.

[237] The last session was one in which Carmichael said the mother was expressing general frustration with everything that was going on in her life at the time. That said, Carmichael also testified that the mother disclosed that there were some improvements, particularly with Y, but the mother was also very concerned that the agency had its own agenda insofar as Z's future was concerned.

[238] According to Carmichael, it was in late August that the mother declared she no longer needed family support services.

[239] In assessing the forgoing evidence, I found it surprising when the witness admitted that she was unaware of, or could not recall, that the mother had been diagnosed with Borderline Personality Disorder. All Carmichael could recall was that she had learned of conflict between the mother and some of the agency workers. When pressed, could not recall any specifics of the mother's (by then) widely known mental state or condition.

[240] Carmichael admitted that she did know in late August, 2012 that permanent care and custody of Z was a possibility - but she claimed that as far as she knew no final decision had been made while she worked with the mother. She was also

unaware that the mother asked for resumption of family support services after she (Carmichael) ceased working for the agency.

[241] When presented with copies of Minutes from an agency risk management meeting of August 29th, 2012, Carmichael acknowledged that she attended the meeting and that she gave a report regarding her visits which she described as generally positive. She also conceded that she reported to the meeting that the mother seemed to understand what was being expected of her and that the mother was acting more socially appropriate and less resistant. Importantly, the Minutes indicate that it was Carmichael who informed the meeting that additional family support services would not be helpful and there was no mention of the mother expressing that opinion. Carmichael eventually conceded that the agency decided to terminate family support services and that she (personally) supported the decision. Carmichael went as far to say that when she learned of the permanent care and custody decision she concluded such an outcome was best for Z.

Access Facilitators

Susan Budden

[242] Exhibit 1 is a voluminous book of Access Facilitators Reports. Susan Budden was one of the facilitators and supervised around 140 visits between Z and her mother. Some, but not all, of the visits included X and Y.

[243] It is not practical to regurgitate each and every one of Budden's responses to questioning about the visits because, broadly speaking, they generally went well and there were no exceptional concerns or incidents. She spoke of the strong affection and apparent bond between mother and daughter.

[244] Budden mentioned that the mother attended virtually all of the scheduled visits, that she was always concerned about her children's education, that she appeared to support any counselling efforts for the children that might be offered, etcetera.

[245] There were several references in Budden's regular reports to the agency about the mother's wish for more access with Z and the difficulties she experienced in this regard.

[246] I note that the witness expressed no serious concerns or worries about the maternal grandmother's conduct or interactions during those visits which she attended.

[247] Incidentally, Budden also corroborated the mother's evidence that she was very concerned about Y and X when they were placed by the agency in the city. The concerns centred on the level of supervision and control that was being exercised over the children. Without labouring the point, within Budden's records and testimony there were frequent references to the events surrounding the so-called Occupy Halifax movement and the activities both of those children at the time which tended to corroborate the mother's recollections and version of what occurred at the time.

Tina Lineker

[248] Tina Lineker was an access facilitator for several months in 2012 (February to August). The evidence was that she supervised about 40 of the mother's visits with Z. Her notes will be found in Exhibit 1.

[249] The overall impression this witness' testimony left is that supervised visits went well and there were no serious concerns on any front. Her testimony also corroborates the strong evidence from others of the affection between mother and daughter, and among siblings and other family members when present.

Counsellors/Therapists

Jan P. Cressman

[250] M. B. was referred to Jan Cressman for counselling by the agency in mid November 2012. A written report from Cressman in late May, 2012 confirmed that they met several times, the last being around mid January, 2012.

[251] Cressman reported that B. was seeing another therapist twice weekly at the same time that she was seeing Cressman. Their appointment times started to conflict and she and B. jointly decided it would be best that B. continue therapy with the other individual.

[252] Cressman reported that B. was forthcoming during the sessions which did occur. She offered that B. was clear that she wanted to do whatever was necessary for her children to be returned to her care.

[253] Cressman confirmed that they worked on issues of grief and loss of her children. They also worked on communication skills as between B. and her peers.

[254] Cressman met with X B. just once in late May, 2012. Her mother was in attendance and encouraging and supporting her daughter's involvement. However, the child decided that she did not want to continue and did not feel that counselling would be of benefit to her.

Siblings

Y B.

[255] M. B.'s son, Y B., authored an affidavit in late May, 2012. By agreement, Y's affidavit was admitted into evidence. He did not testify. He was 14 years old when he signed the affidavit. He had been in the agency's care since early September, 2010.

[256] In May 2012 he was residing with his maternal grandparents, C. and G. H.. Previously, he had been living at [...] in Halifax. He said he was gone quite frequently from his [...] placement and often spent the nights in tents throughout the city. He wrote that he was "pretty much free to come and go as I pleased and neither the Agency nor staff at [...] made any effort to ensure that I stayed at [...]".

[257] While living in the city, Y said that he was supposed to attend school at [...]. He said he did not like school and did not always attend.

[258] Y admitted that while in the city he broke the law by doing such things as "car hopping and stealing". He said that charges were laid for some of the incidents and found there way through the Youth Court Justice System. There were no outstanding charges in May of 2012 against Y, according to him. However, he said that he had received six months probation for some past involvements.

[259] Y wrote that he had never been in trouble with the law previous to his experience in Halifax and being taken into care by the agency.

[260] While living with his grandparents, he said that he was attending a local school three days weekly.

[261] By late May, 2012 Y said that professional counselling in Halifax which had been made available to him had discontinued. He expressed an interest in re-engaging in counselling in the local area.

[262] In May, 2012 Z was residing in a foster home. He said that he was only getting to see his sister, Z, once a month and that contact occurred in the city.

[263] Y expressed a wish to return to his mother's care, under agency supervision if need be. He wrote that if he was returned to his mother's care that he would attend school locally.

[264] We know the return did occur. His circumstances are discussed elsewhere.

[265] I note that Y's factual assertions about his care and supervision while in agency care, and while at an agency approved placement, went uncontradicted for the most part. There was no countervailing evidence from [...] staff or others responsible for him at the time.

[266] His uncontradicted evidence should be troubling to those responsible for arranging the Halifax placement. As appears elsewhere, to her credit, his mother was very concerned about the situation. This is sadly ironic, in my opinion, given the criticisms directed to the mother's shortcomings and failures as a parent and the efforts she has made to try to keep her admittedly challenging son safe and secure, and to promote his education.

X B.

[267] By agreement, two of X B.'s affidavits were admitted into evidence without the necessity of her testifying.

[268] The first affidavit was signed in mid February, 2012. X confirmed that she had been in care since late September, 2010 and that she was then residing at a Group Home, "[...]", in Halifax. Notwithstanding the formal placement, X wrote that she had not been residing primarily at [...] for about three months and had actually been staying with friends throughout the city. According to X, the agency had made no efforts, as far as she knows, to ensure that she remain at [...].

[269] X wrote that she had been enrolled at a High School in September, 2011 where she was attempting to complete her Grade 10. She said that she suffers from anxiety and the large high school was an environment in which she could not function and she attended infrequently.

[270] X wrote that she was successful in obtaining part-time employment in September, 2011 at a call centre. That job lasted for two months. She claimed she left as a result of verbal abuse she received from callers.

[271] Thereafter, X said she had been looking for other employment and provided particulars of her efforts.

[272] In mid February, 2012 X's position was that she should not remain in the agency's care and, at that point, expressed a wish to relocate back to B.. She ventured to say that she would return to school and try to obtain a part-time job.

[273] X confirmed that she had been engaged in therapy with Wendy Green three times monthly. However, she said she stopped therapy in December, 2011 because of her belief that it was not helping her.

[274] As of mid February, 2012 X said that she was not receiving any services from the agency and reiterated that she saw no benefit to remaining in care.

[275] X also acknowledged that she was not permitted to have contact with her brother Y, with the exception of phone calls. She said this prohibition was upsetting to her. She added that she was able to see Z, however, once monthly for a family visit and expressed an opinion that that was insufficient.

[276] As of mid February, 2012 X's expressed wish was to return to her mother's care under agency supervision on the understanding she would be required to attend school and receive counselling.

[277] X submitted a supplementary affidavit in late May, 2012. Her 17th birthday was fast approaching. She wrote that when she returned to her mother's care she had difficulty in readjusting after her lengthy stay in the city and, as a result, she decided to return to the Halifax area in mid May, 2012 "to stay with friends". X said her mother found the residence to be unsuitable and retrieved her a short time later. The topsy-turvy continued.

[278] X said that at the end of May she was intending to continue residing with her mother and not return to the city. At the time, she was taking correspondence courses through a local High School with a view to completing sufficient courses to resume full time attendance in the Fall.

[279] Not for the first time, X said that in order to assist with finances she would be seeking part-time employment.

[280] She confirmed that she was engaged in counselling with Jan Cressman and anticipated, at least at that time, that counselling would continue.

[281] X reported that after her return home, her relationship and communications with her mother had improved. By then, her contact with Z was two hours monthly and was still occurring in the city.

[282] X wrote that she thought she could be of assistance to her mother if Z was returned to her mother's care and said that she was more than willing to help her mother with Z's care and upbringing.

Educators

C.T.

[283] C. T.'s affidavit of January 31st, 2013 was considered by agreement of the parties.

[284] C.T. is Vice-Principal/Teacher for the [...] Alternate School. She wrote that Y was interviewed for the Middle Level Transition Program in early October, 2012. He was accepted and was expected to start the program shortly thereafter. However, he did not attend as expected, even when transportation for picking him up at his address had been arranged.

[285] T. said that M. B. attempted to maintain contact with the school to advise of the difficulties.

[286] T. said that both Y and M. attended a meeting in late January, 2013 when the school agreed to give Y another opportunity to attend the program. He was expected to start the third term starting in early February, 2013.

[287] T. said the school would arrange for transportation (which would be a taxi that would pick him up at a specified location near the [...] at B.).

[288] T. said that Y would be expected to follow the rules of the program and to participate fully. She added that failure to do so would result in him being removed from the program.

J. M.

[289] J. M.'s affidavit of January 21st, 2013 was admitted by agreement. M. is the Guidance Counsellor at [...] School in Halifax. She wrote that Z is a student at the school and that she has been meeting with Z regularly since arrival in September, 2010.

[290] When Z arrived at the school, M. consulted with the Guidance Counsellor at the child's previous school and based on that information M. concluded that Z was

isolated from her peers at school, had been taunted by other students, and was often unkept and without lunch.

[291] According to M., Z was a very emotional child when she started school in September, 2010. M. discerned that Z was grieving as a result of her separation from her family. At first, M. saw Z on a daily basis and they spent time talking about her family and related matters. According to M., her work was intended to help Z come to terms with what was happening in her life and to ease her fears about the future.

[292] M. said that Z was able to gradually settle into her new school placement and that she seemed to enjoy her new teacher. Contact with Z continued until she was removed from the school in late November, 2010. This change was related to issues surrounding her placement, not schooling.

[293] M. said Z returned to [...] School in September, 2011 when she resumed regular, if less frequent, contact with the child. M. said more recent work was focussed on Z's self-esteem by helping her identify her own strengths.

[294] M. wrote that Z does very well academically and that she was achieving beyond expected outcomes. She characterized Z as having a "lot of innate intelligence". She also wrote that Z is positively influenced by the achievement of her peers at the school.

Psycho-Educational Assessment

Jackie Trimper

[295] Jackie Trimper is a registered psychologist. She authored a psychological progress report in late April, 2011.

[296] There had been concerns about Z's ability to comprehend school work as well as instructions regarding completion of household tasks and addressing behavioural issues within the foster home.

[297] Trimper was engaged to conduct an assessment to determine the child's learning ability and academic achievement. In summary form, the assessor

described Z's overall intellectual ability as being in the average range. When compared to others at her age level, other abilities such as long-term retrieval, visual processing, auditory processing, processing speed, short-term memory, etcetera were also described as being in the average range. The only low average score was in the area of comprehension - knowledge. No other significant strengths or weaknesses were identified. In the same vein, the child's ability to focus her attention on relevant stimuli was described as average and her overall ability to plan, monitor and arrive at solutions to problems was also assessed as average.

[298] Z's oral language skills were found to be average as was her fluency with academic tasks and her ability to apply academic skills.

[299] When compared to others of her age, the child's standard scores were also average in broad reading, basic reading skills, brief reading, broad mathematics, etcetera, although her standard scores were described as low average in reading comprehension and math calculation skills, nonetheless no significant strengths or weaknesses were found among her general scores.

[300] Z was determined to be performing at predicted levels in reading, math, written language and oral language.

[301] The assessor firmly stated that the child does not meet the criteria for diagnosis of a learning disability because her overall intellectual functioning was observed to be within the average range of functioning and no significant academic functioning difficulties were observed. The assessor opined that Z can be expected to achieve well in school and to understand learning and behavioural expectations. A number of strategies were recommended to support Z as she continues with her education but none of these were exceptional or extraordinary.

Parental Capacity Assessments

[302] As a preface to this part of my decision, I refer to the decision of Judge James Wilson in **Children's Aid Society of Pictou County v. A.J.G.**, 2009 NSFC 26. The following excerpts are instructive:

> [60] Parental capacity assessments are frequently provided to assist the court, particularly in cases involving permanent care applications. Given the serious issues before the court,

every effort must be made to bring the most informed perspective to the decision. The assessment process can nevertheless become part of the problem when they consume as much time as they did in this case.

[61] ... While the court benefits from expert opinion, there are other interests that cannot be held hostage to the expert report. These include allowing the court to make timely decisions in the child's best interests and to have the widest array of disposition options available to it.

...

[63] While assessments are frequently requested and provide valuable and relevant evidence for the court, their role should never be misunderstood. Expert opinions are evidence to be considered by the court like any other piece of evidence. Expert opinions do not replace the court's judgement. Expert opinions should not drive the process. When expert opinions, and the battle over the weight to be afforded them eat up so much of the disposition time, the court may become hampered in making the right decision in the best interests of the child. Decisions at the end of the dispositional period can be problematic in difficult cases. The risk to the child of terminating a positive attachment and denying the child the opportunity to grow up in his family of origin or placing the child back with a parent who may yet again struggle are equally serious. The answer is clearly in having timely assessments presented so that there is opportunity to better tailor a disposition consistent with the evolving evidence. When the initial report is delayed, the process becomes compromised.

[64] ... The qualification of an individual as an expert remains within the discretion of the court and each court will make those decisions on a case by case basis dependant upon the academic qualifications and work experience of the witness. The opinions of the expert, once qualified, may be accepted or rejected by the court. It is the responsibility of the court to determine whether or not recommendations are consistent with other evidence before the court. The court appreciates that individuals coming from different disciplines and experiences may approach their professional responsibilities in different ways. There is no evidence that any profession or individual has a monology [sic] on truth. In the end these are professional or clinical judgements and the trier of fact is responsible to give weight to the opinions as deemed appropriate in light of all other evidence.

...

[66] ... This is not an easy case for a social worker, clinician or judge to decide. What is required is that the trier of fact approach the issue with an open and unbiased mind and allow the evidence to lead to a conclusion that is in the best interest of the child.

L. Elaine Boyd-Wilcox

[303] Boyd-Wilcox is a licensed psychologist. Her Curriculum Vitae appears in Exhibit 3 at Tab 42.

Parental Capacity Assessment Report - May 2, 2006

[304] This assessment was requested by Kari Trethewey during the course of a child protection proceeding then ongoing. The stated objectives were to secure an assessment of M. B.'s ability to effectively parent and meet the needs of her four children, to identify the mother's strengths and how to work with those strengths, to identify the mother's limitations, especially in regard to parenting, and how to address the limitations, to psychologically assess the mother and the children, to determine the level of support needed by the mother to meet the children's needs, and to assess the level of so-called attachment and quality of the bond between the mother and her children.

[305] The assessment document appears in Exhibit 2 at Tab 10.

[306] The assessor canvassed the history of the agency's involvement with the family as well as the mother's view of the child protection concerns identified by the agency. It is unnecessary to dwell on those aspects of the assessment because so much of it is based on disclosure by the mother and the assessor's filtered summary of information gleaned mainly from agency sources.

[307] Boyd-Wilcox's psychological findings included the following:

> Results of the personality testing were not consistent with M.'s reported past diagnosis of Bipolar Disorder although there was some evidence of depression. However, they were consistent with the more recent diagnosis of Borderline Personality Disorder. Scale elevations supported the presence of a number of personality problems and that she may meet the diagnostic criteria for both Borderline Personality Disorder and Passive-Aggressive Personality Disorder. Overall the test results suggest that M. is likely to have difficulty in interpersonal relationships because of her tendency to assume changing and conflicting roles. She is likely to have particular difficulty dealing with those she perceives as authority figures and to distance herself from those who can support her. She may be guarded and resistant to sources of external influence. She is self-centered and minimally competent to manage the stressors in her life and has difficulty with anxiety tolerance, impulse control and social adaption when under stress. She may have a negative view of her own capabilities and pessimism about the future. She is likely to be inconsistent in her expressed needs and behaviors and her mood is likely to be labile with a level not consistent with external reality. She reported negative attitudes toward mental health treatment and mental health professionals. She feels no one can help her.

> Although M. reported that she uses the strategies assessed to cope with stress more than average this is not consistent with her observed behavior. It suggests that although she is aware of numerous coping strategies she has difficulty implementing them in a way that is beneficial to her. It is interesting to note that her preferred method of coping with stress is Avoidance of the stressful situation through distraction or social diversion.
>
> Results of the measure of the experience and expression of anger indicate that M. experiences chronic intense angry feelings. She is sensitive to criticism, perceived affronts, and negative evaluation by others and experiences intense anger in those situations. She may express her anger outwardly or by attempting to suppress it.
>
> On the measure of parenting attitudes and attitudes toward her children M. endorsed an egalitarian view of parenting and generally endorsed items consistent with the knowledge of appropriate parenting strategies. However, she identified a number of problem areas related to parenting W including being overburdened by the responsibility of parenting him, having less than average interest in his activities and spending time with him, trouble communicating with him and trouble setting limits with him. There was one area of difficulty identified with Y and that was in feeling overburdened by her parental responsibilities.

[308] Boyd-Wilcox's test result summaries in regard to W and X B. (who are not currently the subject of litigation) are included in the assessment and have been considered by me but will not be discussed in any detail.

[309] Insofar as Y is concerned, he was determined psychologically to be functioning within the borderline to average range of intellect. There were no reported elevations in those testing scales intended to measure behavioural and emotional difficulties within the mother's home. Assessment of Z was limited because of her age at the time.

[310] Noted at page 84 is confirmation of a referral by therapist, Mary Haylock, to Mental Health for "a diagnostic impression of M. as a way to determine how to support her most effectively".

[311] Dr. J. Milliken, Psychiatrist, was also cited (at page 85) as having received a referral and having found M. B. as "functioning well at present, especially in view of her past history of suicidal behaviour, affective instability, intense anger and

unstable interpersonal relationships. She does not have a serious mental illness such as a major affective disorder or schizophrenia". Significantly, though, Dr. Milliken reportedly diagnosed the mother with Borderline Personality Disorder (BPD), and recommended "continued emotional support". She also prescribed a medication.

[312] Some of Boyd-Wilcox's conclusions are excerpted below:

> Psychological Assessment of M. B.
> Results of this assessment suggest that M. does not suffer from a serious psychiatric disorder but rather personality problems that interfere with her ability to cope with the demands of her daily life. Specifically, test results suggest that she is likely to meet the diagnostic criteria for Borderline Personality Disorder and/or Passive-Aggressive Personality Disorder. This is consistent with the previous assessment by Dr. Milliken who diagnosed her with Borderline Personality Disorder.
>
> Individuals diagnosed with personality disorders display longstanding patterns of relating to their environment with symptoms that may increase in severity in relation to the stress they are experiencing. In M.'s case information she provided about her past suggests that she has experienced difficulty with interpersonal relationships and engaged in acting out behaviour at least from the time that she was a teenager. More recently she has been involved in destructive abusive relationships with her partners and is reportedly alienated from her family of origin. She has a very limited support system in the community. Her main supports are professional caregivers who she sometimes turns to for nurturing and support and at other times attempts to alienate.
>
> .....
>
> M. describes herself as suffering from depression and claims to have had a past diagnosis of Bipolar Disorder. Though she is likely to be depressed at times the predominant issue is a personality disorder and she has little if any understanding of the dynamics of her own difficulties.

[313] Without dwelling on these aspects, the conclusions regarding W mentions diagnosis of ADHD and Tourettte's Syndrome as well as some reported "affective" problems. Coupled with his level of intellectual functioning, Boyd-Wilcox

described W as a challenging child to parent who requires a lot of structure and support to feel safe and secure.

[314] X, by contrast, was characterized as the most resilient and adaptive of the children with few reports of behavioural concerns and an average level of intellectual functioning. There was some indication of symptoms of Post Traumatic Stress Disorder related to Z having reportedly witness domestic violence.

[315] Y was ultimately characterized as having significant learning problems by comparison to his siblings. He too was reported to have exhibited symptoms of Post Traumatic Stress Disorder and significant behavioural difficulties. The latter seemed to have resolved themselves once the family situation stabilized during the course of the initial court case.

[316] As mentioned, Z was not given any formal testing during the course of the 2006 assessment because of her young age. On the issue of attachment and quality of the bond between the mother and her children, Boyd-Wilcox wrote as follows:

> It is the consensus of the professionals involved with M. and her children that she is generally committed to parenting the children. However, when she is having difficulty coping she becomes self focused and is unable to meet the children's needs effectively. In fact she tends to blame them for their difficulties and become more negative and punitive toward them. At those times she has difficulty keeping the home environment clean and structured and she is unable to monitor the children's activities effectively. As a result their hygiene and nutrition is neglected and they are not supervised closely enough. Then there is acting out behaviour-particularly from W and Y-which M. does not have the emotional resources to deal with appropriately. She is then at risk of engaging in inappropriate parenting (e.g. hitting with the wooden spoon, threatening foster care, asking to have W placed in care) and the children are at risk of being harmed because of lack of supervision or harming each other when acting out. This means that the children do not feel safe and secure in their environment and cannot depend on their mother to meet their needs. This is all complicated by their past exposure to domestic violence and they continue to be afraid that B. may harm their mother or take them away from her. Thus the traumatic bond referred to by Ms. McCready.
>
> Results of testing completed as part of this assessment suggest that M. feels overburdened by parenting W and Y and that she has particular difficulty

> communicating with and setting limits for W. These concerns can be indicative of attachment issues between the parent and the child.
>
> It is possible that the bond between M. and the children can become more secure if the family situation can be stabilized and M. can engage in appropriate parenting strategies. This would be facilitated by the maintenance of a strong professional support system for the family, therapy for M. to address issues related to her understanding and coping with her symptoms, and therapy related to developing resilience in the children.

[317] After touching on the mother's ability to effectively parent and to determine the level of support required by the family, Boyd-Wilcox recommended that her children remain in her care with supervision and support from the agency. She also recommended continuing therapy with Mary Haylock, continuation with family skills services and therapies for the children, if such could be arranged. There was a smattering of other recommendations which will not be repeated.

Parental Capacity Assessment Report - June 20, 2011

[318] Boyd-Wilcox received a second assessment referral regarding the mother's ability to parent X (then age 15), Y (then age 13) and Z (then age 8). Robert Snair was the referring social worker. He informed Boyd-Wilcox that the mother's mental health had been a concern and specifically mentioned a Borderline Personality Disorder diagnosis in 2006. He asserted that the mother also met the criteria for Passive-Aggressive Personality Disorder.

[319] The 2011 referral alleged the mother had made "several suicide attempts" and in her most recent drug overdose she made no attempt to shield her children from it, nor made arrangements for their care. The referral went on to say as follows:

> Ms. B.'s children demonstrate inappropriate behaviours including poor school attendance, smoking, stealing, and aggression. The Agency believes that these behaviours are a result of the emotional harm the children have suffered in Ms. B.'s care, and have no confidence that Ms. B. will be able to make changes to her parenting at this time. Considering the special needs of the children, and due to Ms. B.'s poor parenting skills and mental health,

> the safety and well being of the children cannot be adequately protected in Ms. B.'s care. There have been repeated efforts to remedy Ms. B.'s parenting deficits; however, she puts her needs in front of her children's. She is unable to meet even the children's basic parenting needs

[320] Boyd-Wilcox's 2011 assessment includes a recapitulation of background information going back to 1994 and included reference to the taking into care of Y and Z in 2010. Mention was made of the coincidental taking into care of X in [...] where she had been residing with her biological father.

[321] Like the 2006 assessment, the final report spans many pages.

[322] Boyd-Wilcox's summary, conclusions and recommendations start at page 127 of the Exhibit. At page 48 of her assessment report, Boyd-Wilcox outlined "long-term personality characteristics likely contributing to her adjustment problems". She listed close to two dozen hallmarks which appeared (to me) to have been taken from a template or generic source.

[323] Boyd-Wilcox rendered an opinion that the most appropriate diagnostic hypothesis would be Avoidant Personality Disorder and Adjustment Disorder with Anxiety and Depressed Mood. Boyd-Wilcox concurred with Dr. Mulhall's opinion that the mother did not, however, suffer from a major depression and she questioned the presence of an Anxiety Disorder.

[324] Boyd-Wilcox also opined that the mother has significant difficulties related to the experience and expression of anger. (She identified several signs at page 129 of the Exhibit.)

[325] Boyd-Wilcox was careful to point out that the children were not the subject of her 2011 assessment and accordingly she had no collateral information to confirm or refute the mother's concerns about the children's emotional and behavioural adjustment issues.

[326] Boyd-Wilcox said that the mother was minimizing the potential impact/risk of the conflict between her and W on the other children. She claimed that the

mother was also minimizing the extent to which Y and X behaved inappropriately. Moreover, the mother did not acknowledge, according to the assessor, that her suicide attempt (with the children present) could have a negative impact on the children.

[327] Given the perceived long-standing pattern of coping difficulties, the assessor said she was not optimistic that any form of intervention would be sufficient to support the mother in developing the resources to parent her children effectively. She described X and Y as being very challenging and that although Z was not exhibiting the same behavioural difficulties the assessor was concerned that as Z matures, if she is exposed to the modelling of the older children and the mother's inability to cope at times, that Z too would develop significant behavioural problems. In the result, in 2011, the assessor recommended that X, Y and Z remain in the agency's care and that ongoing supervised access be continued between the mother and her children.

[328] Boyd-Wilcox recommended that the mother be given "therapeutic support to cope with the children remaining in care should her first recommendation be followed". Lastly, the assessor recommended follow up psycho-educational assessments of the children to assist with academics.

[329] In her courtroom testimony, Boyd-Wilcox indicated that in 2011 she understood there were certain statutory time limits that applied to the case and which, practically speaking, limited the outcome options available by operation of law. At the hearing, she stressed that the mother needs significant long-term support if she is going to successfully parent Z (and Y, if he is still in the home).

[330] Boyd-Wilcox was afforded an opportunity to comment on the critique of her 2006 and 2011 assessments which were advanced by Dr. Gerald Hann. Regarding the 2006 assessment, she acknowledged that it took place over a longer period of time (i.e. more than 8 months) to conclude and that this was less than ideal. However, she did not think the validity and reliability of her work was affected and saw no need to re-administer any tests before signing off on her report. She refuted any suggestion that her employment of an assistant to conduct some of the tests undermined validity and reliability.

[331] Dr. Hann had opined that by 2006, "personality pathology and character disturbance was quite evident and such a diagnosis would require very specialized interventions, and not supportive therapy, as would have appeared to be offered by Ms. Mary Haylock". In response to this, Boyd-Wilcox insisted that Haylock did have experience with personality disorders and, in any event, that Haylock had recommended psychiatric evaluations.

[332] Boyd-Wilcox bristled at Dr. Hann's opinion that the therapy offered to B. at the time would have had very little, if any, impact on improving her mental health, including her personality pathology. In the same vein, she down-played the criticism that her 2006 assessment was "largely silent" on what specific types of resources and treatments would be needed to ameliorate many of the issues, including those related to the children. She suggested that her report clearly identified the supports and services which were in play at the time and that they were adequate for the intended purposes.

[333] Dr. Hann also criticized the 2011 assessment. He ventured to say that "the key role of an <u>independent</u> assessor in any type of Parental Capacity Assessment is to examine the agency's concerns to determine the veracity of the agency's reported information". Dr. Hann also said as follows:

> One key role of the assessor in reviewing agency referrals should be evaluate whether the reported concerns appear credible?; are they related to the assessment findings?; and is it possible they may have affected by bias by either the agency or reporting sources? Simply reporting the agency's referrals can give the illusion that the assessor is agreeing with the characterization of the parent.

[334] Perhaps not surprisingly, Boyd-Wilcox said that the background information she put forward in her report was never intended to indicate or imply that the information was true. And - here she differs with Dr. Hann - she said did not perceive her role to include extensive verification or investigation of voluminous background information.

[335] Dr. Hann's critique of the testing and test results found in the 2011 assessment were countered by Boyd-Wilcox and, at the end of the day, I find did not significantly undermine the general findings and conclusions which were reached.

[336] At this point it should be remembered that Boyd-Wilcox's 2006 assessment, did recommend that B.'s children remain in her care with supervision and supports. At worst, Boyd-Wilcox agreed that she may not have provided the specificity or specialized approaches that Dr. Hann might have employed, but she defended her recommendations based on the constraints of her retainer at the time. And again, not surprisingly, she took issue with Dr. Hann's opinion to the effect that because the required services were not well articulated in 2006 that the state of the affairs of the family in 2011 was to be expected.

[337] In the battle of the experts which unfolded in court, Boyd-Wilcox conceded on cross-examination that while she has some specialized experience with the therapeutic side of anger management, that Borderline Personality Disorder work is "not a big part of my practice". She conceded she had a copy of Dr. Mulhall's 2006 psychiatric assessment and that it was relevant, but, to use her words, such assessments "may not shape her opinion".

[338] The assessor acknowledged that Mary Haylock, to her knowledge, is not a psychologist but her understanding is that Haylock was holding herself out as having skills and training to deal with individuals with personality disorders. Somewhat surprisingly was her admission that she had not checked out or verified Haylock's credentials in this regard.

[339] Boyd-Wilcox had not viewed any reports from Dr. Abbass and was unable to comment on his work and opinions. That is unfortunate because so much of the case hinges on what has happened since her last work was completed.

[340] Also important for our purposes was the acknowledgement by Boyd-Wilcox that she has had no contact with the mother for about two years. She became aware, in the run-up to the hearing, of the report or critique of Dr. Hann as well as the work and involvement of Dr. Gretta Taylor. While generally aware of therapeutic work being provided to the mother after preparation of her last assessment and while agreeing with the potential benefit of the therapy being offered to and accepted by the mother, the assessor candidly admitted that she really did not know what progress had been made since she filed her report with the agency. Quite rightly, she underlined that her assessment speaks as of the date when it was authored. That said, Boyd-Wilcox insisted at the hearing she is not

optimistic about the mother's treatment prognosis. Before concluding her testimony, Boyd-Wilcox somewhat reluctantly conceded that "a year or two might make a difference". This was a reference to the therapeutic program now in play.

[341] Boyd-Wilcox admitted on cross-examination that she knew in 2011 that the child protection case was far more complex than the mother's alleged inability to parent her children. And she acknowledged that there were a host of issues indigenous to the children themselves who were not, in fact, assessed in 2011.

[342] Also before concluding her testimony, Boyd-Wilcox reaffirmed that in 2011 she made no specific treatment recommendations because of her belief that the statutory deadlines would preclude any further supports and services. She thought the deadline was falling within months, if not weeks, of her final report.

[343] In re-examination, Boyd-Wilcox allowed that she has no specialized training or education or experience in ISTDP and related work and that she has only a general knowledge of the subject area.

Dr. Gerald Hann

[344] Gerald Hann is a registered psychologist in private practice based in Halifax. His extensive curriculum vitae appears as Exhibit 11. I do not propose to canvass it in any detail but because it is relevant to the present case I note that Hann's post-graduate professional training includes reference to intensive short-term dynamic psychotherapy (ISTDP) and that a considerable portion of that education and training was under the leadership of Dr. Allan Abbass whose evidence is discussed elsewhere. I also note that Hann currently holds a clinical appointment at the Dalhousie University School of Medicine (psychiatry) and that he is a clinical associate in the Dalhousie University Ph.D. Clinical Psychology Program. He has authored and co-authored a number of publications and made a variety of professional presentations in the subject area of ISTDP.

[345] Hann was retained to offer an opinion regarding Parental Capacity Assessments done by Boyd-Wilcox. For our purposes, it is important to note that Hann did not conduct a Parental Capacity Assessment of B., nor did he assess Z or her siblings.

[346] Incidental to my discussion of Boyd-Wilcox's assessments, I have already made references to Hann's criticisms and her rejoinders, as need be.

[347] The thrust of Hann's major criticisms was that the 2006 and 2011 recommendations in the assessments were not tailored to the special treatments and therapies which were then available and likely would have had more "value-added" for the benefit of the mother and her children. Put another way, Hann postulated that more than "supportive therapy" should have been recommended because that kind of therapy (i.e. therapy provided by Mary Haylock, for example) would only serve to relieve general symptoms, temporarily; and not treat or remediate the underlying mental health conditions which had been identified. Hann's opinion was that his colleague should have more precisely addressed the core or root causes for the presenting problems and not dealt exclusively with the outward symptoms. That said, although he was not surprised that the services that Mary Haylock, for example, provided were resulting in some improvements, he maintained that the underlying causes were still present and remained unaddressed until the intervention of Doctors Abbass and Taylor.

[348] The better approach that could have and should have been taken by Boyd-Wilcox, in Hann's opinion, was to identify the underlying conditions and tailor very specific therapies to address the issues. So-called evidence based services, according to Hann, deserved more elaboration and more detail than was provided in both 2006 and 2011.

[349] Hann conceded that the 2006 recommendations were good but they were generic and not specific nor as robust as should have been presented. Leaving aside the technical details of the testing that was performed in 2011, Hann again conceded that the work done was generally good at identifying the presenting symptoms but, in his opinion, the final report stopped short of what he would like to have seen presented.

[350] Hann was careful to address the question of statutory time limits which Boyd-Wilcox may have thought she faced. He suggested that whether she was ruling in, or ruling out, certain recommendations and options that her opinions should have been more clear on the time needed to ameliorate the problems.

[351] Hann presented an elaboration on ISTDP which is canvassed elsewhere in this decision. As it happens, the evidence discloses that it was he who first recommended a referral to Dr. Abbass and then the referral to Dr. Taylor followed from there. To his knowledge, as at the hearing, some 80 therapeutic sessions had been held and therapy was continuing.

[352] Hann's opinion regarding ISTDP as a therapeutic method was that it is very effective, and that clinical experience is that there had been little if any relapses by patients who have undergone the full program. In his words, he is a big fan of the treatment because of the demonstrated results.

[353] I should add at this point that Dr. Hann's opinion on the effectiveness of ISTDP stood uncontradicted at the end of the hearing. Although the agency was well aware of Dr. Hann's likely evidence, no other expert was called to refute or to diminish the opinions he expressed. I have said the same about the evidence from Dr. Abbass.

[354] Before closing, Hann noted that Boyd-Wilcox's final assessment was conducted in 2011. Putting the best spin on that assessment, i.e. that it was valid when done, he strongly asserted that it can not be taken as an indicative of the mother's current mental health condition or circumstances. In short, the assessment is out of date and makes no allowance for the ISTDP treatment, the progress made, or the prospects for success.

[355] On cross-examination, Hann reiterated that he was "astonished" at the work of Dr. Abbass in this subject area. He said that very intense training is needed to effectively administer the therapy and it is a relatively new field.

[356] When pressed about the state of the art in 2006, Hann eventually conceded that ISTDP would likely not have been recommended because it was in its infancy in this Province.

[357] Asked to elaborate on this special area of interest and practice, Hann's evidence was that there are only about 500 psychiatrists and psychologists world-wide who are skilled and qualified. In Nova Scotia, he asserted that there are less than 15 out of 500 psychologists doing this type of work and, in the public sector, that the wait lists for ISTDP treatment run as long as 12 months. Hann's evidence

was that ISTDP is now taught in the first year of medical school and that Dr. Abbass is spear-heading the education efforts.

[358] Asked about local psychiatrists who may be utilizing the technique, Hann was aware that at least two local psychiatrists who are involved in the case did not refer the mother for ISTDP therapy. As those individuals did not testify, it's unclear from the evidence why that did not occur. Zeroing in on this point in the absence of Dr. Mulhall, Hann acknowledged that Dr. Mulhall, for example, had reaffirmed a personality disorder in his clinical diagnosis but still did not recommend ISTDP or any other specialized form of treatment which he had somewhat chastised Boyd-Wilcox for not doing as well. That said, Hann insisted that specialized or evidence based referrals would have been beneficial to the mother and to the children.

[359] As discreetly as possible, Hann ventured to say that most psychiatrists in the Province may still not be aware that ISTDP is a widely recognized and accepted treatment modality.

Psychotherapist

Ken Osbourne

[360] Ken Osbourne is a psychotherapist, currently employed with Breakthrough Co-Op Limited at Halifax. This is a private agency offering therapy, training and supervision, consulting and teaching. Therapy is provided to individuals, couples and groups. There is particular focus on working with trauma, loss and grief issues, play therapy and the integration of so-called traditional and alternative approaches to therapy.

[361] Osbourne's extensive Curriculum Vitae appears in Exhibit 3 at Tab 43. He holds a Bachelor or Arts Degree with a specialization in Psychology and Sociology, and an MSW degree from the Maritime School of Social Work**.** Previous to his current employment, Osbourne was a pediatric social worker at the Isaac Walton Killam Hospital for Children. In that setting, he provided crisis assessment and counselling in the intensive care and neurosurgery/neurology units, palliative care and bereavement counselling. Without going into all the detail, he

has additional experience as a medical social worker in a hospital setting, psychiatric social work experience at the Abby Lane/Camp Hill Medical Complex in Halifax, and also as a child protection worker.

[362] Osbourne authored a series of professional reports after working with Z, starting in October, 2010. Those reports appear in Exhibit 3 at Tabs 33, 37 and 40 respectively. A final report is marked as Exhibit 4.

March 16, 2011 Report

[363] Osbourne's March 16, 2011 report was authored after Z stopped seeing him, for the first time. It is essentially a "closing note report".

[364] A reported suicide attempt by Z was sourced to the foster mother and to disclosures made by the child herself. The incident (discussed elsewhere) is the one in which Z consumed some of her mother's medications. A number of troubling behaviours demonstrated by the child to the foster mother were summarized and need not be repeated.

[365] By October, 2010 Osbourne said that Z was speaking openly to him about the events surrounding her mother's overdose of medications and the resulting fear caused to the child. Osbourne noted the strong relationship between mother and daughter and the child's fear that she might be adopted and never see her mother again.

[366] The upshot of the first series of meetings with the child was that Z should be actively involved in therapy. At the time, the child's intensity of thought and behaviour being exhibited were "quite alarming".

June 4, 2012 Report

[367] Osbourne saw Z upon an agency referral for a brief period of time starting in early October, 2010. Services were interrupted coincidental with disruption in Z's foster placement. Osbourne's initial impressions were that Z should be actively

involved in therapy because of the intensity of thoughts and behaviours she was exhibiting at the time.

[368] In any case, Osbourne resumed seeing Z again in late June, 2011. Sessions were held twice monthly. Reportedly, Z was still "a very troubled young person". There were troubling reports, or at least allegations, that the child had attempted to commit suicide (as already mentioned). These allegations were sourced to a foster parent as well as to the child herself. Early on, Osbourne also identified behaviours and thought patterns which he associated with "attachment-disordered children".

[369] At the time, Osbourne was clearly relying on reports provided to him by the agency *via* Kari Trethewey who, in turn, was relaying information provided by a foster parent.

[370] Osbourne reported that Z had settled reasonably well once she returned to her original foster placement and that she had found good support at school and was doing well in that setting. Z was described as a "genuinely very warm, funny and compassionate young person. She is very intelligent and quick thinking".

[371] Osbourne stressed that Z has a "very strong emotional attachment to her mother and her siblings". Indeed, Osbourne said that Z occasionally takes a "parenting role" towards her mother and her siblings, despite the fact that she is the youngest child.

[372] Osbourne noted that the foster mother was observing a definite pattern of Z being emotionally distressed, immediately before and after family visits. Osbourne said that Z disclosed to him that she has mixed feelings about seeing her mother and her siblings. He reported that she is excited to be with them but then "very sad after she leaves".

[373] The following passage bears repeating:

> One particularly distressful thing for Z through this time period was the mixed messages she was getting about going home. At various points she has told me that she was told she would soon be going home, and then later she would be told that she was never be returning to her mother's care.

[374] Osbourne said the child would become overwhelmed with the thought that she might be adopted and never see her mother or siblings again. Unfortunately, according to Osbourne, Z continued to receive differing messages about whether she would or would not be returning to live with her mother.

[375] Adding to the complexity of the situation, according to Osbourne, was Z's knowledge that X and Y would or could be returning home to live with their mother. Apparently, Z was aware that this was a last resort because of the breakdown of her sibling's placements. According to Osbourne, Z perceived the return home as being some sort of reward because they had acted badly. Perhaps understandably, Z reportedly continued to have mixed feelings of happiness for her siblings and sadness about her own inability to go home.

[376] Osbourne was careful to commend the current foster mother with her care of Z and management of an obviously very challenging placement.

[377] Osbourne wrote that it has been a very difficult case to be involved with because "there are many complex variables" and "unfortunately during the time of my one and a bit years involvement with the file, I have dealt with four different social workers. No continuity of care can be had when the unfortunate situation of staffing is occurring as it did".

[378] Osbourne noted that he was asked to address two questions, namely, if there were to be no time limits on the situation, and if there were time limits, what would his recommendations be.

[379] Osbourne wrote as follows:

> If at all possible for there to be a potential for a healthy relationship, this should be supported. If there are no court imposed deadlines then I believe what is in Z's best interests would be a continuation at her current foster home who has been such a great source of stability for Z, while M. works on parenting her daughter X and her son Y as well as work on her personal issues which affected her ability to parent effectively.

[380] Those thoughts were against the background of X and/or Y also living under the same roof. In that context, Osbourne said that the mother would need to be supported as she learns to deal with the children, with parenting assistance. He opined that Z ought not to be reintroduced into the home as long as there is or was instability - he did not think Z could handle well a return home only to have it fail and to have her once again removed.

[381] To answer the questions put to him specifically, he wrote as follows: "I would suggest that timelines like Christmas 2012 or perhaps at the end of school 2013 be thought of as reasonable time-targets to be considered".

[382] Osbourne referred to Maggie Stewart's characterization of the situation, i.e. as reported to him in late May, 2012. He opined that "If the timelines must remain in place, and if the situation is as described above, then I would not recommend that Z return to her mother's care but stay in the care of the agency".

[383] Osbourne went on to say that the issue of Z's attachment to her mother and her "attachment injuries" must be considered. His belief was that access should be maintained should the child come into the agency's permanent care.

[384] In his concluding recommendations, Osbourne wrote as follows:

> Given Z's age, adoption may be a consideration in such a circumstance. If that were to be the case, then I would still recommend that Z have some ongoing access to her mother. Obviously there would be many factors determining this access, but the issue of Z's attachment concerns should be the guiding principal..

August 28, 2012 Report

[385] Osbourne's late August, 2012 report updates the report previously discussed. Much of that report recapitulates the mother's concerns and progress as disclosed by the mother. Osbourne noted that Z's behaviour had been concerning throughout much of the summer because she was displaying self-injurious behaviours and continuing to show "attitude" by lying, bullying others, etcetera. However, those behaviours seemed to have dissipated or stopped altogether by the end of the summer.

[386] Osbourne reiterated that Z revealed to him that she is very scared. According to him, she desperately wants to go home and she is fearful that she may not be permitted to do so. Conversely, Osbourne said that she is also scared that if she does go home, that the situation will not last and that she may have to leave again. In the latter part of July and August, there were joint sessions with Osbourne which included mother and daughter. Osbourne said that the most telling feature of the sessions was the "obvious sheer delight they have in each other's company".

[387] Osbourne had recommended against an increase in parent/child access which did not find favour with the mother. He explained that he gave that opinion because of the uncertainty surrounding Z's potential return to her mother's care. He thought that increasing access while there was a possibility that the child would be made a permanent ward could be very hurtful to the child.

[388] Osbourne noted that the mother was openly distrustful of the agency and many of the professionals. Nonetheless, he described her as being respectful and cooperative insofar as his work is concerned.

[389] Osbourne reiterated as follows, "I believe that the attachment between Z and her mother is too important to end contact between them if Z does go into permanent care of the agency." Later, "The topics that Z had raised that she wants to talk with her mother about still should be addressed irrespective of what the outcome of permanency care is".

[390] Osbourne also noted that the mother had shown herself to be consistent and child focussed during their sessions and he said that future sessions would be important to help Z deal with past and future challenges.

September 24, 2012 Report

[391] By late September, 2012 Osbourne was reporting that self-injuring behaviours by Z as exhibited in the late spring/early summer of 2012 had not continued. He sensed an overall improvement but nonetheless ongoing and concerning behaviours and attitudes which he perceived as disturbing or troubling.

[392] He wrote this, “There is no question of the love and bond between these two, the question remains: can Z be raised appropriately in her mother’s home”.

[393] Osbourne noted that it was Maggie Stewart who had asked him to comment on the agency’s decision (already made) to apply for permanent care and custody of Z. To his credit, in my opinion, Osbourne declined to give a definitive response because, quite simply, he did not have enough information upon which to base an opinion. For example, he noted that he had no professional reports, no information regarding access visits, no information regarding the mother’s home situation, etcetera. He was unaware of the support programs, if any, put in place for the mother or how the mother was managing with her other children.

[394] Once again, Osbourne wrote as follows, “There is no doubt the bond between mother and daughter is very strong and must be supported irrespective of where Z lives”. He went on to write as follows,

> In our time together, M. was appropriate while openly mistrustful of the process and anything to do with the agency’s involvement, she was involved and nothing I saw would warrant her daughter’s removal from her home. That being said, there is a great deal about this situation which I have not known and do not know. As stated, the current state of affairs with M.’s home and situation is unknown to me.

Courtroom Testimony

[395] In his oral testimony, Osbourne reiterated that Z (when first seen by him) presented with themes of death and anger. The child was angry about being taken into care and not being at home with her mother. Indeed, Osbourne said that she felt that she was to blame to some extent for her apprehension.

[396] Since his first written reports to the agency, Osbourne said that Z has never denied or retracted the report and self disclosure about attempted suicide and suicidal ideations.

[397] Currently, Osbourne believes that Z is more trusting and comfortable in addressing sensitive subjects but she still presents as reserved and frightened, at

times. Osbourne expressed hope that Z has benefited from his services, especially since he has strived to present himself as neutral and their forums for discussions as similarly nonthreatening.

[398] Osbourne conceded that Z is now more aware and confident and that occasionally distressing behaviours will bubble up which suggest to Osbourne that work with the child should continue.

[399] Osbourne said that much of the alleged misconduct by Z (eg. stealing, lying, food hoarding, etcetera) have not been denied by Z during therapy. He has noted a link between increased stress by the child before and after visits with her mother and before and after court appearances (which she has learned of). Indeed, Osbourne said there appeared to be a link between some self-harming behaviour with a court appearance last year when it was thought (at least by the child) that she might be returning home and then was not returned home.

[400] Osbourne noted that there were joint sessions with the mother last summer as directed by the agency because, at one point, it was thought that the child would be returning home and therapy would be helpful and of benefit. However, the identified subject areas were not pursued because the agency reversed field and decided to go forward with its application for permanent care and custody.

[401] Referring to his June 4, 2012 report, Osbourne emphasized that he was very concerned about the mother/daughter attachment issue and, when asked directly if therapy would remedy the concern should the attachment be "broken" by a permanent care order, the witness said "I sure hope so". However, Osbourne perceived the attachment issue, whether short-term if the child is repatriated to her mother or long-term if she is placed in permanent care, as a "life-long" challenge. That said, Osbourne emphasized that the strong bond between mother and daughter and its continuance, is "critical to Z's future". Everything else aside in the case, Osbourne said that the mother/daughter bond is the one consistent element. He strongly believes that the bond should be maintained..

[402] Osbourne expressed hope that the child will benefit from ongoing therapy, as already mentioned, and that resolution of the child protection case may also have a stabilizing effect.

[403] Osbourne stated that currently Z feels very trapped. She wants to return to live with her mother but she also has great fears that repatriation will be unsuccessful. That is, if she returns home, Z feels that she may have to leave again which would be crushing to her. Z also wants to resume sibling relationships but there is fear that her sister could be a bad influence. (It should be noted however that X does not reside in the mother's home at this time).

[404] Asked directly for his opinion on how Z would cope if she is not returned to her mother, Osbourne said that she would likely be able to cope provided there is ongoing regular contact with her mother. Osbourne did not have enough information however, to express an opinion or bonding or attachment with the maternal grandparents.

[405] As at the hearing, Osbourne was seeing Z twice monthly, on average. However, in times of high stress (eg. pending court appearances, etcetera) Osbourne has been available for additional consultations.

[406] In cross-examination, Osbourne characterized the mother/daughter relationship as "insecure attachment" which he explained is a circumstance in which an individual has experienced vulnerability because someone else may or may not be there for him or her in the future. Optimally, Osbourne expressed an opinion that Z needs a secure home with clear structure, boundaries and consistency. He also says that she has a need for warmth and compassion and consistent leadership.

[407] Osbourne was unable to comment on some of the therapeutic techniques or processes being offered to the mother via Doctors Abass and Taylor, for example. According to the witness, there is no orchestrated coordination of therapeutic services as between those being offered to the mother and those being offered by him to the child.

[408] Regarding the so-called attachment issues or concerns, also on cross-examination the witness conceded that he is not qualified to give a formal diagnosis of the presence or absence of an attachment disorder but clarified that his own opinions were tethered to his observations of the mother/daughter interactions and reports admittedly received from third parties.

[409] Osbourne stressed that he has been primarily focussed on Z and trying to assist her with various therapies.

[410] Osbourne noted that Z seems to be quite alert to the court processes and seems to be gleaning information from social workers, the foster mother, and M. B.. Osbourne has had some limited discussions with the child about the court processes because she has disclosed to him her awareness of those processes and it is his belief it is now an age appropriate matter to discuss. Again, Osbourne hopes that completion of the court case will reduce some stress being experienced by the child. That said, he was unable to quantify or otherwise specify how much of the child's episodic bad behaviours and stress are related to the court proceedings as compared to other factors.

[411] In testimony, Osbourne stressed that the mother/daughter bond is critical and that mother and daughter contact needs to be frequent, ongoing and significant. He said that sporadic contact would be insufficient to meet the child's needs. However, Osbourne resisted giving a finite opinion on frequency and duration of access should the child be placed in the agency's permanent care. Osbourne also expressed an opinion that regardless of the outcome of the case that Z will seek out her mother, one way or the other in order to maintain contact and meet her needs. He expressed a firm opinion that breaking the mother/daughter bond would cause "significant emotional harm to Z".

[412] On the question of statutory deadlines or legislative constraints which the court may have to meet or address, Osbourne said that he was unaware of the particulars. However, when presented with a scenario that potentially the balance of the 2013 calendar might be available, Osbourne said that he could continue to work with Z, including a circumstance in which she is returned to her mother's home. Osbourne was cautious on what might be accomplished before the end of the year because none of his work has been tailored to issues related directly to the child's return. This, of course, is directly connected to the agency's change in tack and pursuing the permanent care option. That is, Osbourne believes that the child can and will benefit from his services whether she is returned home or not. However, the break in service delivery with return as a theme is a factor which must be kept in mind.

[413] Osbourne stated that Z needs a stable and consistent parent and if the court finds that the mother can provide all the usual hallmarks of a successful repatriation, Osbourne sees no difficulty with continuation of his own work.

[414] Osbourne noted in passing that he has had no direct involvement or work with either X or Y and that he has not met them.

[415] Asked if he had read the agency's Plan of Care which calls for no court sanctioned or recognized access by the mother to Z, Osbourne said that that proposal was found by him to be distressing and, in his opinion, very detrimental to the child.

[416] Before completing his testimony, Osbourne conceded that in the course of his own work and his various reports that he has reviewed the agency's Plan of Care and seen some, if not all, of the agency's affidavit material. He also acknowledged that he was aware that X and Y were being transitioned home and that Z knew of this. Reportedly, Z was pleased for her siblings but sad and distressed for herself because "they got to go home because they were so bad in foster care". Osbourne said that both he and the mother gave assurances that her own foster placement was not related to any misconduct or bad behaviour on her part although it is anything but clear as to whether Z accepts that proposition.

The Grandparents

C. H.

[417] In her first affidavit C. H. disclosed that she was then 60 years of age and married to G. H., 65 years of age. G. was formally a fisherman but was injured on the job. C. has continued to work part time at a local business.

[418] C. summarized some of the background circumstances including her recollection of her daughter, M. B.'s departure and return to the Province of Nova Scotia several years ago.

[419] Following M.'s return from [...] , C. H. said that they assisted with the care of Y and Z when M. was taking a community college course. Additionally, there

were frequent visitations back and forth between homes. Y was identified as having a particularly close relationship with his grandfather. C. provided some elaboration on family activities including church attendance, etcetera.

[420] In early June 2102 C. H. updated her first affidavit by indicating that she continued to see Y, Z, and X regularly. C. had knowledge of Y's residence at the group home in Halifax and his difficulty in adjusting to that environment.

[421] C. said that social worker, Archie Kennedy, approached she and her husband in early April, 2012 with a view to placing Y with them for a brief time. She said that when she and her husband were added as parties to the proceeding it was with the view that "we would be a back-up plan for our daughter M., if she was unable to have the children with her".

[422] C. confirmed that Y was placed at their home in mid April 2012 and stayed with them "on again, off again". According to her, Y made it clear from the outset that he wanted to live with his mother in the Town of [...] and not in the rural community of [...].

[423] C. said that she learned in late May 2012 that the agency would withdraw its protection application as it related to Y if the couple made an application under the **Maintenance and Custody Act** seeking full custody of Y. In any event, she claimed that agency representatives indicated to her that "at the very least, Y should remain with my husband, G. and myself, until after the within Court Hearing".

[424] C. expressed her personal opinion that regardless of the outcome of the current child protection proceedings that at 14 years of age Y would likely live wherever he wanted to. Her impression from contact with agency representatives is that the agency would prefer not to take Y into care "as there is no placement for him".

[425] By early June, 2012 C. said she was led to believe that Y would, in fact, be returning to his mother's care under supervision order and that the agency would be discontinuing child protection proceedings as related to X.

[426] In her mid-January 2013 affidavit, C. H. noted that Z continued to be in foster care. Although she had been enjoying regular access to Z, she said the agency unilaterally decided to discontinue such contact.

[427] With regard to Y, she confirmed that he had been returned to M.'s care.

[428] As at the hearing, C. H. expressed their legal position as follows: "I've now decided that we should put forth a plan with respect to allowing Z to return to [...] County and live with us if she is unable to reside with her mother in [...] ".

[429] C. confirmed that she continues to work on a part-time basis and that her husband is now retired and in receipt of various pension benefits.

[430] C. described their residence as modest but adequate to meet Z's needs should the child be placed with them.

[431] C. undertook to ensure Z's school attendance and to fully cooperate with the agency and any directions that might be given by the Minister or the Court with respect to supports and services in the child's best interests.

[432] C. reiterated that there has always been a strong bond between Z and M. B. and that should Z be placed with them that there would be an opportunity to ensure the mother/daughter relationship flourished and strengthened notwithstanding legal custody.

[433] On cross-examination, C. disclosed that she had eight children, three of whom were taken into agency care, many years ago. She candidly disclosed the circumstances surrounding those events and elaborated on the current circumstances of her children, the youngest of whom is in his early thirties and the eldest of which is in her early fourties. She summarized the education and employment histories of her children, and discussed briefly some of the criminal legal problems that some of the children experienced.

[434] C. also candidly acknowledged that her husband has had some problems with alcohol consumption in the past but noted that the couple have been married for 45 years and that she does not perceive past problems with alcohol as being a current issue.

[435] C. acknowledged that M.'s oldest son W had been living with them at one stage on the understanding that he was not to return to M. B.'s residence without agency permission. W did so, despite the prohibition, and C. acknowledged that the agency was not informed.

[436] With respect to Y, she acknowledged that he too was insistent on returning to his mother's residence despite agency directions to the contrary when Y was living with them. C. insisted that she informed Archie Kennedy about Y's intentions and was informed by the worker "off the record" that if Y, in fact, did return to his mother that the agency would not oppose this.

[437] With hindsight, and given that Y has not only been repatriated to his mother but the agency has submitted he is no longer a child in need of protective services, C.'s evidence has enhance credibility.

[438] When M. B. overdosed on medications and was hospitalized, C. acknowledged that she did not call the local agency. Rather, she claimed she was concerned about and focussed on Z who went to her home. The brothers apparently refused to live there and went elsewhere. That said, the bottom line remains that C. was aware of the agency's involvement with her daughter and the children at the time. She reluctantly acknowledged that she did not take any initiative and call the agency when she should have.

[439] C. reiterated in her testimony that if M. B. does not achieve return of Z to her care and custody that she and her husband want Z placed with them. Despite the acknowledged history of not providing timely disclosure of obvious concerns to the agency, C. insisted that "We won't make the same mistake twice".

[440] Asked what assurances she could offer that she could sustain Z's placement when she was unable to do the same for W and Y, C. said that they would retrieve the child if need be and inform the agency.

[441] C. insisted that they do not want to run interference with M.'s legal position and the possibility of resumption of care by her. Should that not be ordered, she said that she and her husband are prepared to offer temporary and/or long term placement.

[442] Before concluding her testimony, C. stated that she was aware of Dr. Gretta Taylor's involvement and she stated that she has noticed "tremendous changes" in her daughter. She elaborated on those observations.

[443] In the same vein she claimed that Y has also improved in as much as he is more cheerful, excited about schooling, and openly discusses counselling and other services with her.

[444] She confirmed that to her observation M.'s new residence is adequate for the family.

[445] (G. H. did not testify.)

Other Witnesses

D.S.

[446] D.S. submitted an affidavit and testified on behalf of M. B..

[447] D.S. is a 25 year old mother of two daughters and a son who range in age from three to seven years old. M. B.'s brother is the father of D.S.'s two daughters. The parents live independently.

[448] D.S. has known M. B. since 2004 when B.'s brother and she started dating. That relationship ended around March, 2011.

[449] In an affidavit, D.S. wrote that she had contact with B. and her four children on an almost daily basis for about seven and a half years - up to the point the agency began its latest proceedings in September, 2010. D.S. said that she has always thought very highly of B. and her children. She reported that she is on a calling list so that she can keep in touch with X and Y. Text messages are also exchanged occasionally. D.S. described M. B. as a very good parent and said that the children appear to be very well taken care of when the children are with her (prior to the apprehension).

[450] D.S. referred to an incident several years ago when W threatened M. and the rest of the family. She personally observed M. to be very calm and in control of the situation.

[451] Following the apprehension of the children in September, 2010 D.S. corroborated that B. was under tremendous stress which was exacerbated by her residential situation.

[452] B. disclosed to D.S. her feelings about perceived changes in the agency's position regarding whether or not she would be resuming care of one or more of her children.

[453] D.S. has never observed B. to be under the influence of drugs and stated that B., to her observation, only drinks alcohol occasionally, and never in the presence of the children.

[454] Although D.S. did observe some minor physical contact between the children, she expressed no concerns about B.'s parenting abilities or capacity.

[455] D.S. also knows C. and G. H. and vouched for an excellent relationship between them and the children.

[456] On a personal note, she said she would have no concern about the H.s looking after her own children and she obviously supports them as they support M. B..

[457] By late March, 2012 D.S. wrote that she had observed significant changes in B.'s physical appearance and presentation. She described her as healthier and no longer overwhelmingly stressed. She observed no signs of depression. By contrast, D.S.said that previously B. would get "very upset and depressed very quickly over anything that happened, even a small issue". She described B.'s reactions as of late March, 2012 as "much more positive".

[458] By the time of the hearing, D.S.'s children were eight, five and four years old. Because D.S.'s employment demands have increased, she sees less of B. now than before. However, she and B. maintain telephone contact and text messages back and forth, etcetera.

[459] In court, D.S. reiterated that B.'s emotional and physical health appear to be "noticeably better than in the past".

[460] D.S. conceded that she has not been to B.'s new residence and that her last visit at B.'s former residence was during the summer of 2012.

Donette Getson

[461] Donette Getson is a Parenting Journey Home Visitor employed by the South Shore Family Resource Association. In her affidavit she explained that she first met M. B. when B. came to the Family Support Centre requesting support for parenting. There was an office consultation in mid September followed by a home visit in early October, 2012. By January 23, 2013 there had been nine scheduled home visits of which six were competed.

[462] In the early stages of her retainer, Getson has been working on developing a professional relationship with B.. She reported that B. has expressed her goals to become a better parent, for Y to be attending school and for Y to receive counselling. She said she and B. have discussed communication skills, effective praise and self-care.

[463] According to Getson, B. has shown a willingness to participate and express her goals for the future and that she and B. have started to develop a so-called family plan. Getson said that future home visits would be focussing on the Common Sense Parenting and Active Parenting Now programs. She said those programs include watching videos, practising, and homework between visits.

[464] Getson stated that she would continue to have weekly home visits until support is no longer needed or requested by B..

[465] By the time of hearing, Getson had met twice more with B.. She recounted participation by Y on a couple of occasions. She observed that B. seemed to be implementing the information provided through teaching, videos, etcetera. She stated that she has noticed improved routines within the home since the service started.

[466] Getson explained that the service she provides is not under the auspices of the Department of Community Services. However, she said that they have frequently partnered in some cases with family support workers who are formally retained by the Department.

[467] Getson confirmed that Y was at home and not at school when she recently visited the home. However, it was her understanding that his absence was due to illness.

E

[468] E is a resident of Halifax who is the foster mother of Z. E has been a foster parent for about 20 years. She has maintained her current residence for approximately 25 years. Her residence includes a small apartment in the basement which is occupied by her adult son. There are three bedrooms upstairs.

[469] At present there are four children plus the adult son at that location.

[470] E is a veteran foster parent who reportedly is now about 70 years old. She disclosed she is in good health. E has four children of her own, three of whom live independently.

[471] Z is one of three females whom E is fostering. The eldest is 12 years of age and has special needs. Another child is two years younger than Z and has no special needs or requirements. Both of the other children whom E is fostering are in the permanent care and custody of the Department of Community Services.

[472] E is fortunate to have a trailer at a not too distant campground where she and the foster children spend most of the time during the summer months and many weekends.

[473] Z was placed at E's home in September, 2010. On arrival, Z was described as very dirty and in need of "a full cleaning". New clothes had to be bought for her as the clothes she had arrived with were dirty and in poor condition.

[474] E described Z as very emotional and often upset when she first came to live with her. She said Z spent much of her time crying and E concluded that she was missing her mother and siblings.

[475] That said, Z settled in quickly and got to know the other children in the home as well as in the neighbourhood. She started to make friends at school and to play outside with other children. However, she continued to be emotional after visits with her mother.

[476] Because of Z's emotional state upon placement, E suggested to agency representatives that Z should be referred for counselling. A referral was made to Ken Osbourne who E did not previously know. E reported her observations to Osbourne once counselling got under way.

[477] In late November, 2010 Z was removed from E's home following an allegation of physical abuse. The agency investigated. Z and another child who was then residing at the home were both removed, although an older child who was also being fostered remained throughout. The investigation was completed in late January, 2011 and, according to E, the allegations were determined to be unfounded. In the intervening time, Z had been placed in another foster home outside of Halifax where she remained until June, 2011.

[478] E learned that the other placement was breaking down and E understood that there were reports of Z lying, stealing, and bullying other children. E had not previously observed such behaviours in Z.

[479] Z was returned to E's home and appeared to be happy with that turn of events. Upon Z's return, she also resumed therapy with Ken Osbourne.

[480] E described Z as an easy child to care for, for the most part. She was characterized as being helpful around the home with routine chores and other responsibilities.

[481] E said that after June, 2011 Z had some behavioural issues at home and at school. One minor incident was an allegation that she had stolen another child's lunch at school. This only occurred once.

[482] There was another incident in the spring and early summer of 2012. At that time, E said that X had returned home and that there were plans in the works for her brother, Y to also return home. E said Z was truly upset by the fact that she would not be returning home and, as a consequence, she feels that Z started to act out. She reverted to some poor behaviours such as bullying, stealing and lying. However, E continued to work with Osbourne and after several weeks the offending behaviours tapered off.

[483] E stated that Z's presentation and demeanour can be negatively impacted by access visits with her sister, X, and with her mother. E said there are only difficulties if there has been talk of plans for the future and/or what is happening in court. Otherwise, Z "tolerates the visits fairly well and is able to return to my home and our routine without much difficulty". E's feeling is that discussions about court proceedings and plans for the future are very upsetting to Z who inevitably cries and withdraws and becomes very emotional in the wake of these discussions.

[484] E said that she has observed Z to be negatively affected by visits with X to the extent that it starts even before the visits actually occur. So, if Z knows that she is going to have a visit with her sister she will start to withdraw from activities in the home and spend more and more time alone. Esaid that withdrawal continues even after the visits with X.

[485] E. expressed concern about Z's knowledge of pending decisions by the court about her future care. She has discussed this with Osbourne. She claimed that Osbourne approved of her informing the child that she would be testifying in court although she did not disclose to the child the subject matter. E said that she is very sure that Z is aware that the court will be deciding on her future and strongly suggested that she is learning about these matters during access visits.

[486] E acknowledged that she and the social worker were concerned sufficiently about this recent knowledge that it was thought that telephone access should be discontinued - again because Z was becoming so distraught. When telephone access was ended, E said the child did not ask to resume telephone calls with her mother. She said that if such a request had been made the topic would be discussed with the social worker.

[487] According to E, Z is doing well at school. Reportedly she is being influenced positively in her academic achievements by one of the other foster children and also by a granddaughter who lives next door. One recently identified area of concern was "respect for her peers". It is a subject which school officials and Osbourne have been attempting to address with the child.

[488] Based on her conversations with Z, E believes that Z would like to return home to live with her mother. However, E also believes that Z is fearful that things will not work out well for her at home and that she will have to return to agency care. E disclosed that she and Z have discussed the possibilities and, without going into the detail of those conversations, it is clear that E believes that Z needs assurances and support, regardless of the final outcome.

[489] Before concluding her evidence, E said that Z, in her view, requires firm and consistent attention when she is distressed or upset by something. She believes that Z does well in a highly structured and well supervised environment where there is consistency in terms of expectations. E said she has enjoyed having Z living in her home and is prepared to have her remain there should that be required.

Mother's Evidence

[490] M. B.'s April 2012 affidavit is a lengthy document and does not easily lend itself to brief summary. The early paragraphs deal with her personal circumstances dating back many years. Much of this is not disputed and is captured in assessments and other professional reports.

[491] Importantly, B. recounted that she was sexually assaulted as a teenager and as a result suffered severe anxiety, depression and post traumatic stress which was never really dealt with until recently, according to her. As discussed elsewhere, Dr. Gretta Taylor is now providing psychotherapy intended to help B. deal with her troubling past.

[492] B. said the father of her eldest son, W, is one G.S. who never had any contact with W. B. B., who is named as a Respondent in the current proceedings, acted as a father to W, and is the biological father of B.'s other children.

[493] According to B., the relationship with B. B. was largely unhealthy and deteriorated into abuse. As a consequence, the parties separated in early July 2004 while living in [...]. B. admitted that at the time she contemplated suicide, called a mental health worker, and was admitted to the psychiatric unit of a local hospital for a brief period. She said she struggled with depression for many months. The same month, she decided to relocate to Nova Scotia with the children, She recounted in considerable detail the challenges in establishing a residence and some stability upon her relocation. Local child protection officials became aware of her circumstances and arranged to provide a variety of supports to the family. (I do not propose to regurgitate the legal history as between the mother and B. B. wherein parenting and child support issues were addressed.)

[494] B. confirmed that a child protection application was started in or about July of 2005. Among other things, the mother was receiving counselling through Mary Haylock and she agreed to a Parental Capacity Assessment. As she continued her struggles with depression, she was seen by psychiatrists, Dr. Milliken and Dr. Gray. According to B., and consistent with other evidence before the court, she cooperated with the agency and accepted services. Some stability in housing was achieved. Eventually, in mid December 2005, a disposition hearing under the **CFSA** resulted in a consent supervision order. In July 2006 the supervision order was renewed; and there were routine reviews. In early December 2006, on the agency's motion, the underlying child protection application was terminated.

[495] There followed a period of stability and a divorce from B. B..

[496] The mother said she discussed the Parental Capacity Assessment results with the assessor who suggested that she likely met the criteria for Borderline Personality Disorder (BPD) and/or passive-aggressive personality disorder. This was consistent with a previous assessment by Dr. Milliken. However, according to B., the difficulty was that although she had been prescribed medications for depression, anxiety and sleep issues by her family physician, she did get any specific treatment for the diagnosed BPD. In her words "therefore, I would continue to cycle up and down with good days and bad days and I continued to struggle emotionally on a regular basis".

[497] Although she cooperated with Mary Haylock's counselling, B. said the service did not really give her any insight into how to deal with BPD. Following

termination of the **CFSA** case in 2006, services with Mary Haylock were discontinued because the mother could not afford to pay for them.

[498] B. admitted that her life began to "spiral out of control" in August 2010 and that her mental health deteriorated. She elaborated on the reasons for this. She admittedly overdosed at home on prescription medications and, unfortunately, three of her children were present. She was hospitalized and shortly thereafter Y and Z were taken into the agency's care. X was then residing with her father in [...]. X returned to the province and was taken into care on arrival.

[499] The mother said she fully cooperated with all of the subsequent supports and services provided to the family by the agency. The eldest child, W, left his mother's care for the reasons explained by the mother in her affidavit. Thereafter, she secured a new residence which was thought to be adequate.

[500] According to the mother, following the 2010 apprehension she and her solicitor had ongoing discussions with the agency about the need for, or benefit of, an updated psychiatric assessment and a treatment plan. However, local mental health services refused to provide such an assessment citing (not for the first time in my experience) the fact that a child protection case was before the court. Eventually, the agency did agree to pay for a private psychiatric assessment by Dr. David Mulhall. And, there followed a new Parental Capacity Assessment by Elaine Boyd-Wilcox which (once again) provided no specific suggestions on how she was to treat her BPD.

[501] In early October 2011, B.'s solicitor received a critique of Boyd-Wilcox's work by Dr. Gerald Hann (discussed elsewhere). Then the mother was referred to Dr. Alan Abbass and later Dr. Gretta Taylor. (Their work is discussed elsewhere). B. outlined, in considerable detail, her work with Dr. Gretta Taylor. She elaborated on the progress being made through psychotherapy. She mentioned that she had not taken any anti-depressants or anti-anxiety medications since September or October of 2011 and stated that she had not felt depressed since she took the medication overdose back in August 2010. Reduction or cessation of other prescribed medications is also canvassed in her affidavit evidence. The mother's demanding schedule of professional appointments and access with Z was similarly detailed.

[502] B.'s affidavit evidence included refutation of many factual assertions advanced by a variety of agency workers. I do not intend to elaborate on her replies but have taken them into account, but I note her evidence was precise and thoughtful.

[503] B.'s Exhibit 14 affidavit evidence, included confirmation of X's return home in late April, 2012 and that Y returned in mid June. The agency terminated proceedings in relation to X but Y has remained under agency supervision.

[504] B. said that when X and Y were in the agency's care, they were placed in residential group homes in HRM. She said their behaviours escalated and they were frequently absent from their placements. The so-called Occupy Halifax demonstrations took place in downtown Halifax in the Fall of 2011. B. learned from the agency and from staff of the residential group homes that both X and Y were camped out for a couple of weeks in tents at the demonstrations. Both refused to resume schooling. Both were reportedly involved in criminal activity resulting in numerous charges being laid against both. The behaviours escalated to the point that both were briefly placed in secure treatment at the[....]

[505] B. said that when X and Y were returned to her care she expected that the agency would provide her with in-home services, such as a family support worker. She acknowledged that Rosalee Carmichael attended at her residence a few times but, according to her, offered very little help or support. The mother subsequently requested another family support worker, but was informed that the service would no longer be provided.

[506] B. gave particulars of her comings-and-goings for the summer of 2012 and conceded she was not always able supervise X and Y as much as she wanted - she had committed to meetings with various professionals and also had access visits with Z, in Halifax. (According to B., she requested that her access to Z take place in [...] but that request was denied.)

[507] Regarding assertions that large numbers of teenagers were hanging out at her residence during the summer, B. said that as soon as she learned that anyone was in the home without her permission she immediately asked them to leave. She said she was unaware of any drug use or alcohol use at her residence, with one exception. She flatly denied purchasing drugs or alcohol for her children or any of

their contemporaries. She denied personally consuming any non-prescription drugs and said that she only consumes alcoholic beverages infrequently on a social basis.

[508] B. confirmed that her therapy with Dr. Gretta Taylor was scaled back after X and Y returned home so that she could devote more time to parenting them. She fully anticipated challenges when both children were repatriated to her. She made arrangements for Y to attend a school in [...] and expected X to attend school in [...].

[509] It was not very long before X refused to attend school and refused to comply with house rules. And it was not very long before Y similarity started to balk at school attendance. When Y's schooling became problematic, B. said she informed social worker Archie Kennedy. She also complained when joint counselling sessions with Ken Osbourne and Z were terminated and were not reinstated. She speculated that this was because the agency had taken a decision to proceed with its permanent care and custody request.

[510] Y's schooling continued to be problematic. The agency reportedly made arrangements for Y to see Jan Cressman but Y balked at the proposed therapy.

[511] In or about October, 2011 B. said she contacted the Family Support Centre to see if she could obtain some in-home support - given the agency's stance on services. The direct result was Donette Getson's involvement (discussed elsewhere).

[512] B. said that Y met with in-house therapist, Stephen Young, in early January, 2013. It was hoped that Young would help Y sustain school attendance and engagement. Y became involved with the Youth Criminal Justice System the same month. To secure his release from custody, B. signed a written undertaking to be responsible for him, including a term that she ensure school attendance and that he abide by a curfew. Recent schooling is discussed elsewhere.

[513] B. noted improved behaviour by Y and conceded that X's conduct had been far more challenging than his. The upshot was that there was escalating conflict between mother and daughter.

[514] X allegedly slapped her mother across the face and, as a direct consequence, B. asked her daughter to leave. Since then, X has been living mainly in HRM. Mother and daughter maintain some contact and X has been informed that she is welcome to return provided she is respectful and abides by house rules.

[515] The mother has continued to visit Z in Halifax but telephone access has been terminated by the agency.

[516] B. confirmed that she continues to see Dr. Gretta Taylor each Friday for therapy and has done so since October, 2012. The sessions last for approximately 1 ½ hours each occasion.

[517] B. said that Dr. Taylor is helping her to continue to learn about the causes of her chronic anxiety and how to deal with her Borderline Personality Disorder. She claimed that the therapy has made her a better parent, especially for Y and Z. She asserts that she is now better able to respond to the children's needs emotionally, mentally and physically. B. stated that she has more patience now than in the past, that she is firmer with her children than before, and because she is following through with consequences that Y, in particular, is responding more positively to her parenting.

[518] B. commended Dr. Taylor as well as various family support workers and Donette Getson for her being able to set boundaries for Y and to manage his behaviours.

[519] B. said that she has attended virtually all scheduled access visits with Z in the city and reaffirmed what many others have said about the very strong bond and affection between mother and daughter.

B.'s Response to New Evidence

[520] M. B. methodically responded to the new evidence offered by the agency. She said that Fournel misidentified her daughter, X, as S.A.. (Fournel had not previously met X.) The second woman at the residence was a friend of X's who needed a place to stay, for one night only. She attributed a strong smell of urine in the residence to kitty litter which needed to be changed.

[521] Regarding the observations of Kari Trethewey, the mother said when the worker recently came to her apartment that N.R. [the mother of her granddaughter] had "just dropped by at the request of X and that the two of them left shortly after Ms. Trethewey's visit. Ms. R. had been at my residence on two occasions at the request of X and she has not been back to my residence since April 6, 2013." (There was no evidence directly from R..)

[522] Regarding contact with W, B. acknowledged that W has visited her residence and stayed overnight, but only "occasionally".

[523] Regarding discussions between the mother and X regarding the daughter's return to the area, B. said the plan is that if Z is returned to her care that X will secure her own apartment and live independently.

[524] Should the court authorize Z's return to her care, the mother said that she will comply with any order that might restrict Z's contact with X, W, or anyone else for that matter.

[525] As of early May, 2013 B. said that she was continuing weekly psychotherapy consultations with Dr. Gretta Taylor and believes she is still making progress. She also confirmed that she continues to meet with Donette Getson and that they have finished the parenting courses. However, the mother said that Getson will continue to work with her on specific issues including developing a strategy for Y's hopeful return to school in September, 2013. She added that she has met with a school board representative on a few occasions to deal with his schooling.

[526] According to B., Y has continued to follow her house rules and that "he has not gotten into any new trouble with the law". B. said Y is still meeting with counsellor Stephen Young every week. (Steven Young offered no evidence to the contrary.)

[527] Access with Z has continued every Wednesday and, according to the mother, the visits have continued to be extremely positive. There was no evidence to the contrary.

B.'s Plan of Care

[528] B. seeks Z's return to her day to day care under agency supervision. She currently has a three bedroom duplex in the local area. The residence is completely furnished. There is a separate bedroom for Z and other separate bedrooms for herself and Y. All of the necessary furniture, etcetera is in place for Z's return.

[529] She seeks to continue counselling for Y with Stephen Young and also wants counselling to continue for Z's benefit with Ken Osbourne. Assuming Osbourne's blessing, she also seeks authorization for joint counselling with her daughter.

[530] Assuming that Y resumes full time schooling the mother has also requested that a tutor be arranged for additional educational assistance.

[531] It is proposed that Z will attend a local school and travel to and from by school bus. The mother has plans and proposals for a number of other community activities such as Sunday School, Big Brothers/Big Sisters, etcetera.

[532] B. provided written assurance that she will cooperate with any of the services offered by the agency for the children and herself and any services and supports which may be ordered by the court. She undertook to continue services with Donette Getson and to continue to see Dr. Gretta Taylor for weekly psychotherapy.

[533] B.'s alternate proposal if Z is not repatriated to her is to support her parents' plan for placement with them under agency supervision.

Discussion/Decision

The Statute

[534] I will not reproduce all of the relevant sections of the **Children and Family Services Act** (**CFSA**). However, the preamble sets out a number of basic principles, several of which are intersecting and sometimes seem to be competing.

[535] I am mindful that children are entitled to protection from abuse and neglect; and that the basic rights and fundamental freedoms of children and their families

include a right to the least invasion of privacy and interference with freedom that is compatible with their own interests and of society's interest in protecting children from abuse and neglect. Also, parents have responsibility for the care and supervision of their children; and children should only be removed from that supervision, either partly or entirely, when all other measures are inappropriate.

[536] Z, Y and other children, are presumed to have a sense of time that is different from that of adults, and services provided under the **CFSA** must respect the child's sense of time.

[537] Also, as a matter of principle, when it is necessary to remove children from the care and supervision of their parents they should be provided for, as nearly as possible, as if they were under the care and protection of wise and conscientious parents. The challenges faced by the agency in giving life and meaning to that principle are amply demonstrated by the experiences of X and Y when placed temporarily at group homes in the metropolitan Halifax area.

[538] I have also directed myself that the purpose of the **CFSA** is to protect children from harm, promote the integrity of the family and assure the best interests of children. In this proceeding, the paramount consideration is the best interests of the children.

[539] Under section 3(2) of the **CFSA**, when making orders and determinations in the best interests of a child, I must consider a host of relevant circumstances as set out in subsection (a) through (n). In the present case, the following subsections are particularly relevant: (a), (b), (c), (d), (e), (f), (I), (j), (k), (l) and (m).

[540] A broad statement of agency functions will be found in section 9. And section 13 elaborates on potential services promoting integrity of the family. The agency must take reasonable measures to provide services to families and children that promote the integrity of the family. The range of services intended to promote family integrity include, but are not limited to those services provided directly by the agency or provided by others with the agency's help for the purposes set out in subsections (a) through (k), inclusive.

[541] Section 22(2) sets forth when a child is in need of protective services. Where there is reference to “substantial risk”, that means a real chance of danger that is apparent on the evidence.

[542] Under section 41, one will find directions regarding disposition hearings. The court must also consider a plan for the child’s care and the minimum content standard is set out in section 41(3) sub-subparagraphs (a) through (e).

[543] The court’s so-called options at the conclusion of a disposition hearing are set out in section 42(1).

[544] The court must not make an order removing a child from the care of a parent unless satisfied that less intrusive alternatives , including services to promote the integrity of the family pursuant to section 13 have been attempted and have failed, have been refused by the parent or guardian, or would be inadequate to protect the child.

[545] Under paragraph 42(3), where the court determines that it is necessary to remove a child from the care of a parent, the court must before making a permanent care and custody order (which is requested for Z) consider whether it is possible to place the child with a relative, neighbour or other member of the child’s community or extended family, with the consent of the relative or other person. (The H.s have offered a placement for Z.)

[546] There is also an overreaching directive that the court shall not make an order for permanent care and custody of a child 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 on the age of the child, set out in section 45(1), so that the child can be returned to the parent.

[547] Section 46 deals with review hearings. The key portions follow:

> (3) Where an application is made pursuant to this Section, the child shall, prior to the hearing, remain in the care and custody of the person or agency having care and custody of the child, unless the court is satisfied, upon application, that the child's best interests require a change in the child's care and custody.

> (4) Before making an order pursuant to subsection (5), the court shall consider
>
> (a) whether the circumstances have changed since the previous disposition order was made;
>
> (b) whether the plan for the child's care that the court applied in its decision is being carried out;
>
> (c) what is the least intrusive alternative that is in the child's best interests; and
>
> (d) whether the requirements of subsection (6) have been met.
>
> (5) On the hearing of an application for review, the court may, in the child's best interests,
>
> (a) vary or terminate the disposition order made pursuant to subsection (1) of Section 42, including any term or condition that is part of that order;
>
> (b) order that the disposition order terminate on a specified future date; or
>
> (c) make a further or another order pursuant to subsection (1) of Section 42, subject to the time limits specified in Section 43 for supervision orders and in Section 45 for orders for temporary care and custody.
>
> (6) Where the court reviews an order for temporary care and custody, the court may make a further order for temporary care and custody unless the court is satisfied that the circumstances justifying the earlier order for temporary care and custody are unlikely to change within a reasonably foreseeable time not exceeding the remainder of the applicable maximum time period pursuant to subsection (1) of Section 45, so that the child can be returned to the parent or guardian.

[548] Section 47, among other things, sets out the consequences of a permanent care and custody order, addresses the subject of access, and related issues. I am aware that section 48, among other things, addresses the question of variation and termination of permanent care and custody orders.

[549] **Minister of Community Services v. C.B.**, 2012 NSSC 358 is a decision which dealt with an application by the Minister of Community Services for a permanent care and custody order, with no provision for access between a mother and her children. The case presented itself as a review of disposition hearing.

[550] In her decision, Justice Elizabeth Jollimore directed herself that a disposition order is one that requires the court to consider the best interests of the child or children. After mentioning the various disposition options, she emphasized that each possible disposition must be considered. She cited **Children's Aid Society of Halifax v. B.(T.), 2001 NSCA 99** at paragraph 19.

> [27] I'm to consider each of these possible dispositions, according to Justice Saunders in *Children's Aid Society of Halifax v. B.(t.),* 2001 NSCA 99, at paragraph 19.
>
> [28] Ms. B has been clear that she is not asking for more time, either to address the application with regard to C (which would need to be concluded in just five weeks, in any event) or to consider another possible disposition for J. By virtue of J's age, a final disposition isn't required until May 21, 2013.
>
> [29] Ms. B has had more than one year to address the Minister's concerns. The concerns were identified at the outset of the proceeding. The Agency has been alerted about concerns relating to the children frequently since M was born and those referrals have been annual since 2007. Ms. B has been provided with services to assist her in remedying the deficiencies and problematic circumstances.

[551] She also noted that the court is not required to defer or delay a permanent care decision until the maximum time limit prescribed by statute has expired. To this end she cited the decision of **Nova Scotia Minister of Community Services v. L.L.P.**:

> [30] According to the Court of Appeal's decision in *Nova Scotia (Minister of Community Services) v. L.L.P.,* 2003 NSCA 1, at paragraph 31, I am not required to defer a permanent care decision until the maximum time limit has expired.

[552] Justice Jollimore was facing a situation in which the legal options had been reduced to returning the children to their mother or placing them in the Minster's permanent care and custody.

[553] By contrast, the present case does not face a similar constraint because it is agreed that the statutory or technical deadlines will not be reached until December, 2013.

[554] As mentioned, the court must also consider section 42(2) and 42(4) of the **CFSA**. The first mandates that the court not make an order that removes children from their parent unless the court is satisfied that less intrusive alternatives have been tried and have failed, have been refused, or would be inadequate to protect the children. The latter section instructs the court that it must not make a permanent care and custody order unless the court is also satisfied that the circumstances which justify the order are unlikely to change within the reasonably foreseeable time, not exceeding the maximum time limits prescribed by the statute.

[555] On the issue of access following a potential permanent care and custody order, Justice Jollimore similarly faced a request by the Minister of Community Services that there be no order for access between the mother and her children. It was noted that a decision with regard to access following a permanent care order is not one which requires the court to consider the children's best interests. Rather, under section 47(2), the court may not make an order for access unless satisfied that one of the identified circumstances in the subsection exists. Access may be available where an adoption is not planned or where some other special circumstances justifies an access order. In the circumstances she faced, Justice Jollimore had evidence that adoptions were planned for the children involved and there was evidence that an ongoing access order could impair the prospect of the adoptions.

[556] **Mi'Kmaw Family and Children's Services v. Kdo,** 2012 NSSC 379 is a decision of Justice Theresa Forgeron who, at a review hearing, was asked to decide whether three children should be placed in the agency's permanent care and custody - despite the fact that the legislative timelines had not been exhausted. The issue to be decided was whether the circumstances giving rise to a previous temporary care and custody order were likely or unlikely to change within a reasonably foreseeable time.

[557] In addressing the issue, Justice Forgeron wrote as follows:

> [18] In this case, the agency is assigned the burden of proof. It is the civil burden of the proof. The agency must prove its case on a balance of probabilities by providing the court with "clear, convincing, and cogent evidence"**: C.(R.) v. McDougall**, 2008 SCC 53. The agency must prove why it is in the best interests of the children to be placed in the permanent care and custody of the agency, according to the legislative requirements, at this time.

[19] In making my decision, I must be mindful of the legislative purpose. The threefold purpose is to promote the integrity of the family, protect children from harm, and ensure the best interests of children. The overriding consideration is, however, the best interests of children as stated in sec. 2(2) of the *Act*.

[20] The *Act* must be interpreted according to a child centred approach, in keeping with the best interests principle as defined in sec. 3(2). This definition is multifaceted. It directs the court to consider various factors unique to each child, including those associated with the child's emotional, physical, cultural, and social development needs, and those associated with risk of harm.

[21] In addition, sec. 42(2) of the *Act* states that the court is not to remove children from the care of their parents, unless less intrusive alternatives have been attempted and have failed, or have been refused by the parent, or would be inadequate to protect the children.

[22] When a court conducts a disposition review, the court assumes that the orders previously made were correct, based upon the circumstances existing at the time. At a review hearing, the court must determine whether the circumstances which resulted in the original order, still exist, or whether there have been changes such that the children are no longer children in need of protective services: sec. 46 of the *Act*; and **Catholic Children's Aid Society of Metropolitan Toronto v. M.(C.)** [1994] 2 S.C.R. 165.

[23] Past parenting history is also relevant as it may be used in assessing present circumstances. An examination of past circumstances helps the court determine the probability of the event reoccurring. The court is concerned with probabilities, not possibilities. Therefore, where past history aids in the determination of future probabilities, it is admissible, germane, and relevant: **Nova Scotia (Minister of Community Services) v. Z.S.** 1999 NSCA 155 at para. 13; **Nova Scotia (Minister of Community Services) v. G.R.** 2011 NSSC 88, para. 22, as affirmed at **Nova Scotia (Minister of Community Services) v. G.R.** 2011 NSCA 61.

[24] Section 42(4) of the *Act* provides the court with the authority to make a permanent care order, even when the legislative time lines have not been exhausted, if circumstances are unlikely to change within a reasonably foreseeable time. Section 42(4) states as follows:

> (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.

[25] Section 46(6) of the *Act*, notes a similar provision. Section 46 (6) states as follows:

> Where the court reviews an order for temporary care and custody, the court may make a further order for temporary care and custody unless the court is satisfied that the circumstances justifying the earlier order for temporary care and custody are unlikely to change within a reasonably foreseeable time not exceeding the remainder of the applicable maximum time period pursuant to subsection (1) of Section 45, so that the child can be returned to the parent or guardian. 1990, c. 5, s. 46.

[558] Justice Forgeron provides helpful guidance on what I conclude is one of the crucial issues or themes in the present case - the likelihood of circumstantial change within the reasonably foreseeable future:

[26] Although discretionary, secs. 42(4) and 46(6) of the *Act* do not provide the court with unlimited jurisdiction. All discretionary authority must be exercised judicially, and in accordance with rules of reason and justice, not arbitrarily and based upon a rational and solid evidentiary foundation: **MacIsaac v. MacIsaac** (1996) 150 NSR (2d) 321 (C.A.). This requirement is heightened when the meaning of "reasonably" and "foreseeable" are examined.

[27] "Reasonably foreseeable" is not defined in the legislation. In *Words & Phrases: Judicially Defined in Canadian Courts and Tribunal* vol, 7. (Toronto: Carswell, 1993) (June 2012 supplement) at p. 7-36, s.v., "reasonably" is defined as follows:

> ...the definition of "reasonably" in Webster's Third International Dictionary [is as follows:]:
> 1. in a reasonable manner (acted quite...)
> 2. to a fairly sufficient extent (a book that is good).What is "reasonable" is not the subjective view of either the respondent or appellant but the view of an objective observer with a knowledge of all the pertinent facts.
> The Shorter Oxford English Dictionary on Historical Principles refers to "reasonably" as an adverb meaning "in a reasonable manner; sufficiently; fairly".
> (Income Tax)
> Bailey v. Minister of National Revenue, [1989] 2 C.T.C 2177 at 2182, 2183, 89 D.T.C. 416 (T.C.C.) Rip T.C.J.

[28] "Foreseeable" is defined in the Judy Pearsall, ed, *The New Oxford Dictionary of English*, 9th ed (New York: Oxford University Press, 1999) at p. 718, s. v., as follows:

Foreseeable - **adjective** able to be foreseen or predicted ...

[29] In this context, it is helpful to review the cases submitted to the court by counsel. Circumstances which have been identified as important in determining if a change can be made in a reasonably foreseeable time are as follows:

(a) *Whether other children have been placed in the permanent care and custody of the agency, or in the permanent custody of other adults*. In **Nova Scotia (Minister of Community Services) v. G.R.** ***supra***, three of the respondent's children were in the custody of paternal grandparents; another child was in the permanent care of the Minister; and a fifth child was apprehended at birth and remained in the temporary care of the Minister.

(b) *Whether the children have a lengthy history of being in the temporary care of the agency*. In **Children's Aid Society of Halifax v. D.H.** 2006 NSSC 1, three separate court proceedings had been initiated. As a result, the four and five year old children had only been in the unsupervised care of her parents for five months; and the youngest child had not been in the unsupervised care of her parents at any time.

(c) *Whether the parent lacked meaningful insight into the issues that gave rise to the protection finding*. In **Nova Scotia (Minister of Community Services) v. G.R.**, ***supra***, the mother minimized the abusive and dysfunctional nature of her relationship with the father. The mother was unable to identify the changes she had to make in her lifestyle to ensure a safe environment for the child. In **Nova Scotia (Minister of Community Services) v. P.M.D.,** 2002 NSSF 38, the mother lacked insight into her addiction to cocaine, which led to a life of prostitution and crime. The mother failed to become involved in a meaningful drug rehabilitation program. In **Nova Scotia (Minister of Community Services) v. S.W.** 2010 NSSC 472, the court held that maximizing the statutory time limits would not result in the mother effecting necessary changes. The mother severed all relationships with each of the

doctors who sought to reduce her addiction to pain medication.

(d) *Whether the parent exercised access*. In **Nova Scotia (Minister of Community Services) v. G.R.**, ***supra***, the mother lacked commitment to the child, having only exercised access on five occasions. In **Nova Scotia (Minister of Community Services) v. S.W.** , ***supra***, the mother was late for approximately 25% of all scheduled visits, and another 17% were cancelled as a result of her actions or inactions.

(e) *Whether the parent lacked basic parenting and housekeeping skills*. In **Children's Aid Society of Halifax v. D.H.**, ***supra***, the mother's parenting skills were so pervasively and extensively inadequate, that no hope of change was probable. In **Nova Scotia (Minister of Community Services) v. S.W.**, ***supra***, the mother made limited progress in developing even basic parenting skills, such as feeding, diapering, or securing the child correctly in a car seat.

(f) *Whether an expert provided opinion evidence confirming an inability to parent*. In **Children's Aid Society of Halifax v. D.H.**, ***supra***, the assessor recommended permanent care because of filthy living conditions, drug and alcohol abuse, and chronic neglect. In contrast, in **Nova Scotia (Minister of Community Services) v. E.C.** 2007 NSSC 37, the court placed little weight on the expert report because of the erroneous information that it contained.

(g) *Whether the parent was effecting positive changes that resulted in lifestyle improvements*. In **Nova Scotia (Minister of Community Services) v. E.C. supra**, the mother's parenting skills had improved. The mother was focussed and open to learning new

> skills by participating in services. The request for a permanent care order was denied.

[559] Past parenting of Z, and her siblings, received a lot of attention but, with respect, its precise purpose was nor clearly articulated. That is, it was not made clear to me whether it was introduced as background history, or to round out and prove old facts for the final hearing, or to help sustain the grounds for a protection finding, or some combination thereof. (The mother did not actually contest the finding.) In the circumstances, I directed myself to keep such evidence in perspective, that I must be attentive to the present and not get swept away with the past, and that the main focus now is the child, Z. I am alert to the practicalities of so-called "front-end loading" and proceeded cautiously in this subject area. [See **C.A.S. of Regional Municipality of Waterloo v. R.C.** [1994] O.J. No. 2955 (Ont. Prov. Div. *per* Katarynych Prov. J.] at paragraphs 14 - 21.

[560] On the evidence, I find that the circumstances which led to imposition of the last temporary care and custody have changed.

[561] I am persuaded that the mother's current psychotherapy regime has sparked significant positive changes in her mental health state which are not fleeting, trivial or feigned. On a balance of probabilities, I find there is good reason to believe she is capable of, and should, resume parenting of Z, provided her therapy continues in conjunction with other supports and services. Put another way, the agency has not convinced me that the circumstances justifying the last order have not changed and are unlikely to change within the statutory deadline (in this case, by the end of 2013.)

[562] In an admittedly different context, Wright, J. recently stated in **R. (C.) v. Children's Aid Society of the District of Thunder Bay**, 2013 CarswellOnt 2895 (Ont. S.C.J.):

> A Crown wardship order is the most profound order that a court can make. To take someone's children from them is a power that a judge must exercise only with the highest degree of caution, and only on the basis of compelling evidence, and only after a careful examination of possible alternative remedies. See **Catholic Children's Aid Society of Hamilton-Wentworth v. Jill G.-T. reflex**, (1996), 90 U.A.C. 5, 23 R.F.L. (4th) 79, [1996]

U.J. No. 1394, 1996 CarswellOnt 1428 (Ont. Div. Ct.). per S.B. Sherr: **Children's Aid Society of Toronto v. E.E.**, [2011] O.J. No 3143.

[563] With the foregoing in mind, the result is influenced by, but not confined to, the following considerations:

- the strong expert opinion medical evidence regarding BPD and ISTDP, including progress since the last order, its efficacy and the prognosis for "success", as compared to past generalized treatment recommendations and efforts
- the mother's consistent cooperation and acceptance of services and supports throughout, coupled with her improved insight into the underlying issues as a result of ISTDP
- that none of Z's siblings children have been committed to the agency's permanent care and custody or been the subject of litigation seeking such an outcome
- the mother's impeccable access record (frequency, duration, and quality)
- evidence that basic parenting and housekeeping skills are present
- the mother's assurances that she will abide by any terms and conditions imposed by the court (including contact prohibitions or constraints) to allay ongoing agency concerns
- evidence that breaking the very strong bond between mother and daughter may cause significant emotional harm to the daughter
- the evidence of risk that Z may suffer (emotional) harm after repatriation should she later be reapprehension is largely speculative, and [in my opinion] is less than the risk of emotional harm incidental to permanent care and breaking the parent/child bond
- Z's wish to be returned to her mother's care and to enjoy a secure place as a member of her own family, immediate and extended
- the absence of special or exceptional physical, mental or emotional needs or demands by Z
- the absence of cogent evidence to support the agency's propositions that the effect of delay on Z and the risk of other (negative) effects - if she is returned to her mother, if the proceeding is continued, and if final disposition is delayed until later in the year - outweigh the risk of emotional harm and other negative effects should she be placed in permanent care now

[564] I order that Z shall be returned to the care and custody of her mother under agency supervision on the following terms and conditions:

> Unless otherwise agreed by the mother and the agency, Z shall be returned to her mother's care at the conclusion of Z's current school year and, in any event, not later than June 29th, 2013.
>
> The mother and agency representatives shall consult one another and confer with service providers to establish a firm date for Z's transition home and advise a Family Court Officer accordingly. All concerned shall use their best efforts to ensure a smooth and positive transition. If the parties are unable to establish a return date by consensus, further direction may be sought from the court upon notice.
>
> The mother shall cooperate and comply with all reasonable requests, inquiries, directions and recommendations of any representative of the agency.
>
> Any representative of the agency shall have the right to enter the residence of the child, Z, to provide guidance and assistance and to ascertain that she is being properly cared for.
>
> The mother shall continue her individual counselling with Dr. Gretta Taylor as scheduled by Dr. Taylor.
>
> The mother shall be provided with the services of an agency family support worker and she will make herself available for regularly scheduled appointments.
>
> Individual counselling shall be provided for Z with Ken Osbourne, with reports to be provided to the agency and the mother's legal counsel.
>
> The mother shall not consume or have in her possession any non-medically prescribed drugs. The mother shall ensure that any and all of her prescription drugs are safely secured at all times to the satisfaction of the agency.
>
> The agency shall provide such other supportive and rehabilitative services to Z and the mother as may be determined to be in their best interests by the agency.
>
> The mother shall not permit her children, W and X, to be present at her residence in the presence of Z unless authorization is first obtained from agency representatives who may establish reasonable terms and conditions for contact. Z's contact with her siblings shall be supervised at all times by the mother or a responsible adult approved by her. The mother shall keep the

agency informed about any sibling contact which occurs away from her residence.

The costs of all supportive and rehabilitative services, if not paid for from any other source, shall form part of and be paid out of the costs of maintenance of a child in care.

The supervision order shall be for a period of three months, commencing June 29, 2013 or the date of Z's return home, whichever first occurs ("the effective date"). There shall be a review of the order in approximately two months, calculated from the effective date. Counsel shall establish a mutually convenient date and time for a docket appearance by contacting a Family Court Officer.

[565] I find it is difficult, if not impossible, to distinguish the perceived risks to Z from the potential risks to Y. Given Y's fragile circumstances, including but not limited to his educational status, I am persuaded that he remains a child in need of protective services who could benefit from supports and services in preparation for and during the transition of Z home. That said, agency supervision flows from an order approved on June 18, 2012, incidental to the rollover. Under section 43 (4) of the **CFSA**, the last order now has a very limited life span. Having regard to the factors set out in section 46 of the **CFSA**, I order that Y shall remain in the care and custody of his mother subject to agency supervision until its expiry by operation of law. In the meantime, I authorize so-called generic terms and conditions for services and supports for Y, and specifically authorize continuance of his individual counselling.

[566] Given the result, it is unnecessary to rule on the H.'s alternate placement plan for Z. It is also unnecessary to decide what access, if any, by the mother to Z would have been authorized had the child been placed in the agency's permanent care and custody.

[567] Mr. Gruchy shall prepare an appropriate order which captures the results and seek approval (only as to form) from counsel for the other parties.

Dyer, J.F.C.